Violence, Exploitation, and Abuse and Discrimination in Migration

Affecting Women and Children in ASEAN: A Baseline Study
# Table of Contents

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>273</td>
</tr>
<tr>
<td>Laos PDR</td>
<td>425</td>
</tr>
<tr>
<td>Malaysia</td>
<td>499</td>
</tr>
<tr>
<td>Myanmar</td>
<td>585</td>
</tr>
</tbody>
</table>
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

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Indonesia
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

by
Ranyta Yusran
Table of Contents

LIST OF TABLES 279
LIST OF LEGISLATION 280
LIST OF ABBREVIATIONS 284
A OVERVIEW 289
  1 Introduction 289
  2 Intended Reader 290
  3 List of Literatures 290
B VIOLENCE 293
  1 Description of the Problem 293
    a. Prevalence of Violence 293
    b. Root Causes of Violence and Aggravating Practices 305
    c. Impact of Violence 307
  2 De Jure State Responses 308
    a. Bases of State Responsibility 308
    b. National Policies against Violence 312
    c. Assessment of State Policies 319
  3 Implementation, Monitoring and Prevention 329
    a. Implementing and Monitoring Mechanisms 329
    b. Complaints Process 331
    c. Protection and Rehabilitation 332
    d. Prevention Strategy 333
  4 Role of Non-State Actors 334
    a. Assistance to Victims 334
    b. Prevention Programs 334
    c. Monitoring and Cooperation 335
  5 Progress Indicators and Challenges 336
    a. Progress Indicators 336
    b. Challenges 338
    a. Gaps in Indonesia’s Legal Framework and Policies 340
    b. Gaps in the Literatures 341
    c. Recommended Areas/Subjects for Further Studies 342
C EXPLOITATION 343
  1 Description of the Problem 343
    a. Prevalence of Exploitation 343
    b. Root Causes of Exploitation and Aggravating Practices 356
    c. Impact of Exploitation 358
  2. De Jure State Responses 358
    a. Bases of State Responsibility 359
    b. State Policies against Exploitation 365
    c. Assessment of State Policies 371
  3. Implementation, Monitoring and Enforcement 375
    a. Implementing and Monitoring Mechanisms 375
    b. Complaints Process 376
    c. Protection and Rehabilitation 377
    d. Prevention Strategy 377
  4. Role of Non-State Actors 378
    a. Assistance to Victims 378
    b. Prevention Programs 378
    c. Monitoring and Cooperation 380
  5 Progress Indicators and Challenges 381
    a. Progress Indicators 381
    b. Challenges 383
  6 Gaps and Recommendations for Further Studies 385
    a. Gaps in Indonesia’s Legal Framework and Policies 385
    b. Gaps in the Literatures 386
    c. Recommended Areas/Subjects for Further Studies 387
D ABUSE AND DISCRIMINATION IN MIGRATION 389
  1 Description of the Problem 389
    a. Prevalence of Abuse and Discrimination in Migration 389
    b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices 397
    c. Impact of Abuse and Discrimination in Migration 398
  2. De Jure State Responses 399
    a. Bases of State Responsibility 399
    b. National Policies against Abuse and Discrimination in Migration 404
    c. Assessment of State Policies 407
  3. Implementation, Monitoring and Enforcement 409
    a. Monitoring Mechanisms 409
    b. Complaints Process 409
    c. Protection and Rehabilitation 410
    d. Prevention Measures 410
4. Role of Non-State Actors 411
   a. Assistance to Victims 411
   b. Prevention Programs 411
   c. Monitoring and Cooperation 412

5. Progress Indicators and Challenges 412
   a. Progress Indicators 412
   b. Challenges 414

6. Gaps and Recommendations for Further Studies 415
   a. Gaps in Indonesia’s Legal Framework and Policies 415
   b. Gaps in the Literatures 415
   c. Recommended Areas/Subjects for Further Studies 416

BIBLIOGRAPHY 417
# List Of Table

<table>
<thead>
<tr>
<th>Table</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 1</td>
<td>General Information on Indonesia</td>
<td>290</td>
</tr>
<tr>
<td>Table 2</td>
<td>List of Reports to be Reviewed</td>
<td>294</td>
</tr>
<tr>
<td>Table 3</td>
<td>Occurrences of Domestic Violence against Women reported to Komnas Perempuan in 2005 - 2010</td>
<td>299</td>
</tr>
<tr>
<td>Table 4</td>
<td>Division of Cases of Domestic Violence against Women based on Relationship and Types of Spousal Violence (Komnas Perempuan Note 2011)</td>
<td>299</td>
</tr>
<tr>
<td>Table 5</td>
<td>Komnas Perempuan 2011’s Data on Community-Based Violence</td>
<td>304</td>
</tr>
<tr>
<td>Table 6</td>
<td>International Human Rights Treaties signed/ratified/acceded by Indonesia related to protection of women and children against violence</td>
<td>312</td>
</tr>
<tr>
<td>Table 7</td>
<td>List of ASEAN Instruments on Protection of Women and Children</td>
<td>316</td>
</tr>
<tr>
<td>Table 8</td>
<td>List of Preventive Measures Provided under General Legislations and Policies on Violence against Women and Children</td>
<td>318</td>
</tr>
<tr>
<td>Table 9</td>
<td>List of Protective Measures Provided under General Legislations and Policies on Violence against Women and Children</td>
<td>319</td>
</tr>
<tr>
<td>Table 10</td>
<td>List of Curative Measures Provided under General Legislations and Policies on Violence against Women and Children</td>
<td>320</td>
</tr>
<tr>
<td>Table 11</td>
<td>List of Preventive Measures Provided under Specific Legislations and Policies on Violence against Children</td>
<td>322</td>
</tr>
<tr>
<td>Table 12</td>
<td>List of Protective Measures Provided under Specific Legislations and Policies on Violence against Children</td>
<td>322</td>
</tr>
<tr>
<td>Table 13</td>
<td>Number of Trafficked Persons based on Recruiter (Source: IOM Statistics March 2005 - December 2010)</td>
<td>349</td>
</tr>
<tr>
<td>Table 14</td>
<td>Breakdown of Trafficked Persons based on Type of Exploitation (Source: IOM Statistic March 2005 - December 2010)</td>
<td>349</td>
</tr>
<tr>
<td>Table 15</td>
<td>Comparison of Information on the Handling of Trafficking Cases by Indonesian Law Enforcers Provided by Various Sources</td>
<td>350</td>
</tr>
<tr>
<td>Table 16</td>
<td>Compilation of Estimates on the Number of Women and Children Domestic Workers in Indonesia</td>
<td>353</td>
</tr>
<tr>
<td>Table 17</td>
<td>Compilation of Estimates on the Number of Sexually Exploited Women and Children in Indonesia</td>
<td>354</td>
</tr>
<tr>
<td>Table 18</td>
<td>Percentage of Working Children by Industry and Age Group and Sex in Indonesia 2009</td>
<td>358</td>
</tr>
<tr>
<td>Table 19</td>
<td>Indonesia’s International and Regional Commitments relating to the Elimination of Exploitation of Women and Children</td>
<td>364</td>
</tr>
<tr>
<td>Table 20</td>
<td>Countries to which Indonesia has Extradition and MLA Treaties</td>
<td>368</td>
</tr>
<tr>
<td>Table 21</td>
<td>List of Preventive Measures Provided under General Legislations and Policies on Exploitation of Women and Children</td>
<td>371</td>
</tr>
<tr>
<td>Table 22</td>
<td>List of Protective Measures Provided under General Legislations and Policies on Exploitation of Women and Children</td>
<td>372</td>
</tr>
<tr>
<td>Table 23</td>
<td>List of Curative Measures Provided under General Legislations and Policies on Exploitation of Women and Children</td>
<td>375</td>
</tr>
<tr>
<td>Table 24</td>
<td>Placement of Indonesian Labour Migrants by Gender</td>
<td>393</td>
</tr>
<tr>
<td>Table 25</td>
<td>Various Data on the Number of Registered Indonesian Migrant Workers cited by Various Organisations</td>
<td>393</td>
</tr>
<tr>
<td>Table 26</td>
<td>Compilation on the Fees and Salary Deduction faced by Indonesian Workers (Source: CARAM Asia)</td>
<td>396</td>
</tr>
<tr>
<td>Table 27</td>
<td>Indonesia’s International, Regional, and Bilateral Commitments/Arrangements relating to the Protection of People in the Context of Migration</td>
<td>404</td>
</tr>
<tr>
<td>Table 28</td>
<td>List of Recommendations given by UN Treaty Bodies/Special Procedures and Other Bodies related to Implementation of Indonesia’s International Obligations Pertaining to Protection of Migrant Workers</td>
<td>407</td>
</tr>
<tr>
<td>Table 29</td>
<td>List of Legislations and Regulations relevant to the Implementation of Migrant Workers Protection under the Migrant Workers Law</td>
<td>408</td>
</tr>
<tr>
<td>Table 30</td>
<td>Preventive Measures Provided under the Migrant Workers Law</td>
<td>409</td>
</tr>
<tr>
<td>Table 31</td>
<td>Protective Measures for Indonesian Migrant Workers</td>
<td>410</td>
</tr>
</tbody>
</table>
## List Of Legislation

### Acts of Parliament


34. Law No. 21 of 1999 on the Ratification of ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation. State Gazette 1999:57. 7 May 1999

Government Regulations


Presidential Decrees and Regulations


2. Presidential Decree No. 18 of 2011 on the National Prosecutor Commission. 4 March 2011.

3. Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad. 7 July 2011.

4. Presidential Instruction No. 3 of 2010 on Justice for All Development Program. 21 April 2010.


8. Presidential Regulation No. 81 of 2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers. 8 September 2006.


Ministerial Regulations and Decrees


Chief of Police Regulations

1. Regulation of the Chief of Indonesian National Police Forces No. 3 of 2008 on the Establishment of the Special Women and Children Unit and the Inspection Procedure of Victims and/or Witnesses. 22 May 2008.

2. Regulation of the Chief of Indonesian National Police Forces No. 10 of 2007 on the Organisation and Management of Special Women and Children Unit. 6 July 2007.

Regional Legislations


Court Decision

List Of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AI</td>
<td>Amnesty International</td>
</tr>
<tr>
<td>ACILS</td>
<td>American Center for International Labor Solidarity</td>
</tr>
<tr>
<td>ARTIP Project</td>
<td>Asia Regional Trafficking in Persons Project</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>AusAID</td>
<td>Australian Agency for International Development</td>
</tr>
<tr>
<td>Bappenas</td>
<td>Badan Perencanaan Pembangunan Nasional (National Development Planning Agency)</td>
</tr>
<tr>
<td>Bareskrim</td>
<td>Badan Reserse Kriminal Polisi (Criminal Investigation Unit)</td>
</tr>
<tr>
<td>BKKBN</td>
<td>Badan Kependudukan dan Keluarga Berencana Nasional (National Population and Family Planning Agency)</td>
</tr>
<tr>
<td>BNP2TKI</td>
<td>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (National Agency for the Placement and Protection of Indonesian Workers)</td>
</tr>
<tr>
<td>BP3TKI</td>
<td>Balai Pelayanan, Penempatan, dan Perlindungan Tenaga Kerja Indonesia (Service Centre on the Placement and Protection of Indonesian Migrant Workers)</td>
</tr>
<tr>
<td>BPS</td>
<td>Badan Pusat Statistik (Statistic Indonesia)</td>
</tr>
<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>CEACR</td>
<td>Committee of Experts on the Application of Conventions and Recommendations</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination against Women</td>
</tr>
<tr>
<td>CIA</td>
<td>Central Intelligence Agency</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>CWGI</td>
<td>CEDAW Working Group Initiative</td>
</tr>
<tr>
<td>FGM</td>
<td>Female Genital Mutilation</td>
</tr>
<tr>
<td>GCSKSW</td>
<td>Global Campaign to Stop the Killing and Stoning of Women</td>
</tr>
<tr>
<td>GIEP</td>
<td>Global Initiative to End all Corporal Punishment of Children</td>
</tr>
<tr>
<td>GoI</td>
<td>Government of Indonesia</td>
</tr>
<tr>
<td>HRC</td>
<td>Human Rights Council</td>
</tr>
<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social, and Cultural Rights</td>
</tr>
<tr>
<td>ICMC</td>
<td>International Catholic Migration Commission</td>
</tr>
<tr>
<td>ICSW</td>
<td>International Council on Social Welfare</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
</tr>
<tr>
<td>INCCM</td>
<td>Indonesian NGO Coalition for CRC Monitoring</td>
</tr>
<tr>
<td>IOM</td>
<td>International Organisation for Migration</td>
</tr>
<tr>
<td>IPU</td>
<td>Inter-Parliamentarian Union</td>
</tr>
<tr>
<td>Jala PRT</td>
<td>Jaringan Nasional Advokasi Pekerja Rumah Tangga (National Network for Domestic Workers Advocacy)</td>
</tr>
<tr>
<td>Jangka PKTP</td>
<td>Jaringan Advokasi Kebijakan Penghapusan Kekerasan Terhadap Perempuan (Network for the Advocacy of Policies to Eliminate Violence against Women)</td>
</tr>
<tr>
<td>JKP3</td>
<td>Jaringan Kerja Prolegnas Pro Perempuan (Coalition Network for Pro-Women National Legislation)</td>
</tr>
<tr>
<td>KDRT Law</td>
<td>Undang Undang tentang Kekerasan Dalam Rumah Tangga</td>
</tr>
<tr>
<td>KNPBPTA</td>
<td>Komite Nasional Pemberantasan Bentuk Bentuk Pekerjaan Terburuk bagi Anak (National Committee on the Elimination of Worst Forms of Child Labour)</td>
</tr>
<tr>
<td>Komnas Anak</td>
<td>Komisi Nasional Perlindungan Anak (National Commission on Child Protection)</td>
</tr>
<tr>
<td>Komnas HAM</td>
<td>Komisi Nasional Hak Asasi Manusia (National Commission on Human Rights)</td>
</tr>
<tr>
<td>Komnas Perempuan</td>
<td>Komisi Nasional Anti Kekerasan terhadap Perempuan (National Commission on Violence against Women)</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
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<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>KPAI</td>
<td>Komisi Perlindungan Anak Indonesia (Commission on the Protection of Indonesian Children)</td>
</tr>
<tr>
<td>LPSK</td>
<td>Lembaga Perlindungan Saksi Korban (Witness and Victim Protection Institution)</td>
</tr>
<tr>
<td>MOE</td>
<td>Ministry/Minister of Women Empowerment</td>
</tr>
<tr>
<td>MUI</td>
<td>Majelis Ulama Indonesia (Indonesian Council of Ulama)</td>
</tr>
<tr>
<td>NCWCR</td>
<td>NGO Coalition for Women and Children Rights</td>
</tr>
<tr>
<td>NGO</td>
<td>Non Governmental Organisation</td>
</tr>
<tr>
<td>NHRI</td>
<td>National Human Rights Institution</td>
</tr>
<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
</tr>
<tr>
<td>OP-CEDAW</td>
<td>Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women</td>
</tr>
<tr>
<td>OPM</td>
<td>Organisasi Papua Merdeka (Free Papua Organisation)</td>
</tr>
<tr>
<td>P2TP2A</td>
<td>Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak (Integrated Service Centre for the Empowerment of Women and Children)</td>
</tr>
<tr>
<td>PHC-TIP</td>
<td>Phugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang (National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons)</td>
</tr>
<tr>
<td>PPT</td>
<td>Pusat Pelayanan Terpadu (Integrated Service Centre)</td>
</tr>
<tr>
<td>PPTKIS</td>
<td>Pelaksana Penempatan Tenaga Kerja Indonesia Swasta (Private Agency for the Placement of Indonesian Migrant Worker)</td>
</tr>
<tr>
<td>Prolegnas</td>
<td>Program Legislasi Nasional (National Legislation Program)</td>
</tr>
<tr>
<td>SCVC</td>
<td>SOS Children's Villages Canada</td>
</tr>
<tr>
<td>SOM</td>
<td>Smuggling of Migrant</td>
</tr>
<tr>
<td>SPM</td>
<td>Standar Pelayanan Minimal Layanan Terpadu bagi Perempuan dan Anak Korban Kekerasan (Minimum Service Standard for Women and Children Victims of Violence)</td>
</tr>
<tr>
<td>TeSA129</td>
<td>Telepon Sahabat Anak 129</td>
</tr>
<tr>
<td>TIP</td>
<td>Trafficking in Persons</td>
</tr>
<tr>
<td>TIPR</td>
<td>Trafficking in Persons Report</td>
</tr>
<tr>
<td>TK-PTKIB</td>
<td>Tim Koordinasi Pemulangan Tenaga Kerja Indonesia Bermasalah dan Keluarganya dari Malaysia (The Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia)</td>
</tr>
<tr>
<td>UPPA</td>
<td>Unit Pelayanan Perempuan dan Anak (Special Women and Children Unit)</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCT</td>
<td>United Nations Country Teams</td>
</tr>
<tr>
<td>UN ESCAP</td>
<td>United Nations Economic and Social Commission for Asia and the Pacific</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children's Fund</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crimes</td>
</tr>
<tr>
<td>UNSG</td>
<td>United Nations Secretary General</td>
</tr>
<tr>
<td>UNTOC</td>
<td>United Nations Convention on Transnational Organised Crime</td>
</tr>
<tr>
<td>UN WOMEN</td>
<td>United Nations Entity for Gender Equality and the Empowerment of Women</td>
</tr>
<tr>
<td>UPR</td>
<td>Universal Periodic Review</td>
</tr>
<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
</tr>
<tr>
<td>WGAT</td>
<td>Working Group on the Advocacy against Torture</td>
</tr>
<tr>
<td>YPHAI</td>
<td>Yayasan Harapan Anak Indonesia (Children Human Rights Foundation)</td>
</tr>
</tbody>
</table>
Formal Name: Republik Indonesia (Republic of Indonesia)
Capital City: Daerah Khusus Ibukota Jakarta (Special Capital Region of Jakarta)

| Administrative division¹ | Provinces: 33  
Regencies and Cities: 497  
Districts: 6,747 |
|--------------------------|--------------------------|
| Population²              | Male: 119,630,913  
Female: 118,010,413  
Both Sexes: 237,641,326 |
| Life expectancy³         | 70.9 years |
| Age structure⁴           | 0 – 14 years: 28.87% (male 35,298,880/female 33,304,383)  
15 – 64 years: 66.09% (male 78,969,160/female 78,083,952)  
65 – Over: 5.04% (male 5,362,873/female 6,622,078) |
| Sex ratio⁵               | 101.4 |
| Religion⁶                | Islam: 87.18%, Christianity: 6.96%, Catholicism: 2.91%, Hinduism: 1.69%,  
Buddhism: 0.72%, Kong Hu Chu: 0.05%, other beliefs: 0.15%, and unknown: 0.06% |
| Ethnic groups            | Java (41.71%), Sunda (15.41%), Malay (3.45 %), Madura (3.37%), Batak (3.02%),  
Minang (2.72%), Betawi (2.51%), Bugis (2.49%), Banjar (2.05%), Banten (1.74%),  
and more than 900 ethnic groups comprising of 21.87% of the population⁷ |
| Functional literacy rate⁸ | Male: 94%  
Female: 86.8%  
Both sexes: 90.4% |
| Net enrolment ratio in secondary schools⁹ | Male: 66%  
Female: 65% |
| Migration rate           | Net: -1.15 migrant(s)/1,000 population¹⁰ |

---


³ Statistic Indonesia, Statistic Indonesia 2011, 2.


⁵ Statistic Indonesia, Statistic Indonesia 2011. p. 76. Sex ratio usually expresses the number of males for every 100 females.


⁸ Central Intelligence Agency (CIA), The World Fact Book 2011 – Indonesia, <www.cia.gov>, accessed on 22 September 2011. Information on the age structure is based on 2011 estimates. The number cited in the CIA World Fact Book is based on both Indonesian official source and estimates (as of July 2011). Even though the paper cited BPS as the official source, due to the limited information on the results of the 2010 Census provided by BPS the Study will cite other reliable sources such as the CIA World Fact Book, UNESCO Institute of Statistic, World Development Indicator 2010, and other reliable sources.


¹⁰ Ibid.
<table>
<thead>
<tr>
<th><strong>Indicator</strong></th>
<th><strong>Data</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of citizens working overseas</strong></td>
<td>Total: 2,679,536 (as of February 2010)&lt;sup&gt;11&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Number of foreign workers in country</strong></td>
<td>102,288 (2010)&lt;sup&gt;12&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Percentage of female-headed households</strong></td>
<td>13% (2007)&lt;sup&gt;13&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Labour force participation rate (15 years +)</strong>&lt;sup&gt;14&lt;/sup&gt;</td>
<td>Male: 86% &lt;br&gt; Female: 52%</td>
</tr>
<tr>
<td><strong>Unemployment rate&lt;sup&gt;15&lt;/sup&gt;</strong></td>
<td>Male: 7.5% &lt;br&gt; Female: 8.5%</td>
</tr>
<tr>
<td><strong>Proportion of unpaid family workers</strong></td>
<td>Total: 108,207,767&lt;sup&gt;16&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Fertility rate</strong></td>
<td>2.15 children born/woman&lt;sup&gt;17&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Maternal mortality rate</strong></td>
<td>307 deaths/100,000 live births&lt;sup&gt;18&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Infant mortality rate</strong></td>
<td>25.5 deaths/1,000 live births&lt;sup&gt;19&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Legal definition of “child”</strong></td>
<td>Below 21 years of age and never been married&lt;sup&gt;20&lt;/sup&gt; &lt;br&gt; Below 18 years of age, including those who are still being conceived&lt;sup&gt;21&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Age of majority</strong></td>
<td>18 or 21 years old&lt;sup&gt;22&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Marriageable age&lt;sup&gt;23&lt;/sup&gt;</strong></td>
<td>Female: 16 years old &lt;br&gt; Male: 19 years old</td>
</tr>
</tbody>
</table>

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<sup>11</sup> Statement of Rusman Setiawan, Head of BPS, cited in Detik Finance, BPS: Jumlah TKI Arab Saudi Capai 1,5 Juta Orang, <www.us.finance.detik.com>, accessed on 12 October 2011. According to the Head of BPS, the data is provided by the Ministry of Labour and Transmigration. However, differing number of Indonesian workers abroad was put forward by the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), where it stated that in 2010 there were at least 4,310,000 Indonesian migrant workers in 41 countries (cited in National Commission on Violence against Women (Komnas Perempuan). 2010 Note on Violence against Women. 7 March 2011, 29. Further discrepancy on the number of Indonesian workers abroad is shown by the data provided by BNP2TKI, though coming from year 2009, it documented 632,172 Indonesian workers abroad consisted of 103,1888 males and 528,984 females.

<sup>12</sup> Ministry of Labour and Transmigration, Penggunaan Tenaga Kerja Asing di Indonesia Tahun 2010, <www.pusdatinaker.balitfo.depnaktrans.go.id>, accessed on 12 October 2011. The Ministry’s report only presented the total number of foreign workers in Indonesia; it did not present the number of male and female foreign workers. Disaggregated data is not available.


<sup>14</sup> *Ibid.*. The 2010 Census shows that as of 2010, Indonesia’s labour force has reached 169,038,063 people (accessible on http://sp2010.bps.go.id) however, in 2011 BPS stated that the labour force in Indonesia has reached 119,400,000 (it does not provide gender disaggregate data, see www.bps.go.id). Further clarification on this statement is needed since the gap in the number is quite significant.

<sup>15</sup> *Ibid.*, BPS Indonesia stated that as of February 2011 unemployment rate has reached 8,100,000 people, 6.8% than the total labour force, see <www.bps.go.id>, accessed on 24 September 2011.


<sup>17</sup> Statistic Indonesia, Statistic Indonesia 2011, 2.

<sup>18</sup> GoI, 2008 Indonesian UPR, para. 55. However, The World Fact Book 2011 – Indonesia states that maternal death in Indonesia reaches the number of 240 deaths per 100,000 live births.

<sup>19</sup> Statistic Indonesia, Statistic Indonesia 2011, 2.

<sup>20</sup> Indonesian Civil Code, art. 330; and Law No. 4 of 1979 on Child Welfare, State Gazette 1979:32, 23 July 1979, art. 1(2).


<sup>22</sup> There are two standards of age of majority in Indonesian legal system. According to the Civil Code the age of majority is 21 years old however other Indonesian Laws concerning minor generally stipulate 18 years old as the age of majority.

<sup>23</sup> Law No. 1 of 1974 on Marriage, State Gazette 1974:1, 2 January 1974, art. 7.
<table>
<thead>
<tr>
<th></th>
<th>Age of consent</th>
<th>Age of criminal responsibility</th>
<th>Minimum age of employment</th>
<th>Minimum age for military recruitment and participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age of consent</td>
<td>15 years old(^{24}) (female, Criminal Code)/18 years old(^{25}) (both sexes, Child Protection Law)</td>
<td>12 years old(^{26})</td>
<td>15 years old(^{27})</td>
<td>18 years old(^{28})</td>
</tr>
</tbody>
</table>

**Table 1 – General Information on Indonesia**

\(^{24}\) Indonesian Criminal Code, art. 287(1). The Criminal Code only indicates the age of consent for girls. However, see ibid, Law No. 1 of 1974 stipulates that the age of marriage for girls are 16 and 19 for boys, this means that there is 4 years gap for girls as indicated by the two laws and no clear stipulation for age of consent of boys.

\(^{25}\) Law on Child Protection., art. 81.

\(^{26}\) Law No. 11 of 2012 on the Juvenile Court System, State Gazette 2012:153. 30 July 2012, art. 1(3). Prior to the enactment of the Law on the Juvenile Court System, article 1(1) of Law No. 3 of 1997 on Juvenile Court (State Gazette 1997:3, 3 January 1997) established that the age of criminal responsibility in Indonesia was 8 years old. The definition was declared as unconstitutional by the Constitutional Court in 2010 and that the age of criminal responsibility shall be 12 years old (Case No. 01/PUU-VIII/2010, decision of 24 February 2011), which lead to the enactment of the present Law on Juvenile Court System. stipulates that the age of criminal responsibility should be 12 years old.


\(^{28}\) Law No. 34 of 2004 on the Indonesian National Army, State Gazette No. 2004:127, 16 October 2004, art. 28(1)
A OVERVIEW

1 Introduction

This Baseline Study of reports/literatures and policies (the Study) will examine various reports related to the issues of violence, exploitation, and abuse and discrimination in the context of migration affecting women and children with the purposes of:

1. Reviewing the extent of the problems of violence, exploitation, and abuse and discrimination in migration affecting women and children that various reports have documented on Indonesia;
2. Reviewing the de jure State responses;
3. Reviewing the implementation, monitoring, and prevention mechanisms in Indonesia done both by the GoI and civil society; and
4. Reviewing the progress indicators and challenges pertaining to the problems of violence, exploitation, and abuse and discrimination in migration affecting Indonesian women and children.

The overall aim of the Study is to present a composite document that reflects the abovementioned points based on existing reports and literatures on subjects of violence, exploitation, and migration affecting women and children. Furthermore, based on the data provided by the reports and literatures, the Study will try to cumulate gaps in information and make them as bases for recommendations for further studies. In no way does the Study intend to present new findings or researches that are not based on already-existing reports and literatures.

The Study will examine reports that were concluded from 2005 onward. The reports that come from the official sources of the Government of Indonesia (GoI) are considered as primary sources, especially national reports submitted to the Human Rights Council (HRC) and the UN Treaty Bodies. However, to maintain a balanced perspective, the Study will also scrutinise reports produced by UN organs, bodies, and funds, most notably the HRC and the human rights treaty bodies such as the Committee of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW Committee) and Committee of the Convention on the Rights of the Child (CRC Committee).

Indonesia’s Universal Periodic Report (UPR) and Periodic Reports to the CEDAW and CRC Committees, together with the observations of stakeholders and UN bodies/funds and the concluding comments of the HRC and the treaty bodies, will be the main focus of this Study. On this note, there is also an incomplete report that the Study will rely on, which is Indonesia’s 3rd and 4th Periodic Report to CRC Committee (submitted in 2007). This report was concluded and submitted in 2007. However, until this moment, a written reply from the GoI to the List of Issues made by the CRC Committee, as well as observations and concluding comments from the CRC Committee to Indonesia’s 3rd and 4th Periodic Report, are not yet available. Additionally, the Study will strive to compare the data in the above-mentioned reports with relevant and more recent reports made by the GoI, the National Human Rights Institutions (NHRI), the UN bodies and funds (including special mechanisms), and reliable reports from international and local Non-Governmental Organisations (NGOs).

With regard to issues or questions raised in this Study that are not covered by the reports presented to the HRC and the treaty bodies, the Study will resort to existing reports issued by relevant State ministries/institutions/agencies; Indonesian NHRI; reporting mechanisms under the UN specialised agencies such as the International Labour organisation (ILO); reports supported by UN funds such as UNICEF and UNIFEM (now UN WOMEN); and publications of international organisations such as the International Organisation for Migration (IOM) and local NGOs. The Study shall take into account existing legislation, regulations, and plans of actions that shape Indonesia’s policies on the protection of women and children against violence, exploitation, and abuse and discrimination in migration. Independent analysis of relevant legislation will be conducted if the Study deems it is important to include legislation or regulations which are not mentioned in any of the reports.

A comprehensive examination of existing reports from various sources on violence, exploitation, and migration affecting women and children is crucial to give a balanced and holistic description of the facts on the field. Furthermore, it is necessary to take into account reports from various sources on the matter since most reports usually used different perspectives and approaches in determining their methodology, which resulted in differing conclusions, estimates, and priorities in their identification of problems, evaluations, and recommendations.
2 Intended Reader

The Study is intended to induce further studies in the subject of protection of women and children from violence, exploitation, and abuses and discrimination in the context of migration and to contribute to raising awareness of the general population on these issues. To that end, the intended readers of this Study are consisted of:

1. Policy makers and legislatures;
2. Implementing agencies;
3. ASEAN, especially its newly established ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers;
4. International and other regional organisations;
5. International and local NGOs;
6. Academics; and
7. General public.

3 List of Literatures

<table>
<thead>
<tr>
<th>No.</th>
<th>Report Title</th>
<th>Issuing Body</th>
<th>Date of Publication</th>
</tr>
</thead>
</table>

Periodic Reports to the UN Treaty Bodies: CEDAW and CRC Committees

<table>
<thead>
<tr>
<th>No.</th>
<th>Report Title</th>
<th>Issuing Body</th>
<th>Date of Publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>Combined Sixth and Seventh Periodic Reports of States Parties: Indonesia (CEDAW/C/IDN/6-7)</td>
<td>GoI</td>
<td>7 January 2011</td>
</tr>
<tr>
<td>10.</td>
<td>Responses of Indonesia to the List of Issues to be Taken Up in Connection with the Consideration of its Combined Sixth and Seventh Periodic Reports (CEDAW/C/IDN/Q/6-7/Add.1)</td>
<td>GoI</td>
<td>18 January 2012</td>
</tr>
<tr>
<td>11.</td>
<td>Concluding Observations of the Committee on the Elimination of Discrimination against Women: Indonesia’s Sixth and Seventh Periodic Report (CEDAW/C/IDN/CO/6-7)</td>
<td>CEDAW Committee</td>
<td>27 July 2012</td>
</tr>
<tr>
<td>No.</td>
<td>Report Title</td>
<td>Issuing Body</td>
<td>Date of Publication</td>
</tr>
<tr>
<td>-----</td>
<td>-------------------------------------------------------------------------------</td>
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<td>-----------------------------</td>
</tr>
<tr>
<td>16.</td>
<td>An Independent Report prepared by the National Commission on Violence against Women presented on the Occasion of Indonesia's Combined Fourth and Fifth Periodic Reports to the CEDAW Committee</td>
<td>Komnas Perempuan</td>
<td>19 July 2007</td>
</tr>
<tr>
<td>17.</td>
<td>Concluding Comments of the Committee on the Elimination of Discrimination against Women: Indonesia (CEDAW/C/IDN/CO/5)</td>
<td>CEDAW Committee</td>
<td>10 August 2007</td>
</tr>
<tr>
<td>25.</td>
<td>Concluding Observations: Indonesia (CRC/C/15/Add.223)</td>
<td>CRC Committee</td>
<td>26 February 2004</td>
</tr>
</tbody>
</table>

**Reports From the Government of Indonesia**

<table>
<thead>
<tr>
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<th>Report Title</th>
<th>Issuing Body</th>
<th>Date of Publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>26.</td>
<td>Working Children in Indonesia 2009</td>
<td>Statistic Indonesia (BPS) in collaboration with ILO</td>
<td>February 2010</td>
</tr>
<tr>
<td>28.</td>
<td>Compilation of Reports on Trafficked Children, Children in Conflict with the Law, Child Workers, and Abused Children</td>
<td>Ministry of Women Empowerment (MOWE)</td>
<td>2008</td>
</tr>
<tr>
<td>29.</td>
<td>Government’s Response to the UN Secretary General’s (UNSG) Study on Violence against Children</td>
<td>GoI</td>
<td>2005</td>
</tr>
</tbody>
</table>

**Reports of the Indonesian NHRIs**

<table>
<thead>
<tr>
<th>No.</th>
<th>Report Title</th>
<th>Issuing Body</th>
<th>Date of Publication</th>
</tr>
</thead>
<tbody>
<tr>
<td>30.</td>
<td>2011 Note on Violence against Women: Stagnation of the Legal System, Suspending the Hope of Female Victim</td>
<td>Komnas Perempuan</td>
<td>7 March 2012</td>
</tr>
<tr>
<td>No.</td>
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<td>Issuing Body</td>
<td>Date of Publication</td>
</tr>
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</tr>
<tr>
<td>31.</td>
<td>2010 Note on Violence against Women: Terror and Violence against Women, Losing State Control</td>
<td>Komnas Perempuan</td>
<td>7 March 2011</td>
</tr>
<tr>
<td>32.</td>
<td>Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment</td>
<td>Komnas Perempuan</td>
<td>2010</td>
</tr>
<tr>
<td>33.</td>
<td>2009 End Year Reflection</td>
<td>Commission on Protection of the Child (KPAI)</td>
<td>30 December 2009</td>
</tr>
<tr>
<td></td>
<td><strong>Reports of UN Bodies and Funds</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>34.</td>
<td>Domestic Violence Legislation and Its Implementation: an Analysis of ASEAN Countries based on International Standards and Good Practices (2nd Ed.)</td>
<td>UNIFEM (now UN WOMEN)</td>
<td>2011</td>
</tr>
<tr>
<td>35.</td>
<td>Factsheet on Commercial Sexual Exploitation and Trafficking of Children</td>
<td>UNICEF</td>
<td>Undated</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>submitted on 17 March 2006</td>
</tr>
<tr>
<td></td>
<td><strong>Reports of International and Regional Organisations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40.</td>
<td>Policy Analysis and Programme Response on Trafficking in Persons and HIV in Women and Girls in Indonesia</td>
<td>IOM</td>
<td>2010</td>
</tr>
<tr>
<td>41.</td>
<td>Labour Migration from Indonesia: an Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East</td>
<td>IOM</td>
<td>2010</td>
</tr>
<tr>
<td>42.</td>
<td>Situation Report on International Migration in East and Southeast Asia: Regional Thematic Group on International Migration including Human Trafficking</td>
<td>IOM</td>
<td>2008</td>
</tr>
<tr>
<td>43.</td>
<td>ASEAN Handbook on International Legal Cooperation in Trafficking in Persons</td>
<td>Association of Southeast Asian Nations (ASEAN) supported by the Australian Government's Asia Regional Trafficking in Persons Project (ARTIP Project) and UNODC</td>
<td>August 2010</td>
</tr>
<tr>
<td>44.</td>
<td>Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region</td>
<td>ASEAN supported by the ARTIP Project</td>
<td>July 2011</td>
</tr>
<tr>
<td></td>
<td><strong>Reports of International NGOs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>46.</td>
<td>Left without a Choice: Barriers to Reproductive Health in Indonesia</td>
<td>Amnesty International (AI)</td>
<td>2010</td>
</tr>
<tr>
<td>47.</td>
<td>Workers in Shadows: Abuse and Exploitation of Child Domestic Workers in Indonesia</td>
<td>Human Rights Watch (HRW)</td>
<td>February 2009</td>
</tr>
<tr>
<td>48.</td>
<td>Someone that Matters: the Quality of Care in Childcare Institutions in Indonesia</td>
<td>Save the Children (in collaboration with the Ministry of Social Affairs and UNICEF)</td>
<td>December 2007</td>
</tr>
<tr>
<td></td>
<td><strong>Reports of Local NGOs</strong></td>
<td></td>
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</tr>
</tbody>
</table>
B. VIOLENCE

1 Description of the Problem

“Documenting violence against women is difficult for a number of reasons. First, the influence of social and cultural norms in determining what constitutes violence impedes a universal consensus on the definition of VAW. Second, only a limited number of cases of VAW are reported officially. Third, violence against women in many cases regarded as a private rather than a public issue.”


a. Prevalence of Violence

i. Prevalence of Violence against Women

The 2012 and 2008 Indonesian national reports to the UN Human Rights Council (2012 and 2008 Indonesian UPR)\(^{29}\) and the two Indonesian Periodic Reports to the CEDAW Committee (2005 and 2011 IPR-CEDAW)\(^{30}\) highlighted special circumstances where violence against women is prevalent, such as violence against Indonesian women and girl domestic workers abroad and domestic violence against women at home. Apart from the two special circumstances presented by the


Goi in its reports to the UN Human Rights mechanisms, related reports\(^{31}\) indicated other special circumstances where violence against women is prevalent. These special

circumstances consisted of violence against women and girls domestic workers in Indonesia, violence against women in conflict areas, and community-based violence against women.

The reports presented by the GoI did not provide background information on the victims and perpetrators (e.g., age range, education, profession, ethnicity, etc.) nor did they provide types of violence inflicted upon the victims. Pertaining to the issue of the lack of statistical background data of the victims and perpetrators, the Study will utilise mainly the latest annual report produced by the National Commission on Violence against Women (Komnas Perempuan), one of Indonesia’s NHRIs responsible for the monitoring and protection of women’s rights in Indonesia, to fill out the gap.

In this section, the Study would also like to note that even though many reports classified trafficking in women and children as a form of violence, the Study will only include the discussion on trafficking in the next section relating to exploitation. This is pertinent to the definition of trafficking, especially in women and children, stipulated under Indonesian Law on Trafficking in Persons (TIP Law) where it sets out trafficking as a crime with the intent to exploit the objects of trafficking without necessarily applying violence on the victims.

**Violence against Women Domestic Workers Abroad and in Indonesia**

Concern over violence against women and girl-child domestic workers abroad is highlighted in the 2008 Indonesian UPR and the 2005 IPR-CEDAW. The 2005 IPR-CEDAW notes that each year there are 387,000 Indonesian migrant workers of which women comprised more than 70% and the majority of them are domestic workers. The types of violence that these women undergo include non-payment of wages and extortion in the destination countries and during pre-departure stages in Indonesia.

In its 2007 submission to the CEDAW Committee, Komnas Perempuan recorded 1,259 cases of discrimination, exploitations and violence experienced by Indonesian migrant workers in which more than 80% comprised of women and 90% of these women were employed as domestic workers. Furthermore, the CEDAW Working Group Initiative (CWGI) indicated that in 2005 there were 19 cases of deaths, 101 cases of torture accompanied by rape, 117 cases of lost contacts, and 4,100 cases of deportation, trafficking, unpaid wages, and long working hours befalling Indonesian women domestic workers abroad.

A study conducted by the International Labour Organisation (ILO) in 2010 shows 785,000 Indonesian women leave Indonesia to work abroad as migrant and domestic workers, a significant increase compared to the number presented by GoI in 2005. Violence against Indonesian women domestic workers abroad is still prevalent until now, as confirmed by 2011 Indonesia’s Combined Sixth and Seventh Periodic Reports to the CEDAW Committee (2011 IPR-CEDAW). The non-inclusion of violence against women domestic workers in Indonesia’s reports was pointed out during the 1st Session by UN agencies and funds and AI. CWGI and Komnas Perempuan expressed the same
point in their 2007 submission to CEDAW Committee.\textsuperscript{46} The ILO estimates there are as many as 2.6 million domestic workers in Indonesia and the majority were women and girls aged 13 to 30 serving in approximately 2.5 million Indonesian households.\textsuperscript{47} According to AI, women and girl-child domestic workers in Indonesia regularly experienced physical, psychological, and sexual violence including sexual harassment and rape by their employer.\textsuperscript{48} In 2009, Human Rights Watch (HRW) emphasised the need for Indonesia to recognise and take action against the abuse of domestic workers at home in order for advocacy on the protection of the Indonesian domestic workers abroad to have any credibility.\textsuperscript{49}

**Domestic Violence against Women**

Domestic violence against women in Indonesia is pervasive. The 2005 IPR-CEDAW indicated that data on domestic violence are not easy to acquire since victims rarely report the occurrences publicly.\textsuperscript{50} In 2006, Komnas Perempuan recorded 22,152 cases of violence against women reported to it and its partner institutions and 74\% were cases of domestic violence.\textsuperscript{51} Komnas Perempuan noted that domestic violence always dominates cases of violence against women in Indonesia until now.\textsuperscript{52}

<table>
<thead>
<tr>
<th>Year</th>
<th>Violence against Women</th>
<th>Domestic Violence against Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>20,391</td>
<td>16,615 (82%)</td>
</tr>
<tr>
<td>2006</td>
<td>22,512</td>
<td>16,709 (74%)</td>
</tr>
<tr>
<td>2007</td>
<td>25,522</td>
<td>20,380 (80%)</td>
</tr>
</tbody>
</table>

Table 3 – Occurrences of Domestic Violence against Women reported to Komnas Perempuan in 2005 - 2010\textsuperscript{53}

Table 3 shows significant yearly increase in the reporting of violence against women, especially domestic violence. Komnas Perempuan’s data shows a significant jump of the number of cases of domestic violence against women reported by victims in 2008 and 2009 from 54,425 occurrences to 143,586. Meanwhile, in more recent time, the table points out an increase of 13.32\% in the number of violence against women that were reported in 2011 compared to the number of violence recorded in 2010. Komnas Perempuan is of the opinion that this increase of reporting was due to the progress in the data collection technique and, most importantly, it indicated the growing awareness among women of domestic violence as violation of rights, which push them to report domestic violence that they suffered.\textsuperscript{54}

<table>
<thead>
<tr>
<th>Types of Spousal Violence</th>
<th>Classification of Domestic Violence based on Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychological 103,691</td>
<td>Spousal Violence (Wife) 110,468</td>
</tr>
<tr>
<td>Economy 3,222</td>
<td>Dating Violence 1,405</td>
</tr>
<tr>
<td>Physical 2,790</td>
<td>Violence against Girl Child 283</td>
</tr>
<tr>
<td>Sexual 1,398</td>
<td>Violence committed by exes 141</td>
</tr>
<tr>
<td>Others 1,452</td>
<td>Violence against domestic workers 42</td>
</tr>
<tr>
<td></td>
<td>Other Relationship 1539</td>
</tr>
</tbody>
</table>

Table 4 – Division of Cases of Domestic Violence against Women based on Relationship and Types of Spousal Violence (Komnas Perempuan Note 2011)

In 2011, Komnas Perempuan, together with its 393 partner institutions, received and documented 113,878

\textsuperscript{46} CWGI. 2007 CWGI-CEDAW, para. 135 – 139; and Komnas Perempuan. 2007 KP-CEDAW.

\textsuperscript{47} ILO, Recognising, 2.

\textsuperscript{48} Ibid.

\textsuperscript{49} HRW, Workers in the Shadows: Abuse and Exploitation of Child Domestic Workers in Indonesia. February 2009, p. 11.

\textsuperscript{50} Ibid., According to the report of Kalyanamitra on the number of domestic violence against women cited in the 2005 IPR-CEDAW, “Kalyanamitra found that within the period 1997 - 1999 there were 299 cases of rape, 46 cases of sexual harassment and 42 cases of domestic violence. The figure increased quite significantly during 2000 and 2001 with the total number of cases reaching 488 rape cases, 150 cases of sexual harassment and 213 cases of domestic violence.”

\textsuperscript{51} Komnas Perempuan., 2007 KP-CEDAW, para. 24 – 25.

Furthermore, Komnas Perempuan highlighted the fact that over the year domestic violence has always been the highest form of violence against women.

\textsuperscript{52} Komnas Perempuan, 2011 Note, 11.


\textsuperscript{54} Komnas Perempuan, 2009 Annual Note on Violence Against Women: Not only at Home, Women’s Experience on Violence in an Unbalanced Power Relations (2009 Annual Note), 7 March 2010, 9.
reports on domestic violence against women and children. Compared to the reports received in 2010, the number of the reports received increased by 12.61%. According to Komnas Perempuan, the increasing number indicates that victims of violence exist in various parts of Indonesia and they need proper assistance and better access to report their grievances.\textsuperscript{55}

The 2011 Note shows that spousal violence dominates the occurrences of domestic violence against women, consisting of more than 95% of the total occurrences of domestic violence reported to Komnas Perempuan and its partner institutions.\textsuperscript{56} Cases of domestic violence reflected in table 4 also covers violence perpetrated by boyfriends, ex-husbands, ex boyfriends, employers, or other family members.\textsuperscript{57} Types of spousal violence identified by Komnas Perempuan consist of psychological, physical, economic, and sexual violence.\textsuperscript{58} Interestingly, the 2011 Note notes that 95% of victims of spousal violence opt to bring their grievance to the Religious Court and/or Religious High Court.\textsuperscript{59}

In relation to the profile of victims and perpetrators, Komnas Perempuan’s 2011 Note reveals that most victims and perpetrators come from age group of 25-40 years.\textsuperscript{60} The most vulnerable victims are those who fall under the age group of 13 - >40 and the highest number of victims is found in the age group of 25 – 40.\textsuperscript{61} The Report also points out that perpetrators of violence against women also include male children as young as 13 years old.\textsuperscript{62} Most of the victims and perpetrators recorded by Komnas Perempuan have at least completed their secondary education.\textsuperscript{63} However, Komnas Perempuan emphasised that the data is not conclusive as it only captures cases that have been reported to Komnas Perempuan and its partner institutions.

In its recent report to CEDAW Committee, the GoI quoted a 2007 study conducted by the Indonesian Survey on Health and Demography showing 26% of married women relent on violence committed by their husbands.\textsuperscript{64} Furthermore, the 2011 State of World’s Children indicates that 31% of women victims of spousal violence (14 – 49 years old) accepted that their husbands’ acts are justifiable.\textsuperscript{65} The 2011 IPR CEDAW indicates that women who are aware of their rights have a more balanced bargaining position in the household and are in a better position to access health services compared to women who relent to their husbands’ actions.\textsuperscript{66}

**Violence against Women in Conflict Areas**

During the 1\textsuperscript{st} Session of the Universal Periodic Review, the UN Special Rapporteurs on the Question of Torture and Violence against Women underlined the issue of violence against women in conflict areas in Indonesia.\textsuperscript{67} The Special Rapporteurs pointed out that “[a] 2003 joint urgent appeal indicated that an estimated 100 women had reportedly been raped since the declaration of martial law in Aceh on 19 May 2003… and listed 21 cases of alleged rape, gang rape and sexual violence that had been transmitted to the Special Rapporteurs.”\textsuperscript{68} Furthermore, UN documentation suggested that the perpetrators of such violence were mostly members of the army and police forces.\textsuperscript{69} CWGI in its 2007 submission to CEDAW Committee identified types of violence suffered by Acehnese women during that time to include rape, sexual harassment, battery, and murder.\textsuperscript{70}

Meanwhile, in Papua, another conflict area, the Working Group on Documentation of Violence against

\begin{footnotesize}
\begin{itemize}
\item[56] Ibid, 12.
\item[57] Ibid.
\item[58] Ibid.
\item[59] Ibid.
\item[60] Ibid, 15.
\item[61] Ibid.
\item[62] Ibid.
\item[63] Ibid.
\item[64] GoI, 2011 IPR CEDAW., para. 146.
\item[66] GoI, 2011 IPR CEDAW, para. 146.
\item[67] UN OHCHR, 2008 Compilation of UN Documentation, para. 13. UN Special Rapporteurs on the Question of Torture and Violence against Women.
\item[68] Ibid., paragraph 167 of the 2007 CWGI-CEDAW also addressed similar concern and presented another version of data on violence against women in Aceh during the implementation of martial law in Aceh: “During the state of military emergency imposed on Aceh, there are 331 cases of abuses/violence, 16 of which are against women according to data collected by Flower Aceh from May 2003 to March 2004.”
\item[69] Ibid.
\item[70] CWGI, 2007 CWGI-CEDAW, para. 165.
\end{itemize}
\end{footnotesize}
Women and Violations of Women’s Rights in Papua (Papua WG) reported that violence against women in conflict areas is still prevalent. The perpetrators of the violence are mostly members of the military and police forces. In 2009, the Papua WG identified at least 138 cases of violence against women perpetrated by members of the military and police forces. Based on the monitoring conducted by Komnas Perempuan throughout 2011, the condition of these women has not improved and new cases of violence against women in Papua keep on occurring. The report indicates that victims are often neglected and support for women victims is weak in all aspects, and these render them vulnerable to re-victimisation. Komnas Perempuan notes that the presence of the Indonesian military forces in Papua has become the constant source of insecurity and inconvenience for Papuans. Based on the reports received, the existence of the military force in Papua has fostered an air of impunity, triggered occurrences of cases of sexual violence and exploitation, and blocked the rights of women victims to truth, justice, and recovery. Komnas Perempuan indicates that sexual violence against women also occurs in Maluku and Poso, areas where social conflicts are rampant. The occurrences of violence are mostly due to the posting of security forces in both areas. Women who live in conflict areas also experienced further violence in the form of denial of their right to compensation, as experienced in post-conflict Aceh by victims of sexual violence and rape.

State Violence against Women and Discriminative National and Regional Legislations

In relation to other forms of State violence, the 2010 Note of Komnas Perempuan recorded an increase in the number of cases of State violence against women. The 2010 Note reveals that, in 2010, there were 445 cases of State violence based on reports submitted in Jakarta and East Java alone. The 2010 Note shows a significant increase of State violence where usually Komnas Perempuan recorded an average of 50 cases per year. The number of State violence return to “normal” in 2011, with only 42 recorded occurrences. Types of State violence that took place against women in 2010 consist of forced removal of residence, destruction of place of worship, arrest of female dancers (as a part of the implementation of the Anti-Pornography Law), and cessation of religious practice.

Discriminative Regional Regulations

Komnas Perempuan’s annual reports indicate that, despite positive developments on the protection of women against violence made by central and regional governments, some national legislation and regional regulations reflect discriminatory provisions against women. In 2009, Komnas Perempuan identified at least 154 regional regulations that discriminate against women and may create opportunities for abuse of women by the Government and the society. The number of discriminative regional regulations continued to increase in 2010 to 189 and, finally, to 207 discriminative regulations by the end of 2011. From this number, Komnas Perempuan identifies 78 regional regulations as directly discriminative toward women; 4 regulations as causing neglect to the rights and protection of migrant workers; 94 regulations related to the utilisation of religion for political imaging, which can be harmful to women’s rights; and 31 regional regulations related to restriction of the freedom of religion (27 regulations were specifically adopted on the banning of Ahmadiyah religious group).
These regional regulations are enacted at provincial, municipality/regency, and village levels. They are spread out in more than one hundred regencies and municipalities in 26 provinces. In its submission to the Constitutional Court, Komnas Perempuan adds that these regional regulations mostly utilised unverified religious and moral reasoning in justifying the institutionalisation of discrimination against and criminalisation of women.

Below are some examples of regional regulations indicated in Komnas Perempuan reports that are identified as discriminative and creating justifications for violence against women:

1. Regional Regulation (Qanun) No. 14 of 2003 on Khalwat (immoral behaviour) in Aceh, criminalises immoral behaviour (such as when a woman was found being alone with a man who is not her husband or relative), with the heaviest penalty of public flogging. Aceh is not the only region in Indonesia that enforces such regulation, a research in 2008 shows that a similar regulation is also implemented in Bulukumba Regency of South Sulawesi.

2. Qanun No. 11 of 2002 on the Implementation of Sharia Law in Aceh contains a provision obligating women to wear Islamic attire. In 2010, Komnas Perempuan documented at least 1,375 women apprehended in raids conducted by the regional government. A similar regulation is also implemented in Bulukumba Regency of South Sulawesi.

3. Regional Regulation of Tangerang Municipality No. 8 of 2005 on the Prohibition of Prostitution (Banten Province) defines (and criminalises) a prostitute as "every person with suspicious behaviour or act as to raise a presumption that that person is a prostitute is prohibited to be seen on public streets, courts, boarding houses, hostels, hotels, dorms, ... or other public places". Komnas Perempuan views this regional regulation as vague and has a great potential to justify violence against women. Furthermore, Komnas Perempuan states that a number of municipalities/regencies also adopted similar formulation in their regional regulations. Those regions include, among others, Indramayu Regency,
Discriminative National Legislations and Policies

Apart from indicating discriminative regional regulations that will potentially expose women to violence, Komnas Perempuan also identifies legislation and policies enacted at the national level of a similar nature. These discriminative legislations and policies include Law No. 44 of 2008 on Pornography and the 2008 Joint Decision of Minister of Religious Affairs, Attorney General, and Minister of Interior on the Warning and Instruction to the Followers, Members, and/or Organisers of Jemaat Ahmadiyah Indonesia and the Society (2008 Joint Decision). In 2011, Komnas Perempuan identified a total of seven discriminative legislations at the national level that are in force. Below are several examples of discriminative national legislations and policies and their impact on women and children as indicated in Komnas Perempuan’s reports:

1. Anti-Pornography Law:

Komnas HAM is of the opinion that Indonesia’s definition of pornography under the Anti-Pornography Law’s and its implementation is vague, prone to multiple interpretations, and can easily cause unjustifiable criminalisation of citizens, especially women. In 2010, there were three cases where 11 women were convicted under this Law. Ten of these women worked as dancers at bars or cafes and four dancers were later on proved to be victims of internal trafficking.

In relation to the Anti-Pornography Law, in 2010, well known celebrities (one male and two females), were investigated and tried for having their sexual activities recorded, while the person who distributed the recordings has never been brought to justice. Furthermore, the head of a certain region even went as far as banning these celebrities from staying or visiting his constituency because of their immoral behaviour. In relation to this case, Komnas Perempuan believed that the trial of these celebrities based on the Anti-Pornography Law is a violation of their private sphere and that the public reaction to this case reflect negative stigmatization and victimisation of women.

2. Discriminative State Policies against Minority Religious Groups (the Case of Ahmadiyah)

Meanwhile, in the case of violence against women and children of Ahmadiyah group, apart from the adoption of the 2008 Joint Declaration on Ahmadiyah community, Komnas Perempuan also notes that there are at least six discriminative regional regulations toward the Ahmadiyah community. Komnas Perempuan fears that the adoption of these regulations and policies will potentially cause violence on Ahmadiyah’s women and children as indicated in the increasing number of attacks directed against the Ahmadiyah community in 2006 – 2010.

Komnas Perempuan documented 276 cases of violations of human rights from attacks on the Ahmadiyah community in the past 5 years. Forms of violence suffered by Ahmadiyah women arising from these attacks and in social life include rape, threat of rape, sexual harassment, and sexual-related intimidation. The operation of the 2008 Joint Declaration, together with the implementation of Law No. 1/PNPS/1965 on the Prevention, Abuse and/or Desecration of Religion, has contributed to fostering discrimination and victimisation of women.
violence against women and children coming from a religious sect outside the six acknowledged religions in Indonesia. Women and children coming from these “unrecognised” religious groups are vulnerable to further State violence such as the deprivation of their right to get ID card, deprivation of the right of children to get a birth certificate, deprivation of the right to get a marriage certificate if women decide to get married with men from “unrecognised” religious groups, etc.

Community-based Violence

Komnas Perempuan noted that community-based violence against women is prevalent. In 2010, Komnas Perempuan and its partner institutions recorded 5,187 cases of community-based violence against women, in which, 2,937 cases were cases of sexual violence. The number shows a significant increase from Komnas Perempuan’s 2010 report, which documented 3,530 cases of community-based violence against women with 1,781 cases involving sexual violence. The types of violence include sexual violence, psychological and physical violence, trafficking, violence against migrant workers, and kidnapping.

<table>
<thead>
<tr>
<th>Type of Violence</th>
<th>No. Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abduction of girls</td>
<td>55</td>
</tr>
<tr>
<td>Migrant Workers</td>
<td>105</td>
</tr>
<tr>
<td>Trafficking</td>
<td>289</td>
</tr>
<tr>
<td>Psychological violence (including threats)</td>
<td>267</td>
</tr>
<tr>
<td>Physical violence (including murder and grave bodily harm)</td>
<td>1,408</td>
</tr>
<tr>
<td>Sexual violence (including rape, attempted rape, and harassment)</td>
<td>2,937</td>
</tr>
</tbody>
</table>

Table 5 – Komnas Perempuan 2011’s Data on Community Based Violence

According to Komnas Perempuan, occurrences of sexual violence are more frequent in Banten Province, which is located between Jakarta and West Java provinces, compared to the other 32 provinces. The reports recorded by Komnas Perempuan’s partner institutions in Banten show that there are 519 cases of sexual violence in Banten alone.

Apart from the report presented by Komnas Perempuan, the Study believes that the issue of harmful traditional practices on women should also be considered as community-based violence. The 2011 IPR CEDAW states that the practice of female circumcision/female genital mutilation (FGM) is prevalent in Indonesia. According to the report, there is even a group that supports the practice of FGM by interpreting a certain hadith as obligating FGM as it is for male. However, it is very unfortunate that there is no available data on the number of FGM practices over the years.

Komnas Perempuan concludes that the practice of FGM is a form of violence against women as well as reflecting degrading and discriminatory treatment toward women. The NGO Coalition for Women and Children Rights (NCWCR) added in its Shadow Report to Indonesian UPR for the 13th Session of the UPR that the practice of FGM is somewhat condoned at national policy level through the adoption of the Ministerial Regulation No. 1636/MENKES/PER/XI/2010 on Female Circumcision, which stipulates the procedure to be followed by medical personnel in performing FGM. CEDAW Committee truly considers this as a setback since the adoption of this Ministerial Regulation has undermined the 2006 Circular issued by the Director.
ii. Prevalence of Violence against Children

The 2008 Indonesian UPR and the 2007 Combined Third and Fourth Periodic Report to CRC Committee (2007 IPR-CRC)\(^{130}\) identified several circumstances/issues related to children where violence is prevalent. These circumstances include: ill treatment and violence against children committed by parents or other family members, including corporal punishment; child/early marriages; violence against child labour; and violence against children in conflict with the law. Another prevalent circumstance identified by UN Documentations and Komnas Perempuan is violence against children in conflict areas.

iii. Treatment and Violence at Home including Corporal Punishment

In the 2008 Indonesian UPR the GoI indicated that ill treatment and violence by parent(s) against their children is prevalent in Indonesia.\(^{131}\) Furthermore, the 2007 IPR-CRC also acknowledged the challenge posed by the practice of applying corporal punishment to children at home and at school as a way to impose discipline.\(^{132}\)

Both CRC and the Global Initiative to End all Corporal Punishment of Children (GIEP) indicated that corporal punishment in Indonesia is still lawful at home and there is no explicit prohibition of corporal punishment at schools.\(^{133}\) The Special Rapporteur for Torture indicated that children in Indonesia are at high risk for corporal punishment and ill treatment in their families, schools, and detentions.\(^{134}\) This condition is exacerbated by the adoption of regional regulations that tolerate corporal punishment on children, for example, through the provisions of the Regional Regulation in Aceh (Qanun) on the implementation of Sharia Law, which inflicts public flogging on anyone who violates Sharia Law, including people under the age of 18.\(^{135}\)

According to the data provided by Ministry of Women Empowerment (MOWE), among 1,000 children in Indonesia, 30 children have a higher probability of experiencing violence.\(^{136}\) A 2006 survey found 2.81 million incidents of violence against children and the ratio of boys and girls victims of violence is 3.1% to 2.9% of the total population of children.\(^{137}\) MOWE indicates that 61.4% of the perpetrators are the parents and 3.8% are consisted of other family members.\(^{138}\) MOWE also highlights the higher probability of violence against children at home to happen in rural areas (3.16%) compared to big cities (2.81%). Types of violence against children perpetrated by parents and other family members include: physical abuse, verbal insult, sexual violence, and neglect.\(^{139}\) In 2008, Plan International conducted a survey on 1,500 students in three major cities in Indonesia where 67% of those students stated that they experienced abuse at school perpetrated by peers and teachers.\(^{140}\)

Another study conducted in 2007 by the Ministry of Social Affairs, Save the Children, and UNICEF found that physical force, humiliating and degrading treatment

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131 GoI, 2008 Indonesian UPR, para. 25. The UPR did not provide further data to support the prevalent of ill-treatment and violence committed by parent(s) to their children.
132 GoI, 2007 IPR-CRC, para. 75
133 UN OHCHR, 2008 Summary of Stakeholders’ Reports, para. 13; and UN OHCHR, 2008 Summary of UN Documentations, para. 21.
134 UN OHCHR, 2012 Compilation of UN Reports, para. 21.
137 MOWE, Child Victims of Violence, 1. The figures presented by MOWE are based on Survei Kekerasan terhadap Perempuan dan Anak Tahun 2006 (2006 Survey on Violence against Women and Children) conducted by Statistic Indonesia and MOWE. 
138 Ibid.
139 Ibid, 2.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

are used as ways to educate and discipline children.\textsuperscript{141} The study also reveals that, especially in some Islam-based childcare institutions, additional punishments are given to children who did not manage to carry out religious practices correctly.\textsuperscript{142} These additional punishments usually consisted of extra chores such as cutting the grass, cleaning toilets, and heaving water.\textsuperscript{143} Slapping, kicking, and stomach pinching are some of the forms of punishment that children suffered in these institutions for violations such as late for prayers, breaking curfew, eating while standing, and leaving the premise without permission.\textsuperscript{144}

\textit{Early Marriage: a Form of Violence}

The GoI viewed early marriages as a form of violence against children.\textsuperscript{145} According to the data provided by the National population and Family Planning Agency (BKKBN), in 2009, early marriages (of girls under the age of 16) in Indonesia reached 21.75\% of all marriages;\textsuperscript{146} in rural areas, it has reached 47.79\%. Plan Indonesia noted that out of 2.049 million marriages, 34.5\% are marriages of children between the ages of 13 – 16. The 2010 Census showed that the average age of marriage in Indonesia is 15.\textsuperscript{147} The Indonesian Planned Parenthood Association suggested that restrictive abortion law coupled with stigma associated to unmarried pregnant girls forced unmarried underage women/girls who become pregnant into marriage.\textsuperscript{148}

To better illustrate the prevalence of early marriage in Indonesia, in 2008, a Moslem cleric took a 12 years old girl as his second wife and told the public that he planned to marry another two girls aged nine and seven.\textsuperscript{152} He claimed that such marriage is not prohibited under Islamic teachings and that the girls’ parents, who came from a poor economic background, had given their permission.\textsuperscript{153} The 2005 IPR-CEDAW indicates that such practices are common, especially in rural villages and urban slums where poverty prevails.\textsuperscript{154}

This phenomenon begs the question whether the notion of early marriage in Indonesia also indicates the prevalence of forced marriage for underage women or whether it is only an issue of the usage of different terms by different parties. For instance, the NGO Coalition for Women and Children Rights (NCWCR) in its 2011 shadow report to the HRC uses the term of forced child marriage instead of early marriage.\textsuperscript{155} NCWCR later on elaborates that apart from establishing a low minimum age to marry for a girl (16 years old), Indonesia’s Marital Law still makes it possible for girls below 16 to marry with the permission of their parents.\textsuperscript{156} In the understanding of the Study, this exemption highlights the absence of

\begin{itemize}
\item[141] Ministry of Social Affairs, Save the Children, and UNICEF, Someone that Matters: The Quality of Care in Childcare Institutions in Indonesia, Jakarta: December 2007, 169.
\item[142] \textit{Ibid.}
\item[143] \textit{Ibid.}, 170.
\item[144] \textit{Ibid.}
\item[145] GoI, 2008 Indonesian UPR, para. 30.
\item[146] NCWCR, 2011 Shadow Report I – UPR, par. 9. It’s a slight decrease compared to the percentage of early marriages in 2004, which was 25\% (See 2008 Indonesian UPR, para. 31).
\item[147] UN OHCHR, 2012 Summary of Stakeholders’ Reports, para. 30.
\item[148] \textit{Ibid.}
\item[149] Amnesty International (AI), Left without a Choice: Barriers to Reproductive Health in Indonesia, November 2010, 15.
\item[150] \textit{Ibid.}
\item[151] \textit{Ibid.}, 16.
\item[153] \textit{Ibid.}
\item[154] GoI, 2005 IPR-CEDAW, para. 163.
\item[156] \textit{Ibid.}
\end{itemize}
A recent case shows that the police’s treatment of children in detention has not improved. In December 2011, two children aged 17 and 14 were found dead while they were in detention at a local police precinct in West Sumatera.\footnote{165} The police stated that the two children committed suicide; however, further investigation showed signs of abuse, such as bruises on the victims’ body, and a gunshot wound on one of the victims’ body.\footnote{166} In February 2012, Indonesia’s National Chief of Police acknowledged that police personnel had committed torture against the two boys. He insisted, however, that the act did not cause those children’s death.\footnote{167} Due to high public pressure on the police to investigate this case, the West Sumatera Regional Police Force has launched a formal investigation and established four police personnel as suspects of torture committed against the two children.\footnote{168}

In relation to the practice of Juvenile Court, the Children Human Rights Foundation (YPHAI) indicated that at least 4,000 children were brought to court for petty offences and, most of the time, these children were tried without the presence of legal counsel. Ninety per cent (90%) of these children had to serve time in prison.\footnote{169} Meanwhile the data provided by MOWE revealed that, in 2008, there were 4,301 children held in penitentiaries and detention centres, consisting of 3,999 boys and 302 girls.\footnote{170} A recent data from the Directorate of Corrections Ministry of Law and Human Rights in July 2010 stated there are 6,273 children in Detention and Correction Centres all over Indonesia. There are 2,357 children in Juvenile Correction Centres and the rest of them (3,916) are placed in Adult Correction Centres.\footnote{171}

\section*{Violence against Children in Conflict with the Law}

Another prevalence of violence implied by the 2008 Indonesian UPR and 2007 IPR-CRC is violence against children in conflict with the law. CRC expressed its concern on the low minimum age of criminal responsibility (8 years old) and over the fact that alleged child offenders are still detained in the same place as adults.\footnote{158} KPAI in 2009 stated that at least 6,000 children go into Indonesia’s criminal legal system every year.\footnote{159} KPAI indicated that members of the police force have committed violence against these children by not implementing a diversion approach and directly criminalising these children.\footnote{160} Moreover, a study on Juvenile Justice in Indonesia (2003 JJI), conducted by UNICEF in 2003, shows that the police frequently used violence against alleged child offenders, especially during the arrest and interrogation.\footnote{161} Children are also frequently held in the same cell as adults when they served detention.\footnote{162} On this note, UNICEF observes that “detention of children in facilities designated for adults exposes these children to risk of violence, abuse, harmful influence, and other forms of violations of their rights.”\footnote{163} With regard to the role of prosecutors, 2003 JJI indicates that prosecutors tend to accede to police investigations and opt to send the case to court instead of implementing diversion mechanisms.\footnote{164}

\begin{thebibliography}{99}
\footnotesize
\bibitem{157} Susan Blackburn, Women and the State in Modern Indonesia, New York: Cambridge University Press. 2004, 76.
\bibitem{158} UN HRC, 2008 Compilation of UN Documentation, para. 26.
\bibitem{159} KPAI, 2009 End Year Note, 30 December 2009.
\bibitem{160} \textit{Ibid}.
\bibitem{162} \textit{Ibid}.
\bibitem{163} \textit{Ibid}.
\bibitem{164} \textit{Ibid}.
\bibitem{165} BBC Indonesia, Komnas HAM Desak Penyidikan Pidana Kasus Sijunjung, 25 January 2012. <www.bbc.co.uk>, accessed on 20 February 2012.
\bibitem{166} Step Vaessen, Indonesian Police Accused over Brothers Deaths, 17 February 2012, <www.aljazeera.com>, accessed on 20 February 2012.
\bibitem{167} Tempo, Pengakuan Kepala Polri, 3 February 2012, <www.tempo.co>, accessed on 20 February 2012.
\bibitem{170} MOWE, Child in Conflict with the Law, Undated, <www.menegpp.go.id>, accessed on 29 October 2011.
\bibitem{171} KPAI, Pemantauan Dan Penelaahan Terhadap Penanganan Anak Pelaku Tindak Pidana, 2011.
\end{thebibliography}
Violence against Child Labour and Street Children

The reports acknowledge the prevalence of violence against child labour in Indonesia\(^{173}\) and some of the examples put forward include violence against girl-child domestic workers and street children.\(^{174}\) With regard to violence against girl-child domestic workers, the UN Special Rapporteur on the Sale of Children, Child Pornography and Child Prostitution received reports indicating that, in 2006, over 680,000 domestic workers in Indonesia were under the age of 18 and more than 90% were girls.\(^{175}\) Most of them started working at a very young age of 12. Meanwhile, the ILO indicated that almost 35% of 2.6 million domestic workers in Indonesia are below the age of 18 and more than 25% of domestic workers are below the age of 15.\(^{176}\) These children are often made to work 14-18 hours a day, seven days a week. Some of them also suffered from physical and sexual abuse and were then prevented from accessing essential medical care.\(^{177}\)

The CRC is also concerned about the high number of children who are living and working on the street who fall victim to violence, arbitrary arrest and detention during sweeping operations and raids conducted by police force or municipal authorities.\(^{178}\) In 2007, the Ministry of Social Welfare recorded approximately 104,497 children living on the street in Indonesia and only 14,451 children were recorded to have received social care from designated shelters.\(^{179}\) In its recent UPR report, the GoI stated that, in 2011, there were approximately 230,000 street children in Indonesia.\(^{180}\)

In the 2008 Shadow Report to the CAT Committee, the Indonesian Working Group on the Advocacy against Torture (WGAT) reported that street children also experience abuses in the hands of law enforcers, especially during raids.\(^{181}\) The abuse includes arbitrary arrest and detention. The Report indicates that, most of the time, law enforcers did not treat them as required under the Child Protection Law.\(^{182}\) The abuse continues when street children are being transferred to rehabilitation centres, where they often experience sexual harassment and are forced to use drugs.\(^{183}\) A survey in 2007 conducted by the Jakarta Centre for Street Children listed types of violence used by law enforcers against street children to include hitting, kicking, burning with cigarette, blackmailing, arbitrary detention, harassing sexually, and shaving their hair.\(^{184}\)

Violence against Children in Conflict Areas

In conflict areas such as Papua, violence against children perpetrated both by members of the military/police force and resistance groups still takes place. Even though GoI reports to HRC and the treaty body committees did not indicate this, UN documentations and stakeholders’ reports indicate the prevalence of violence against children in conflict area. UN documentations pointed out the use of excessive force by law enforcement officials against school children in 2006\(^{185}\) and Komnas Perempuan reported that refugee children in Papua live in constant fear of being harassed by law enforcers, since they were suspected as children of members of the Free Papua Organisation (OPM).\(^{186}\) Based on the research that Komnas Perempuan conducted in two refugee communities from Yambi and Tingginambut districts, Komnas Perempuan revealed that these refugees have never received assistance from the GoI due to their status as “suspected OPM/OPM accomplices”\(^{187}\).

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173 \textit{Ibid}, para. 15
174 UN OHCHR, 008 Compilation of UN Documentations, para. 17.
176 ILO, Recognising Domestic Worker, 4.
177 \textit{Ibid}.
178 UN OHCHR, 2008 Compilation of UN Documentations, para. 21.
180 GoI, 2012 Indonesian UPR, para. 104.
184 \textit{Ibid}, 72.
185 UN OHCHR, 2008 Compilation of UN Documentation, para. 13.
186 Komnas Perempuan, 2010 Note, 43 – 45.
187 \textit{Ibid}, 44.
b. Root Causes of Violence and Aggravating Practices

i. Definition of Violence

There is no specific definition of violence against women and children under Indonesian legislation; however, Law No. 23 of 2004 on the Elimination of Domestic Violence (KDRT Law) defines domestic violence as:

Any act against a person especially a woman, which cause misery or physical, sexual, psychological suffering, and/or domestic neglect including threats to perform acts, coercion, or deprivation of liberty against the law within the domestic sphere.\(^{188}\)

The Law offers protection to victims from physical violence, psychological violence, sexual violence, and domestic/household neglect.\(^{189}\) In the case of violence against children, Law No. 23 of 2002 on Child Protection (Child Protection Law) protects children against discrimination; exploitation (economically and sexually); neglect; cruelty, violence, and abuse; injustice; and other ill treatment.\(^{190}\) The Child Protection Law goes on to provide protection to children against torture or inhumane punishment.\(^{191}\) The commission of such acts is punishable by the State.\(^{192}\) Especially in the case of violence against children, if the act of violence was committed by parents, guardian, or caregiver, then their status shall constitute an aggravating factor, which will entail harsher penalties.\(^{193}\)

ii. Root Causes

The examined reports mainly brought up qualitative analysis in discussing root causes of violence against women and children. It is very unfortunate that quantitative analysis on the root causes of violence against women and children does not show up in any of the examined reports' discussion.

The 2008 Indonesian UPR and the Periodic Reports to CEDAW and CRC Committees do not specifically address patriarchal culture and religious interpretation as root causes of violence against women and children in Indonesia. However, in the 2007 CC-CEDAW, the CEDAW Committee states that:

The Committee is concerned about the persistence of entrenched patriarchal attitudes and stereotypes about the roles and responsibilities of women and men in the family and society that discriminate against women. Such stereotypes and attitudes constitute serious obstacles to women's enjoyment of their human rights and the implementation of the Convention and are the root cause of the disadvantaged position of women in a number of areas, including in the labour market and in political and public life.\(^ {194}\)

Moreover, some notable reports suggest that patriarchal culture and religious interpretation serve as root causes in marginalising women and children and rendering them vulnerable to violence.\(^ {195}\) In 2012, the CEDAW Committee gave a comprehensive elaboration on possible root causes that might contribute to violence against women. It stated that deep-rooted stereotypes on the roles, responsibilities, and identities of women in family and society have contributed to the prevalence of violence against women in Indonesia, including the occurrence of harmful traditional practices against women and girls such as early marriage, FGM, and polygamy.\(^ {196}\) CEDAW Committee notes that stereotyping of women flourishes due to the persistence of cultural norms and practices.

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\(^{188}\) Law No. 23 of 2004 on Elimination of Domestic Violence (KDRT Law), State Gazette 2004:95. 22 September 2004, art. 1(1).

\(^{189}\) Ibid, art. 5 – 9.

\(^{190}\) Child Protection Law, art. 13(1).

\(^{191}\) Ibid, art. 16(1).

\(^{192}\) Ibid, art. 80 – 82; and KDRT Law, art. 44 – 49.

\(^{193}\) Child Protection Law, art. 13(2).

\(^{194}\) CEDAW Committee, 2007 CC-CEDAW, para. 16.


\(^{196}\) CEDAW Committee, 2012 CO-CEDAW, para. 23.
and patriarchal attitudes.  

The Global Campaign to Stop the Killing and Stoning of Women (GCSKSW) in its 2010 report reveals that “the common denominator in the use of ‘culture’ to justify women’s subordinate status, and violence against them, is the instrumentalisation of sacred concepts and human rights instruments to maintain patriarchal gender relations.” The report added that “gender–based violence is a continuum; violence that starts at home is spread and connected to violence permeating the street, community, country, and across continent... one cannot discount the role of the community or state in violence that occurs in the home.”

Even at the policy-making level in Indonesia, the influence of patriarchal culture is prevalent. GCSKSW quoted a study on Marital Violence in Bugis Society on how culture and religion justify women’s subordinate position in religious and State ideology:

Women’s subordinate position in religious and state ideology is legitimised by invoking the doctrine of kodrat (referring to women’s ‘nature’ or destiny) to naturalise gender inequality. The colloquialism ikut suami (‘follow the husband’) is frequently invoked in popular interpretations of state and religious rhetoric that seek to instruct women on appropriate gender roles and relations, whilst attempting to normalize women’s subservience.

The justification later on leads to discriminative policies in Indonesia such as the application of cruel punishment to women in certain regions for their allegedly improper behaviour against religious teachings. An example of this phenomenon of cruel and inhuman punishment imposed on women is demonstrated in Aceh’s Regional Regulation (Qanun) No. 14 of 2003 on Immoral Behaviour, which stipulates that the punishment for all acts that lead to zina (extra marital sexual relation) is public flogging.

In an Expert Group Meeting conducted by the UN Economic and Social Commission for Asia and the Pacific (UN ESCAP) in 2007, Ms. Zaitunah Subhan, an Islamic scholar and an Expert Adviser to MOWE, stated that: “Numerous violations relating to violence against women have occurred as the result of misinterpretation of Islamic teachings due to incomplete readings of religious texts and explanation of such violence that are influenced by patriarchal culture.” She pointed out several common examples of misinterpretation of the Qur’an that tightly related to the prevalence of patriarchal culture in Indonesia, such as the common misinterpretation of the nusyuz verse in the Qur’an as a base to arbitrarily justify wife beating; the practice of polygamy; and discriminative law on inheritance.

Still, in relation to patriarchal culture and religious interpretation as root causes of violence, in the case of causes of violence against children, the Indonesian Development Planning Agency (Bappenas) identified the prevalence of traditional values that justify parents to treat their children as property that can be treated in any way they see fit. Additionally, in the report to the CRC Commission, GoI underlined that one reason for the higher number of abuse against boys compared to girls is the prevalence of local culture and gender stereotyping that “male children should be able to stand a test.”

In the 2008 Indonesian UPR, the GoI, by acknowledging early marriage as a form of violence against children, indicates discrimination as one of the triggers of violence. The GoI explanation refers to the application of discriminative law that leaves children, especially girls, prone to fall victims to early marriage. Moreover, the 2008 Indonesian UPR also indicates that the implementation of the Child Protection Law, especially on children in conflict with the law, is still “hampered by a lack of understanding among law enforcement officers (judges and attorneys), who have been accustomed to

197 Ibid.
199 Ibid, 10.
200 Ibid, 18.
201 Ibid, 18 and 22.
203 UN ESCAP, Violence against Women, 27.
204 Ibid, 28.
205 PNBAI WG, 2015 National Program, 48.
206 GoI, 2002 IPR-CRC, para. 263.
207 GoI, 2008 Indonesian UPR, para. 31.
208 Ibid.
using the Indonesian Criminal Code rather than the new Law on Child Protection.”

In relation to the treatment of children in conflict with the law, the 2008 report submitted by UNICEF (2008 UNICEF-UPR) to the HRC for the 2008 Indonesian UPR indicates that the problem of corruption occurs as one of the reasons that hamper protection of children in conflict with the law. The report indicates that incidences of bribery with regard to out-of-court settlement are common.

In 2010, Arist Merdeka Sirait, Commissioner of National Commission on Child Protection (Komnas Anak), stated that the data collected and received by Komnas Anak shows poverty as one of the root causes of violence against children, especially domestic violence perpetrated by parents and other family members. KPAI also voiced the same concern, noting that “uncontrolled modernisation will always alleviate poverty with all of its characters such as high number of criminality, prostitution, and life pressure... this will eventually lead to violence against children in all sort of forms such as neglect, child labour, child trafficking, child prostitution, and physical violence that can cause sufferings and even death.”

c. Impact of Violence

The 2008 Indonesia UPR and Periodic Reports to CEDAW and CRC Committees do not provide information on the impact of violence against women and children. According to the 2006 Violence against Women and Children Survey (2006 VWCS), in 2006, there were three million cases of violence, of which 2.27 million women were victims. The 2006 VWCS indicated that 69.5% of these women suffered trauma, 10% experienced material loss, 9% suffered from depression and stress, and 4.6% bore physical injuries and it found that the occurrence of trauma on victims in rural areas is slightly higher (by 3.3%) than on victims in urban areas. Meanwhile, the Indonesian Ministry of Health (IMH) indicates that 10%-12% of children in Indonesia who fall victim to violence suffered physical and mental disorders.

A study conducted by Komnas Perempuan in Jakarta and Yogyakarta in 2005 confirmed another set of effects of violence against 294 women that consist of permanent physical impairment, unwanted pregnancy that leads to unsafe abortion, miscarriage, still born, etc.; severe trauma; and suicide. The study cited and confirmed WHO's finding that women who fall victims to violence tended to visit the emergency unit frequently. However, in case of pregnant victims, they did not go to check on their pregnancy more frequently.

Komnas Perempuan also points out the impact of religious-based violence against women and children. In a study conducted by Komnas Perempuan on the treatment of women and children of the Ahmadiyah group, Komnas Perempuan concluded that religious-based violence directed against Ahmadiyah group by the surrounding community has a tremendous impact on Ahmadiyah’s women and children, such as health deterioration and mental disorder; loss of livelihood; loss of the right to start a family; loss of citizenship status. Meanwhile, in the case of children, Komnas Perempuan identified reproduction of hate among Ahmadiyah’s children and other children. This leads to the development of fear and physical injuries to Ahmadiyah children, as well as to severe trauma to children who experienced or witnessed violence perpetrated against

209 Ibid, 12.
211 Ibid.
212 Please note that there are two commissions on child protection, KPAI and Komnas Anak. KPAI is the national commission established by the Government meanwhile Komnas Anak is a local NGO on child protection.
217 Ibid.
220 Ibid, 9.
their parents or property because of their beliefs.  

2  

De Jure State Responses  

a. Bases of State Responsibility  

i. International Commitments  

Over the years, Indonesia had adopted or signed and/or ratified/acceded to major international human rights treaties, including those that obligate Indonesia to provide women and children protection against violence. These were reflected in the 2008 Indonesian UPR, Indonesia’s Periodic Reports to CEDAW and CRC Committees, the feedback reports from various stakeholders, as well as the HRC’s and the treaty bodies’ Concluding Remarks.

<table>
<thead>
<tr>
<th>No</th>
<th>International Instrument</th>
<th>Date of Adoption (Ad), or Signature (S), Ratification (R), or Accession (A)</th>
<th>Instrument of Ratification/Accession</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>1966 International Covenant on Civil and Political Rights (ICCPR)</td>
<td>23 February 2006 (A)</td>
<td>Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>7.</td>
<td>1984 Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>28 October 1998 (R)</td>
<td>Law No. 5 of 1998 on the Ratification of Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment</td>
</tr>
<tr>
<td>8.</td>
<td>1990 International Convention on the Protection of all Migrant Workers and Members of Their Families (Migrant Workers Convention)</td>
<td>22 September 2004 (S)</td>
<td>_</td>
</tr>
</tbody>
</table>

<sup>222</sup> Ibid, 5-6.  

<sup>223</sup> Normally in Indonesia’s treaty practice, a ratification of an international treaty is always done by enacting a law. The enactment of a Presidential Decree as an instrument ratification is considered as providing insufficient legal basis for the applicability of the Convention in Indonesia. This concern was also raised in Indonesia’s Second Periodic Report in 2002; GoI, 2002 IPR-CRC, para. 17.
<table>
<thead>
<tr>
<th>No</th>
<th>International Instrument</th>
<th>Date of Adoption (Ad), or Signature (S), Ratification (R), or Accession (A)</th>
<th>Instrument of Ratification/Accession</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td>9.</td>
<td>2002 A World Fit for Children(^{224})</td>
<td>11 October 2002 (Ad)</td>
<td>_</td>
</tr>
<tr>
<td>10.</td>
<td>1996 Declaration and Agenda for Action of the 1(^{st}) World Congress against Commercial Sexual Exploitation of Children (Stockholm Declaration)(^{225})</td>
<td>31 August 1996 (Ad)</td>
<td>_</td>
</tr>
<tr>
<td>11.</td>
<td>1995 Beijing Declaration on platform for Action(^{226})</td>
<td>15 September 1995 (Ad)</td>
<td>_</td>
</tr>
<tr>
<td>12.</td>
<td>1993 Declaration on the Elimination of Violence against Women(^{227})</td>
<td>20 December 1993 (Ad)</td>
<td>_</td>
</tr>
</tbody>
</table>

Table 6 – International Human Rights Treaties signed/ratified/acceded by Indonesia related to protection of women and children against violence

With regard to its international obligations as described in Table 6, the HRC in the 2008 Compilation of UN Documentations highlighted the reservations that Indonesia made to the above conventions, consisting of reservations/declarations of understanding on Articles 1, 14, 16, 17, 21, 22, and 29 of CRC; Article 29(1) of CEDAW on dispute settlement mechanism; and Common Article 1 of ICCPR and ICESCR on the right to self-determination.\(^{229}\) In 2007, IPR-CRC, the GoI stated that Indonesia has withdrawn its declarations of understanding on Articles 1, 14, 16, 17, 21, 22, and 29 of CRC on 11 January 2005.\(^{230}\)

Responding to Indonesia’s periodic reports, the HRC and UN Treaty Bodies gave their recommendations and suggestions, which this Study deems as relevant to the prevalence of violence against women in Indonesia at present (see section B.1.a above), to better implement Indonesia’s international obligations. Some of the recommendations made in the various documentation prepared by the OHCHR and UN Treaty Bodies as reflected in, for instance, the reports of the working groups on UPR and concluding comments of CEDAW and CRC Committees are as follows:

1. To complete the process of ratifying the 2000 Optional Protocol on Children in Armed Conflict to realise the commitment Indonesia has made when it signed the Optional Protocol in 2001.\(^{231}\)
2. To incorporate a definition of discrimination into its constitution or national legislation that conforms to Article 1 of CEDAW and to ensure the availability of mechanisms and remedies to women whose rights have been violated.\(^{232}\)
3. To take down provisions in regional regulations which are discriminatory toward women, both at the provincial and regency/municipality levels, especially those identified in the annual report of Komnas Perempuan.\(^{233}\) CEDAW Committee highlights that decentralisation and the power of the regional governments to issue regional regulations

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\(^{225}\) GoI, 2004 SR-CRC. Indonesia participated in the 1\(^{st}\) World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden, in 1996. The GoI supported the adoption of the Stockholm Declaration and Agenda for Action.

\(^{226}\) GoI, 2002 IPR-CRC, para. 527.


\(^{229}\) UN HRC, 2008 Compilation of UN Documentations, 2.

\(^{230}\) GoI, 2007 IPR-CRC, para. 4.

\(^{231}\) CEDAW Committee, 2007 CC-CEDAW, para. 6; UN HRC, 2008 RWG-UPR, para. 77; and UN HRC, 2012 RWG-UPR, para. 108.1.


\(^{233}\) CEDAW Committee, 2012 CO-CEDAW, para. 16 and 18(b).
shall not reduce the obligation of the GoI as the central government to fulfil Indonesia’s obligation under its international commitments.\textsuperscript{234}

4. In general, CEDAW Committee recommends Indonesia to repeal, within a clear time frame, any discriminatory laws against women at national level, especially those identified by Komnas Perempuan and the Ministry of Law and Human Rights.\textsuperscript{235}

5. Specifically in relation to the issue of discriminatory provision on the minimum age of marriage, CEDAW Committee recommends Indonesia to amend its Marital Law in accordance to its obligation under CEDAW.\textsuperscript{236} In 2012, noting the absence of any response to this recommendation, the Committee reiterates this recommendation by stating that the GoI should “… repeal, in particular, discriminatory provisions of Marriage Law No. 1/1974.”\textsuperscript{237} Additionally, the Committee points out that, in order for the Marital law to be in compliance with CEDAW, it has to ensure, in the revised version, the prohibition of polygamy; exclusion of the different roles of women and men in the household; provision for protection of women who decide to undertake inter-faith marriage; and inclusion of the option of civil marriages to all women.\textsuperscript{238}

6. With regard to the prevalence of violence against women in conflict areas, CEDAW Committee urges the GoI to provide full and effective reparation encompassing restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition; to provide medical and psychological support to women who were victims of violence during conflicts; and to ensure the security of internally displaced women.\textsuperscript{239}

7. In relation to the issue of violence against women domestic workers in Indonesia, the Committee recommends Indonesia to enact comprehensive laws and establish procedures to monitor and safeguard the rights of women domestic workers and adequately prosecute and punish abusive employers.\textsuperscript{240} Additionally, the Working Group on UPR and CEDAW Committee also recommends Indonesia to ratify ILO Convention No. 189 on Domestic Workers.\textsuperscript{241}

8. CEDAW Committee urges the GoI to enhance women’s awareness of their rights under CEDAW and to provide trainings to judges and law enforcers on women’s rights to build a legal culture that is supportive of women’s equality.\textsuperscript{242}

9. In relation to violence, including sexual violence, and discrimination against women coming from minority or religious or indigenous groups, CEDAW Committee recommends the GoI to implement effective measures to eliminate violence against these women.\textsuperscript{243}

10. In its 2002 IPR-CRC, the GoI committed to ratify the Additional Protocols to the Geneva Conventions. Moreover, it promised to establish a national mechanism to provide protection, monitoring, and physical and psychological recovery and social reintegration of children in situations of armed conflict within the next five years.\textsuperscript{244} However, until now, Indonesia has yet to ratify the Additional Protocols to the Geneva Conventions.

11. Regarding the minimum age of criminal responsibility, CAT Committee recommended Indonesia to increase the age of criminal responsibility as soon as possible and abolish all forms of corporal punishment of children.\textsuperscript{245} CAT Committee added that Indonesia should take all necessary measures to ensure the proper functioning of juvenile justice system.\textsuperscript{246}

12. Considering that CRC was ratified by Indonesia through an Act of Government, i.e. Presidential Decree, CRC Committee suggests that Indonesia consider supporting Indonesia’s ratification of CRC by the adoption of an Act of Parliament.\textsuperscript{247}

13. Indonesia is encouraged to follow through on its intention to accede to several international law instruments pertaining to the protection of human rights, especially those related to protection against violence: 1) Rome Statute of the International Criminal Court; 2) the Optional Protocol to the

\textsuperscript{234} Ibid, para. 16.
\textsuperscript{235} Ibid, para. 18(a); See also GoI, 2011 IPR-CEDAW, para. 20.
\textsuperscript{236} CEDAW Committee, 2007 CC-CEDAW, para. 19.
\textsuperscript{237} CEDAW Committee, 2012 CO-CEDAW, para. 18(a).
\textsuperscript{238} Ibid, para. 48(b).
\textsuperscript{239} Ibid, para. 28.
\textsuperscript{240} CEDAW Committee, 2007 CC-CEDAW, para. 6; and UN HRC, 2008 RWG-UPR, para. 23.
\textsuperscript{241} UN HRC, 2012 RWG-UPR, para. 109.8; and CEDAW Committee, 2012 CO-CEDAW, para. 38(a).
\textsuperscript{242} CEDAW Committee, 2012 CO-CEDAW, para. 12.
\textsuperscript{243} Ibid, para. 46(b).
\textsuperscript{244} GoI, 2002 IPR-CRC, para. 443.
\textsuperscript{245} UN OHCHR, 2012 Compilation of UN Reports, para. 39.
\textsuperscript{246} Ibid.
\textsuperscript{247} CRC Committee, 2004 CO-CRC, para. 13 – 14.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

Ranyta Yusran

14. In 2011, the United Nations Country Team (UNCT) found out that there are more than 1,000 regional regulations that are unconstitutional and not in compliance with Indonesia’s international obligations related to the observance of human rights. UNCT recommended the GoI to amend discriminatory regional regulations that have direct or indirect impact on violations of women’s rights.

15. UNCT recommended the GoI to undertake a survey on violence against women in 2013.

16. UNCT also recommended that the GoI improve access to justice for the poor and marginalised groups and, adding to this, the CAT Committee recommended the GoI to provide an effective free legal aid system.

17. CAT Committee recommended Indonesia to undertake all necessary measures to eradicate the persistent practice of FGM as the practice has no health benefits and is a violation of women’s rights. On the same subject, CEDAW Committee urges Indonesia to remove Ministerial Regulation No. 1636/MENKES/PER/XI/2010 issued by the Minister of health allowing Female Circumcision and restore the 2006 Circular issued by the Director General of Medical Service on the banning of FGM. The Committee also urges the GoI to criminalise all forms of FGM.

18. Several members of the Working Group on UPR that scrutinised the GoI’s UPR Report, recommend the GoI to:

- Eliminate legal and political provisions that discriminate women and violate sexual and reproductive rights;
- Expressly prohibit through legislation violence against children at home, schools, penal institutions, and centres of alternative cares; and, all in all, to abolish all corporal punishment of children in all settings;
- Take all necessary measures to ensure the proper functioning of the juvenile justice system, e.g., by treating minors in a manner appropriate to their age;
- Ensure the inclusion of sexual and reproduction education in the curriculum of secondary schools as an effort to prevent early marriage and unwanted pregnancy;
- Ratify CRC Optional Protocol on Communication Procedures;
- Raise the minimum age of criminal responsibility to 16 years.

Komnas Perempuan highlights that, until now, Indonesia has not realized its commitments to ratify various international treaties pertinent to the protection of women’s rights, such as the 1998 Rome Statute of the International Criminal Court, 1999 OP-CEDAW, and the 1990 ICRMW. Komnas HAM also upholds this observation in its shadow report to UN HRC responding to the GoI report in the 13th UPR Session in 2012. Furthermore, Komnas Perempuan urged the GoI to follow up on CEDAW recommendations and recommendations of the Special Rapporteur on violence against women.

ii. Regional Commitments

Even though it is not mentioned in either of the reports that the GoI submitted to the HRC and other UN Treaty Bodies, apart from the international instruments listed

248 UN HRC, 2008 RWG-UPR, para. 77.2; and UN HRC, 2012 RWG-UPR, para. 108.
249 UN OHCHR, 2012 Compilation of UN Documentations, para. 2.
250 Ibid, para. 13.
251 Ibid.
253 Ibid, para. 38.
254 Ibid, para. 25.
255 CEDAW Committee, 2012 CO-CEDAW, para. 22(a)
256 Ibid.
in Table 4, Indonesia also pledged its commitment in regional forums to protect women and children from violence and to advance their rights. Pertaining to this issue, the Study takes the initiative to list Indonesia’s commitments through the Association of Southeast Asian Nations (ASEAN).266

<table>
<thead>
<tr>
<th>No.</th>
<th>ASEAN Instruments</th>
<th>Date of Adoption</th>
<th>Adopting Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>2009 Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children</td>
<td>22 October 2009</td>
<td>ASEAN Socio-Cultural Community Council</td>
</tr>
<tr>
<td>4.</td>
<td>2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children</td>
<td>29 November 2004</td>
<td>Heads of State/Government</td>
</tr>
<tr>
<td>5.</td>
<td>2004 ASEAN Declaration on the Elimination of Violence against Women in ASEAN Region</td>
<td>30 June 2004</td>
<td>Foreign Ministries</td>
</tr>
<tr>
<td>6.</td>
<td>2001 Declaration on the Commitments for Children in ASEAN</td>
<td>2 August 2001</td>
<td>Ministers Responsible for Social Welfare</td>
</tr>
<tr>
<td>7.</td>
<td>1993 Resolution on the ASEAN Plan of Action for Children</td>
<td>2 December 1993</td>
<td>Ministers Responsible for Social Welfare</td>
</tr>
<tr>
<td>8.</td>
<td>1988 Declaration of the Advancement of Women in the ASEAN Region</td>
<td>5 July 1988</td>
<td>Foreign Ministers</td>
</tr>
</tbody>
</table>

Table 7 – List of ASEAN Instruments on Protection of Women and Children

Unfortunately, to the best knowledge of the Study, none of the reports discussed the national implementation of these regional commitments and how they affect Indonesia’s policies and legislation regarding the protection of women and children.

b. National Policies against Violence

Unfortunately none of the reviewed reports made classifications on preventive, protective, and curative legislations and other policies.267 Therefore, based on the legislation and policies identified in the reviewed reports, the Study will try to classify such legislation and policies into three categories: preventive, protective, and curative measures.

266 ASEAN instruments are accessible on <www.asean.org>, additionally, for easier access to these documents, visit <www.cil.edu.sg>, accessed on 7 December 2011.

1) General Legislations and Policies


Moreover, Komnas Perempuan Annual Reports identified other legislations and implementing regulations issued by Indonesian Ministries and other State institutions relevant to the protection of women and children. Those regulations are: 1) MOWE Regulation on Minimum Service Standard for Women and Children Victims of Violence (MOWE Regulation on SPM);281 2) the Regulation of the Chief of Indonesian National Police Forces (CNP Regulation) on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence;282 3) Law on Legal Aid;283 4) Minister of Interior Circulation Letter on the Acceleration of the Implementation of Standard Minimum Services;284 and 5) Attorney General Circulation Letter on the Handling of Cases on Violence against Women.285

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268 GoI, 2008 Indonesian UPR, para. 10.
270 GoI, 2002 IPR-CRC, para. 15 and 20; and GoI, 2007 IPR-CRC, para. 2.
280 Regulation of the Chief of Indonesian National Police Forces No. 10 of 2007 on the Organisation and Management of Special Women and Children Unit (CNP Regulation on PPA), 6 July 2007.
282 Regulation of the Chief of Indonesian National Police Forces No. 3 of 2008 on the Establishment of the Special Women and Children Unit and the Inspection Procedure of Victims and/or Witnesses (CNP Regulation on PPA and Inspection Procedure). 22 May 2008.
283 Law No. 16 of 2011 on Legal Aid (Law on Legal Aid), State Gazette 2011:104. 2 November 2011.
## a. Preventive Measure

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 1.  | The Criminal Code | a. Articles 285 – 286 on the prohibition of rape (only applies to women)  
b. Articles 287 – 288 on the prohibition of having sexual relations with underage girl  
c. Article 289 on the prohibition of sexual abuse  
d. Articles 290 – 296 on the prohibition of the commission of obscene acts against children (below 15 years of age)  
e. Articles 297 and 300(1.1.) on the prohibition of trade in women and male minors  
f. Article 299 on the prohibition of facilitating illegal abortion to women and article 347 on the prohibition of committing force abortion  
g. Article 300 on the prohibition of intoxication of women and children  
h. Articles 305 – 308 on the prohibition of child abandonment and abuse  
i. Articles 330 – 332 on the prohibition of abduction of women and children (below 12 years of age), mostly in relation to slavery-like activities  
j. Articles 341 – 343 on the prohibition of murdering one’s own infant |
| 2.  | The Human Rights Law | Article 58(2) on the prohibition of violence against a child by his/her parents/guardian (this includes: physical or mental abuse; neglect; mistreatment; sexual assault, including rape; or murder) |
| 3.  | The Law on Human Rights Court | a. Article 8 (d-e) on the inclusion of prevention of pregnancy of women of a group and forcible transfer of children of a particular group to another groups as an element of genocide  
b. Article 9 (g-i) on the inclusion of slavery, including trafficking in women and children, and rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation and other sexual violence against women as elements of crimes against humanity  
c. Articles 37 and 40 on the penalisation of acts described under Articles 8 (d-e) and 9 (g-i) |
| 4.  | KDRT Law | Article 44 – 50 on the prohibition of physical, psychological and sexual violence, and negligence |
| 5.  | Victims and Witnesses Protection Law | a. Articles 37 – 40 on the prohibition of coercion on victims/witnesses that can compromise the rights of victims/witnesses  
b. Articles 41 – 42 on the prohibition of giving information on the whereabouts of protected victims/witnesses |

*Table 8 – List of Preventive Measures Provided under General Legislations and Policies on Violence against Women and Children*
### b. Protective Measure

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 1. | 1945 Constitution | a. Article 28B(2): Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination.  
   b. Article 34(1): Impoverished persons and abandoned children shall be taken care of by the State. |
| 2. | The Law on Human Rights | a. Article 5(3) on greater protection to disadvantaged groups and children  
   b. Article 17 on the guarantee of women to effective protection, through competent national courts and other public institutions, against any act of discrimination  
   c. Article 41(2) on Special Facilities and Treatment for Pregnant Women and Children  
   d. Article 58(1) on the right to protection against all forms of physical and mental abuse, neglect, mistreatment, and sexual assault  
   e. Article 66 on the rights not to be subjected to oppression, torture, or inhuman punishment; death penalty or life imprisonment; and arbitrary detention |
| 3. | KDRT Law | a. Articles 1(2) and 11 on State guarantee on the prevention and elimination of domestic violence, especially against women  
   b. Article 2 on the inclusion of children and domestic workers as part of a family that require protection from domestic violence  
   c. Articles 16 – 25 and 28 on integrated provisional protection given to victims of domestic violence (involving the police force, medical personnel, social workers, religious figure, volunteer workers, legal counsels, and the court  
   d. Articles 35 – 38 on special measures taken for the protection of the victims (including provisional apprehension of the perpetrator by the police without an arrest warrant)  
   e. Article 55 on the pronouncement that victim's testimony, as one type of evidence recognised under the Penal Procedural Code, is sufficient to convict the alleged perpetrator, if accompanied with another type of evidence (defendant's confession) |
| 4. | Victim and Witness Protection Law | Note: the law has no specific reference to women and children, however it extends general protection to all victims of criminal acts under Indonesian legislations.  
   a. Article 5(1) recognizes the rights of victims and witnesses of crimes to protection and freedom from threats; to be involved in choosing and determining the form(s) of protection; to be free to give testimony without pressure; to acquire an interpreter; to be free from incriminating questions; to acquire information on the development of the case and court decision/judgment; to acquire new place of residence; to acquire legal assistance; and to acquire sustenance until the end of the protection period.  
   b. Chapter III on the establishment of the Witness and Victims Protection Institution (Lembaga Perlindungan Saksi dan Korban, LPSK) that is responsible in rendering protection to victims and witnesses of crimes |
| 5. | CNP Regulation on PPA | a. Articles 2 and 4 on the duty of the special women and children unit (UPPA) to protect women and children crime victims in the form of rendering legal protection, conducting investigation, and cooperating with other relevant institutions, including NGOs  
   b. Article 6(3) on UPPAs jurisdiction, which covers:  
   - Crimes against women and children: trafficking, people smuggling, violence (including sexual violence), prostitution, illegal adoption, pornography, and money laundering from proceeds of the abovementioned crimes  
   - Protection of women and children as victims and/or witnesses  
   - Other crimes where the alleged perpetrator is a woman or a child |
### Table 9 – List of Protective Measures Provided under General Legislations and Policies on Violence against Women and Children

**Curative Measure**

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Law on Human Rights</td>
<td>a. Article 50 on the right of women to take legal actions as individuals (unless determined otherwise under religious law)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. Article 62 on the right of children to access adequate health service and social security as befits his physical and emotional needs</td>
</tr>
<tr>
<td>2.</td>
<td>KDRT Law</td>
<td>a. Article 10 on the rights of victims to acquire protection from family, law enforcers, judiciary, legal counsel, social institution, or from other parties; health care in accordance with his/her need; special treatment in relation to the victim's confidentiality status; counterbating by a social worker and legal assistance at every examination level; and religious/spiritual service/guidance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. Article 39 – 43 on integrated curative measures for victims of domestic violence</td>
</tr>
<tr>
<td>3.</td>
<td>Victims and Witnesses Protection Law</td>
<td>a. Article 6 on the rights of victim of grave human rights violations (see Law on Human Rights Court) to receive medical assistance and psychological-social rehabilitation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. Article 7 on the right of victims of grave human rights violations to claim compensation and the right of victims to claim restitution and compensation from the perpetrators through the Court</td>
</tr>
<tr>
<td>No.</td>
<td>Legislation</td>
<td>Relevant Provisions</td>
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<tr>
<td>4.</td>
<td>The Law on Legal Aid</td>
<td>Article 3:</td>
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<tr>
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<td></td>
<td>a. To ensure and fulfil the right of every person to access to justice;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. To realise the constitutional right of every person in relation to the principle</td>
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<tr>
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<td>of equality before the law;</td>
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<td>c. To ensure that legal aid is implemented in all parts of Indonesia; and</td>
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<td>d. To realise an effective, efficient, and responsible judiciary.</td>
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<td>Article 4(1): Legal aid is rendered to a person who is facing legal issue.</td>
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<td>5.</td>
<td>Government Regulation on Cooperation in Recovery of Victims of Domestic</td>
<td>a. Article 1(6) on the pronouncement of the authority of MOWE as the responsible</td>
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<td>Violence (implementing regulation of KDRT Law)</td>
<td>ministry for victims’ recovery</td>
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<td>b. Article 2 on the facilities provided by central and local government, including</td>
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<td>social institutions such as the establishments of special units in the police,</td>
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<td>service centres and safe houses as well as other relevant facilities, and the</td>
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<td>availability of professional experts</td>
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<td>c. Articles 4 – 14 on the types of recovery of victims (medical assistance, victim’s</td>
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<td>assistance, counselling, religious service, and social reinstatement); designated</td>
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<td>institutions to carry out the recovery measure; and process of recovery measures</td>
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<td>d. Chapter III on cooperation on recovery of victims, including monitoring,</td>
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<td>evaluation, and improvement</td>
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<td>6.</td>
<td>MOWE Regulation on the Establishment of Coordination Forum on the Cooperation</td>
<td>a. Articles 1(1) and 2(1) state that the Forum is consisted of elements from the</td>
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<td>on the Prevention and Recovery of Victims of Domestic Violence</td>
<td>Government and the society, both at the regional and national level.</td>
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<td>b. Article 3 on the duties of the forum: 1) to give recommendations for policy-making</td>
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<td>process; 2) to establish sound coordination with all relevant institutions; 3) to</td>
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<td>promote legislations related to the elimination of domestic violence; 4) to collate</td>
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<td>and develop data and information relevant to domestic violence; 5) to conduct study,</td>
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<td>monitor, evaluate, and oversee the implementation of recovery of victims of</td>
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<td>domestic violence; and 6) to submit report, recommendation, and consideration to</td>
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<td>MOWE in relation to the prevention of violence and recovery of victims.</td>
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<td>c. Article 4(1) states that the Forum will be directed by the Minister of Women</td>
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<td>Empowerment, Minister of Health, Minister of Religious Affairs, and the Chief of the</td>
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<td>National police Forces.</td>
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<td>7.</td>
<td>MOWE Regulation on SPM</td>
<td>Social rehabilitation for women and children victims of violence conducted by</td>
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<td></td>
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<td>numerous government and non-government institutions (Articles 5 – 6).</td>
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</tbody>
</table>

Table 10 – List of Curative Measures Provided under General Legislations and Policies on Violence against Women and Children

2) Legislation and Policies related Specifically to the Protection of Women against Violence:

In relation to the issue of violence against women, the GoI reports to HRC and the treaty bodies only mentioned Presidential Decree No. 181 of 1998 renewed by Presidential Decree No. 65 of 2005 on the National Commission on Violence against Women (Presidential Decree on Komnas Perempuan)\(^{286}\) and the draft law on Gender Equality,\(^{287}\) which this Study considers as relevant to the protection of women against violence. Unfortunately, a consolidated version of the Indonesian draft law on Gender Equality, to the knowledge of this Study, is not yet accessible. Therefore, the Study will only describe the relevant provision(s) of the Presidential Decree on Komnas Perempuan.

The provisions in the Presidential Decree on Komnas Perempuan only indicate protective measures to facilitate women’s rights. Komnas Perempuan was established to prevent and address the prevalence of violence against women as well as to eliminate any kind of violence against women.\(^{288}\) Komnas Perempuan is an independent body and responsible directly to the President.\(^{289}\) Komnas Perempuan conducts monitoring, including fact-finding missions, on any forms of violence against women and is also responsible for taking measures to ensure accountability.\(^{290}\) Most importantly, Komnas Perempuan

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286 Presidential Decree No. 65 of 2005 on the National Commission on Violence against Women (Presidential Decree on Komnas Perempuan), 18 October 2005. This Presidential Decree cancelled the previous Presidential Decree No. 181 of 1998 on Komnas Perempuan.
287 See GoI, 2011 IPR-CEDAW, para. 22.
288 Presidential Decree on Komnas Perempuan, art. 1.
289 Ibid, art. 3 and 20.
290 Ibid, art. 4(c).
may give recommendations and develop regional and international cooperation for the advancement of the protection of women against violence and women’s rights.\textsuperscript{291}

The 2011 IPR-CEDAW notes the enactment of Law No. 36 of 2009 on Health (Law on Health).\textsuperscript{292} The Study notices that Article 75(2) of the Law on Health indicates a remarkable shift in the Government attitude toward abortion. Article 75(2) of the Law on Health stipulates that abortion can be conducted in cases of pregnancy that is caused by rape and can cause psychological trauma to the woman (victim of rape). The Study classifies this provision as a curative measure for women victims of violence.

3) \textit{Legislations and Policies Related Specifically to the Protection of Children against Violence:}

The GoI report to HRC and to the treaty bodies listed legislations and regulations that this Study deems relevant to protection of children against violence: Law on Juvenile Court System;\textsuperscript{293} Law on Child Protection; and Law on Child Welfare.\textsuperscript{294} In 2003, in accordance with Law on Child Protection, the President of Indonesia enacted a Presidential Decree on the Commission on the Protection of Children (Presidential Decree on KPAI).\textsuperscript{295} Prior to the establishment of KPAI, the GoI already established National Commission for the Elimination of the Worst Forms of Child Labour (KNPBPTA) through the enactment of Presidential Decree No. 12 of 2001.\textsuperscript{296}

\textbf{Table 11 – List of Preventive Measures Provided under Specific Legislations and Policies on Violence against Children}

\begin{tabular}{|c|p{15cm}|}
\hline
\textbf{No. 1} & \textbf{Legislation} & \textbf{Relevant Provisions} \\
\hline
\multirow{9}{*}{\textbf{Law on Child Protection}} & a. Articles 13(2) and 90 on aggravating circumstances for perpetrator of violence against children. & \multirow{9}{*}{\textbf{Article 85(b) on the prohibition to harvest a child's organ and/or tissue illegally}} \\
\cline{2-3}
 & b. Articles 77 and 80 on the prohibition of violence against and neglect of children & \\
\cline{2-3}
 & c. Article 78 on punishment for negligence of children that require special protection & \\
\cline{2-3}
 & d. Articles 81 – 82 on the prohibition of rape and sexual abuse against children & \\
\cline{2-3}
 & e. Article 54 on the obligation to protect children from illegal act of organ transplant & \\
\cline{2-3}
 & f. Article 51 on the obligation to protect children against violence in school or other education institutions & \\
\cline{2-3}
 & g. Articles 55 – 58 on the obligation of the government to provide protection to neglected children & \\
\cline{2-3}
 & h. Articles 59 – 71 on the obligation of the government on other state institutions to provide special protection to children in state emergency, including armed conflict; children in conflict with the law; children coming from indigenous groups; and children that fall victims to sexual and/or economic exploitation, drug abuse, trafficking, and all forms of violence & \\
\cline{2-3}
 & i. Articles 74 – 76 on the establishment of the National Commission on Child Protection (KPAI) to monitor the implementation of children's rights & \\
\hline
\end{tabular}

\begin{tabular}{|c|p{15cm}|}
\hline
\textbf{No. 2} & \textbf{Legislation} & \textbf{Law on Juvenile Court System} \\
\hline
\multirow{3}{*}{\textbf{Relevant Provisions}} & a. Articles 13(1) and 16(1) on the right of children to receive protection against all forms of violence inhumane punishment & \\
\cline{2-3}
 & b. Articles 16(3) and 17(1) on the rights of children in conflict with the law & \\
\cline{2-3}
 & c. Articles 17(2) and 18 on the rights of children that become victims of violence & \\
\cline{2-3}
 & d. Articles 20 – 26 on the obligation of the state, government, parents, family, and society to provide protection to children & \\
\cline{2-3}
 & e. Article 47 on the obligation of the state, government, and family to protect children from illegal act of organ transplant & \\
\cline{2-3}
 & f. Article 54 on the obligation to protect children against violence in school or other education institutions & \\
\cline{2-3}
 & g. Articles 55 – 58 on the obligation of the government to provide protection to neglected children & \\
\cline{2-3}
 & h. Articles 59 – 71 on the obligation of the government on other state institutions to provide special protection to children in state emergency, including armed conflict; children in conflict with the law; children coming from indigenous groups; and children that fall victims to sexual and/or economic exploitation, drug abuse, trafficking, and all forms of violence & \\
\cline{2-3}
 & i. Articles 74 – 76 on the establishment of the National Commission on Child Protection (KPAI) to monitor the implementation of children's rights & \\
\hline
\end{tabular}

\textsuperscript{291} \textit{Ibid}, art. 4(d-e).


\textsuperscript{293} Law No. 11 of 2012 on the Juvenile Court System (Law on Juvenile Court System), State Gazette 2012:153, 30 July 2012.

\textsuperscript{294} Law No. 4 of 1979 on Child Welfare (Law on Child Welfare), State Gazette 1979:32, 23 July 1979. GoI reports to the HRC and the treaty bodies did not mention this law however; it was mentioned in the compilation regulations related to psychological violence against children published by Komnas Anak.

\textsuperscript{295} Presidential Decree No. 77 of 2003 on the Commission on the Protection of Children (Presidential Decree on KPAI), 14 October 2003. The enactment of this Presidential Decree is based on Article 76(4) of the Law on Child Protection. However, the Presidential Decree only deals with technical issues relating to KPAI’s internal mechanism and apparatus.

KDRT Law defines domestic violence as “any act against a person especially a woman, which cause misery or physical, sexual, psychological suffering, and/or domestic neglect including threats to perform acts, coercion, or deprivation of liberty against the law within the domestic sphere.”

Under Article 2(1) of KDRT Law, the scope of the Law includes:

a. Husband, wife, and child (including foster child and stepchild);
b. Persons that have family ties with the persons referred in point a (by blood, by marriage, and by guardianship. Also include relation stemming from wet-nursing) that live in the same household; and
c. Domestic worker that live in the same household.

Unfortunately the Law limits the scope of its application to those people that live in the same household. It does not include violence against women that is conducted by a former or current intimate partner or a couple that is not bound by wedlock.

Another shortcoming of the Law is that domestic violence under the Indonesian Legal System (Penal Code) is treated as, to borrow the Indonesian term, “delik aduan” or klacht delicten in Dutch or, loosely translated in English, offence on complaint. The protection granted under the Law can only be activated when the victim or other person holding a power of attorney from the victim or, in the case of a minor, the parent/guardian or the child victim files a complaint to the police; only then can the police initiate an investigation. Even then, within three months after the complaint was filed, the victim can retract her/his complaint. Therefore, even if the victim had filed a complaint, she/he can still retract the complaint within three months and stop the investigation process.

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**Table 12 – List of Protective Measures Provided under Specific Legislations and Policies on Violence against Children**

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 3   | Law on Child Welfare | a. Article 2 on the rights of the child to welfare and to receive care and protection (further elaborated in Articles 3 – 11)  
     b. Article 11(1) on the efforts to achieve child’s welfare conducted by the government and society. They consist of: advocacy, development, prevention, and rehabilitation |

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**c. Assessment of State Policies**

**i. Assessment of Policies Pertaining to Women and Children**

**a. Domestic Violence**

Indonesian legislation defines domestic violence as a crime punishable under the Indonesian legal system.
Regardless of its weaknesses, the enactment of KDRT Law is seen as an unprecedented move under the Indonesian legal system to extend protection to women and children against domestic violence. The 2011 IPR CEDAW underlines that KDRT law has managed to bring issues of domestic violence into public and State domains. The Law encourages victims to report the violence that they experienced and provides remedies for their grievances.

b. Rape

Under Article 285 of the Indonesian Criminal Code, rape is committed by “Any person who by using force or threat of force forces a woman to have sexual intercourse with him outside of marriage...” The Indonesian Criminal Code does not base its definition of rape on lack of consent. Instead, the provision underlines that the act must be accomplished by force to qualify as rape. Furthermore, the Criminal Code provides a circumstance to qualify the crime of rape:

Any person who outside of marriage has carnal knowledge of a woman of whom he knows that she is unconscious or helpless shall be punished with a maximum imprisonment of nine years.

Provisions on rape under the Criminal Code only apply when the victim is a woman and has no marital relation with the perpetrator. If the victim is a man, then the act will not qualify as rape; it will only be considered as sexual abuse. Article 285 of the Criminal Code on rape does not describe the act of rape itself in detail.

At present GoI is planning to replace the present Criminal Code since the Indonesian Criminal Code was inherited from the Dutch and many consider it outdated. Recently, the Director General of Regulation

304 Before the enactment of this Law in 2004, domestic violence is not viewed as a crime under the Indonesian Legal System.

305 GoI, 2011 IPR-CEDAW, para. 193

306 Ibid, para. 203; See also KDRT Law, art. 15. The Law makes it possible for any person who witness domestic violence to directly interfere or to report it (not filing a formal complaint) to the Police and put an end to the incidence and have the perpetrator apprehended. The Study notes that this is a positive move by the Law to encourage victims to file formal complaints against their abusers.

307 The Criminal Code, art. 286.

308 Ibid, art. 292.

309 The Indonesian Criminal Code was enacted in 1946, a year after Indonesia’s independence from the Dutch. The Indonesian Ministry of Law and Human Rights stated that the draft for the new criminal code (2005 Draft Code) is currently undergoing its final polishing before it is presented to the President for approval and, after that, the draft will go for discussion at the House of Representatives. The draft law establish a detailed and wider definition of rape and includes the element of consent rather than requiring proof of force.

1. A man who has an intercourse with a woman outside of marriage, against the will of the woman;
2. A man who has an intercourse with a woman outside of marriage, without the consent of the woman;
3. A man who has an intercourse with a woman outside of marriage, with the consent of the woman but, the consent was made based on threat to be killed or harmed;
4. A man who has an intercourse with a woman outside of marriage, with the consent of the woman believing that the man was her legally-wed husband;
5. A man who has an intercourse with a woman who is below the age of fourteen, with her consent; or
6. A man who has an intercourse with a woman outside of marriage, knowing that the woman is unconscious or helpless.

The provision relating to the crime of rape under the 2005 Draft Code also includes penetration of any orifices by any object as a form of rape.

The Law on Health legalises abortion on pregnancy resulted from rape. Furthermore, the Law necessitates that a Government Regulation be enacted to implement this provision. However, unfortunately, the required Government Regulation has yet to come to realisation.
1. Marital Rape

Indonesia only criminalised marital rape in 2004 through the enactment of KDRT Law. Article 5 of KDRT Law includes sexual violence as one of the types of violence that can take place in domestic settings. Furthermore, Article 8 of KDRT Law stipulates:

The sexual violence referred to in Article 5 letter c shall include:

a. Forcing sexual intercourse carried out against an individual living within the scope of the household;

b. Forcing sexual intercourse against one of the individuals within the scope of the household for commercial purpose and/or a certain purpose.

Any person, who is proven guilty of committing the act described under Article 8(a) of KDRT Law, shall be punished by imprisonment of 12 years at maximum or a fine of thirty six million rupiah at maximum.\(^{315}\) If the act caused irreversible impact/injury to the victim, or mental disorder for at least four weeks, or miscarriage or death of a foetus, or cause harm to the victim's reproductive organ, the perpetrator shall be punished for at least 5 – 20 years of imprisonment or a fine from twenty five million to five hundred million rupiah.\(^{316}\) According to Komnas Perempuan, the wide definition given under Article 8(a) of KDRT Law is sufficient to include the act of marital rape.\(^{317}\)

Interestingly, AI argues that KDRT Law does not specifically refer to rape but only to sexual violence.\(^{318}\) CEDAW Committee even went as far as saying that there is no reference to marital rape under the KDRT Law.\(^{319}\) AI adds that the KDRT Law requires at least two elements of proof (for example, the victim's testimony and the defendant's confession).\(^{320}\) Lastly, as has been described above, the case of marital rape is treated as “delik aduan” or offence on complaint.\(^{321}\)

2. Statutory Rape

Unfortunately, none of the reports to both CEDAW and CRC Committees discuss statutory rape. Both the Indonesian Criminal Code and Child Protection Law criminalise statutory rape.\(^{322}\) According to the Indonesian NGO Coalition for CRC Monitoring (INCCM), the concept of statutory rape under the Indonesian Criminal Code is not clearly defined and Article 287 of the Criminal Code sets a very low age of consent, which is 15 years old.\(^{323}\) INCCM also noted that the penalty given to the perpetrator of statutory rape is lighter than the penalty set for the perpetrator of rape and Article 287 of the Criminal Code only applies to girl victims.\(^{324}\) Further, under Article 287 of the Criminal Code, if the victim is above the age of 12 but below the age of 15, statutory rape is treated as “delik aduan” or complaint offence.\(^{325}\)

After the enactment of the Child Protection Law in 2002, the definition of statutory rape expanded to include boy victims and raised the age of consent to 18 years old.\(^{326}\) The Study noted that, until now, Indonesia has never

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315 KDRT Law, art. 46.

316 Ibid, art. 48.


318 AI, Left without a Choice., 19.

319 CEDAW Committee, 2012 CO-CEDAW, para. 25.

320 AI, Left without a Choice, 19.

321 See the explanation on “delik aduan” in the assessment of State Policies relating to Domestic Violence above.

322 Article 287 of the Criminal Code describes the act of statutory rape as:

(1) Any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable…

(2) A prosecution shall be instituted only by complaint, unless the woman has not yet reached the age of twelve years or one of the cases of Articles 291 and 294 is present.

Article 81 of Child Protection Law provides:

(1) Any person, who intentionally commits violence or threat to do violence, forcing a child to perform a sexual intercourse with him/her or with other person, shall be punished...

(2) Paragraph one also applies to any person who intentionally deceive, tell a series of lies, or persuade a child to do intercourse with him or with others.


324 Ibid.

325 Indonesian Criminal Code. Art. 287(2). See the explanation on “delik aduan” in the assessment of State Policies relating to Domestic Violence above.

326 Child Protection Law, art. 81.
revoked Article 287 of the Criminal Code. In facing this dilemma, it is not clear how the general principle of law *lex specialis derogat lex generalis* (a specialised law overrides a law on general matters) applies in Indonesia and which Law should prevail. Popular opinion shows that the legal principle is accepted as a legal custom and therefore can be applied even with the absence of a pronouncement in a law. However, Indonesia’s practice apparently does not reflect such acceptance; it indicates that a legal principle, in order to be applied in Indonesia, needs to be pronounced in a law. For instance, Article 1 of Indonesia’s Trade Code stipulates that the Trade Code shall prevail over the Civil Code in trade matters. A Professor in Legal Science is of the opinion that in case where the specialised Law does not pronounce that it prevails over a general Law (as in the case between the Child Protection Law and the Criminal Code), then both laws apply with equal strength.

One interesting point that is worth to mention is the differing ages of consent (legal age for sexual activities) indicated in various Indonesian legislation. Apart from the Criminal Code and the Child Protection Law, if the minimum age of marriage can be considered as age of consent, the Indonesian Marital Law establishes that the minimum age of marriage is 16 years for a girl and 19 years for a boy with the consent of the parents. However, a Religious Court can give a dispensation to this provision if the parents from both sides agree; it means that a marriage between a boy and a girl below the age of 19 and 16 years old is still possible. In this setting, it is difficult to apply Article 81 of the Child Protection Law since the practice of early marriage between persons below the age of 18 is still possible under the Marital Law.

Fortunately, in recent years, many Courts in Indonesia have come to realise that early marriage has become the main cause for most divorces in Indonesia, especially in Java. The Courts have also admitted that the application of Article 81 of Child Protection Law is deemed as important by Indonesian Courts to discourage practices of early marriages as is shown in the Supreme Court’s 2010 interlocutory decision on a case of early marriage (Syekh Puji case). KPAI noted that this decision can set a precedent to enforce the application of Article 81 of Child Protection Law to deter not only early marriage practices, but also to deter adults from having sexual intercourse with children with or without the child’s consent. Note also that the draft Penal Code referred to above establishes the age of 14 as the threshold for statutory rape, even if the victim consents.

c. Sexual Violence and Harassment

In general, the Criminal Code, to some extent, provides protection to women and children against sexual violence. Apart from the Criminal Code, KDRT Law also provides protection. In relation to the situation where sexual violence takes place, apart from KDRT Law that offers protection against violence that take place in a household, the Study finds nothing in Indonesian legislation that expressly provides protection for women and children against sexual violence that takes place in specific situations (e.g., workplace, schools, etc.).

The Indonesian Criminal Code regime does not recognise the term sexual violence and sexual harassment under its...
legal terms. The recognised term under the Criminal Code that might cover sexual violence and harassment is “perbuatan cabul” or “obscene act” in English. Article 289 of the Criminal Code stipulates, “Any person who by using force or threat of force forces someone to commit or tolerate obscene acts, shall, being guilty of factual assault of the chastity…” Article 290 of the Criminal Code adds situations when consent of the victim cannot be presumed or the element of force need not be present: • If the victim is unconscious or helpless; and • If the victim has not reached the age of fifteen years or not yet marriageable.

There is nothing in the Criminal Code that explains types of act that can be qualified as “obscene”. Judging from the language of Article 285 of the Criminal Code, it is safe to say that, as long as the sexual activity imposed on the victim does not involve intercourse, then it is considered as obscene act. The 2005 Draft Code, however, defines obscene acts, as “any acts that violate the sense of decency, or other vile acts, and the act should arise from sexual-related intention.” If a person in a position of trust, e.g., parent, guardian, stepparent, teacher, caregiver, commits obscene acts, he/she will receive a lighter penalty. However, under the Child Protection Law, perpetrators of violence who are in a position of trust will receive heavier penalties.

The Code on Criminal Procedure provides general rules to be applied in criminal case examination, including cases of rape. There is nothing under Indonesian legislations, in relation to the examination of rape cases, that mentions considerations of prior sexual history of the victim, the level of force needed to prove sexual assault, etc.

The Code on Criminal Procedure does not prohibit bail for perpetrators of obscene acts. Other legislation, however, provides other protective measures to victims in general, including victims of obscene acts and rape, if there is any risk to the victim arising from the perpetrators. Protective measures under the law on Witness and Victim Protection includes:

- Victims can be dispensed (by the order of the Court) from giving his/her testimony in person during the trial; and
- Victims cannot be prosecuted or held responsible in civil cases based on his/her report/complaint, testimony that is going to be given, is being given, or had been given.

The Law on Victim and Witness Protection also guarantees the rights of victims to:

- acquire protection and be free from threats;
- be involved in selecting the form(s) of protection;
- be free to give testimony without pressure;
- acquire an interpreter;
- be free from incriminating questions;
- acquire information on the development of the case and court decision/judgment;
- acquire new place of residence;
- acquire legal assistance; and
- acquire sustenance until the end of the protection period.

The Law provides that the Witness and Victim Protection Institution (LPSK) shall be responsible for the implementation of these rights.

Meanwhile, if the crime happened in a domestic/household setting, the victims can request protection from the district court. Based on the victim’s request, the Court can order provisional apprehension of the suspect up to thirty days or restraining order for the suspect not to approach the victim.

d. Women and Children in Armed Conflict

Indonesia has acceded to the Four Geneva Conventions of 1949 through the enactment of Law No. 59 of

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337 Komnas Perempuan, 2011 KP-CEDAW, para. 10.
338 Elucidation of the 2005 Draft Code, art. 490.
339 Criminal Code, art. 294(1); Under Article 289 on Obscene Acts, the sentence given for a person proven guilty of the act is imprisonment of 9 years at maximum. However, if the act was committed by a person of trust then the sentence will be imprisonment for 7 years at maximum.
340 Child Protection Law, art. 13(2).
341 See the Code on Criminal Procedure Chapter V on general provisions on apprehension of suspects.
342 See the provisions of Law on Witness and Victim Protection and KDRT Law in table 8 – 10 above.
343 Law on Victim and Witness protection, art. 9 – 10.
344 Ibid, art. 5.
345 Ibid, art. 12.
346 KDRT law, art. 30.
347 Ibid, art. 31 – 38.
348 Geneva Convention (I) for the Amelioration of the Condition of
1958. In 2002, the Indonesian Ministry of Defence enacted a Ministerial Decision on the Implementation of Humanitarian Law and Human Rights in the Application of State Defence. The Decision stipulates the applicability of the Four Geneva Conventions, other international humanitarian instruments that reflect international customs, and numerous international human rights instruments that Indonesia has ratified or acceded to in the application of the State’s defence. Furthermore, this ministerial decision shall be implemented by the Indonesian armed forces. Unfortunately, any regulations related to the conduct of the armed forces in conflict situations issued by the Commander of the Indonesian armed forces are not available for public. Therefore, it is rather hard to scrutinise the policies implemented by the Indonesian armed forces in relation to humanitarian and human rights law in armed conflict situations, let alone on the issue of protection of women and children.

However, generally, based on Indonesia’s accession to the Four Geneva Conventions of 1949, Indonesia has the obligation to provide minimum protection to women and children during an armed conflict situation, especially protections given under the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Moreover, in accordance with the Decision of the Indonesian Minister of Defence above, Indonesia also has an obligation to adhere to provisions of international human rights instrument relating to the protection of women and children in armed conflict situations that Indonesia has ratified or acceded to. Some of the relevant international human rights instruments that Indonesia has ratified or acceded to are 1) CRC; 2) CEDAW; 3) ICCPR; and 4) ICESCR.

In practice, even though Indonesia already acceded to international instruments related to protection of women and children in armed conflict situations, Indonesia has not adjusted its domestic legislations in accordance with its obligation laid down in those international instruments. As an example, there is nothing in Indonesian legal system that defines an armed conflict situation. Indonesia has not criminalised war crimes under its domestic legislation. The mentioning of protection of women and children in armed conflict situation is scarce, even the Law on Human Rights Court does not cover the protection on women and children sufficiently.

The Study notes that, in the level of legislation, only the Child Protection Law, the Law on Child Welfare, the Law on Human Rights, and the Law on Human Rights Court indicate some resemblance of guarantee of the protection of women and children in armed conflict situations. These laws mostly focus on the protection of children in armed conflict by establishing that, in case of emergency, the safety of children shall be prioritised and children have the right not to be involved in armed conflict situations.

Furthermore, the Child Protection Law guarantees special protection of children in armed conflict situations. Article 61 of the Law emphasises that

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351 Ibid, point 1 – 4.
352 Ibid, point 6.
354 Decision of the Minister of Defence, point. 4.
355 See Table 6 above.
356 International conventions, which Indonesia has ratified or acceded to, relevant to the protection of women and children in armed conflict situations are, among others: 1) the Four Geneva Conventions of 1949; 2) CEDAW; 3) CRC; 4) ICCPR; and 5) ICESCR.
357 The Law on Human Rights Court in Indonesia deals mainly with the criminalization of Crimes against humanity and genocide as grave violations of human rights punishable under Indonesian Law. However, the Law does not define an armed conflict situation and does not criminalise war crimes, which elements include protection of women and children in armed conflict situations under international law.
358 Law on Child Welfare, art. 3; Law on Human Rights, art. 63.
359 Child Protection Law, art. 59 – 61.
the implementation of special protection to children refugees\(^{360}\) shall adhere to humanitarian law provisions. However, the reference to the application of humanitarian law was not made to the protection of children in armed conflict situations as described under Article 60(d) of Child Protection Law.

Meanwhile, there is hardly anything in Indonesian legislation that refers to the protection of women in an armed conflict situation. The Minister of Women Empowerment and Child Protection, Linda Amalia Sari Gumelar, acknowledges that Indonesian women who live in conflict situations have not yet been protected by the Law.\(^{361}\) One of the few existing laws that refer to the protection of women in a conflict situations can be found in the Law on Human Rights Court, which stipulates that gender-based violence (rape, enforced sterilisation and abortion, sexual slavery, etc.) is included as one of the categories of offenses encompassed by both genocide and crimes against humanity.\(^{362}\)

MOWE acknowledges that a legal umbrella is needed to protect women and children in armed conflict situations. Since 2009, MOWE has held numerous public consultation meetings to discuss the draft of National Action Plan on the Protection, Prevention, and Empowerment of Women in Conflict Areas (RAN-P4DK).\(^{363}\) The Minister asserts that the enactment of RAN-P4DK is a part of Indonesia’s obligation to implement the UN Security Council Resolution 1325 (2000) related to the protection of women and children in armed conflict situations.\(^{364}\) In her report to the House of Representative, MOWE affirmed that RAN-P4DK will be enacted through a Ministerial Regulation by the end of 2011.\(^{365}\) To date this has not yet occurred.

### ii. Assessment of Policies Pertaining to Women

#### a. Discrimination

In the 2005 IPR-CEDAW, GoI states that the 1945 Constitution establishes discrimination as a violation of human rights.\(^ {366}\) Article 281 (2) of the 1945 Constitution provides a broad prohibition of discrimination by stipulating: “everyone is entitled to be free from discriminatory treatment on any basis and is entitled to be protected from discriminatory treatment.”\(^ {367}\) GoI then continues with providing a definition of discrimination under Article 1(3) of the Law on Human Rights:

Discrimination is any limitation, harassment or exclusion, whether direct or indirect, based on human differentiation determined by religion, tribe, race, ethnicity, group, association, social status, economic status, sex, language, or political belief, that causes the reduction, deviation from, or abolition of the recognition, implementation or use of human rights and fundamental freedoms in the political, economic, legal, social, cultural, and other aspects of life, whether at the individual or collective level.\(^ {368}\)

Moreover, Article 17 of the Law on Human Rights also provides a guarantee for women to have effective protection by competent national tribunals and other public institutions against any act of discrimination:

Everyone without discrimination has the right to justice by submitting applications, grievances, and charges of a criminal, civil, and administrative nature, and to a hearing by an independent and impartial tribunal, according to legal procedure that guarantees a hearing by a just and fair judge allowing an objective and impartial verdict to be reached.\(^ {369}\)

Indonesian legislations also provide guarantees for everyone to equal rights to seek work and to have education.\(^ {370}\) The 2011 IPR-CEDAW listed several laws that, according to the GoI, reflect integrated policies in GoI’s effort to eliminate discrimination against women, such as the Law on the National Long-term Development Plan (2005 – 2025); TIP Law; Laws on General Elections; and Law on the Elimination of Racial and Ethnic Discrimination.\(^ {371}\) However, CWGI noted

\(\text{\textsuperscript{360} Ibid, art. 60(a) on refugee children.}\)

\(\text{\textsuperscript{361} MOWE, Perempuan di Daerah Konflik belum Terpayungi Hukum, 23 November 2011, <www.menegpp.go.id>, accessed on 26 December 2011.}\)

\(\text{\textsuperscript{362} Law on Human Rights Court, art. 8 – 9.}\)

\(\text{\textsuperscript{363} MOWE, Perempuan di Daerah Konflik.}\)

\(\text{\textsuperscript{364} Ibid; See also S/RES/1325 (2000), www.un.org, accessed on 26 December 2011.}\)

\(\text{\textsuperscript{365} Indonesian House of Representative. Summary of Meeting, 29 November 2011, 7 – 8.}\)

\(\text{\textsuperscript{366} GoI, 2005 IPR-CEDAW, para. 25.}\)

\(\text{\textsuperscript{367} Ibid.}\)

\(\text{\textsuperscript{368} Ibid, para. 26.}\)

\(\text{\textsuperscript{369} Ibid, par. 30.}\)

\(\text{\textsuperscript{370} Ibid, para. 27 – 28.}\)

\(\text{\textsuperscript{371} GoI, 2011 IPR-CEDAW, para. 3 – 4.}\)
that most legislations only contain the general principle of non-discrimination without specifically referring to discrimination against women. CWGI added that the legislations have not been able to explicitly define discrimination.

In 2007, the CEDAW Committee sent a list of issues and questions to the GoI. One of the questions presented to the GoI concerned the absence of a clear definition of “discrimination against women modelled on Article 1 of the Convention.” In its response, the GoI stated that it is preparing a Draft Law on Gender Equality, which will include a definition of discrimination against women in accordance with CEDAW provision. GoI added that the draft is scheduled for 2008. As a response to the GoI reports, CEDAW Committee encouraged Indonesia “to incorporate a definition of discrimination into its Constitution or national legislation that conforms with Article 1 of the Convention.” These exchanges of communications indicate that there is no gender-specific non-discrimination clause under Indonesian legislation. Nevertheless, to the knowledge of this Study, the Draft Law on Gender Equality has yet to be enacted. The Indonesian Minister for Women Empowerment, Linda Gumilar, indicated in her latest statement that the Draft Law was still in discussion in the DPR and hopefully would be enacted by the end of 2011.

Pertaining to the absence of a definition of discrimination against women modelled on Article 1 of CEDAW in Indonesia’s legal system, the Study would like to point out an important question: does Indonesia need to enact a new law to accommodate Article 1 of CEDAW when Indonesia has already ratified CEDAW in 1984? Despite various arguments on the status of international law in Indonesia’s domestic legal system, the Study is of the opinion that even without the enactment of the draft Law on Gender Equality, CEDAW provisions can be implemented directly in Indonesia’s legal system since Indonesia is a monist Country. To demonstrate the basis of this statement, Indonesia’s Law No. 24 of 2000 on International Treaty (Law on International Treaty), requires every instrument signifying Indonesia’s ratification or accession to an international treaty to be published in the State Gazette for the purpose of informing the public about Indonesia’s consent to be bound to the treaty and therefore the treaty binds all citizens. This provision implies that the ratification of or accession to a treaty binds Indonesia both externally and internally and applicable even without the existence of an implementing legislation. Therefore, based on the argument that Indonesia is a monist Country, CEDAW provisions can be applied directly in Indonesia’s domestic legal system even without the enactment of implementing legislation or without translating them into national law; however, what Indonesia needs is harmonisation of its law to accommodate the implementation of CEDAW.

Another argument that can be put forward for the direct application of CEDAW provisions is in relation to the wordings chosen by the GoI to be utilised in the Law for the Ratification of CEDAW. The GoI stated that the provisions of CEDAW in no way contradict the 1945 Constitution or other legislations; in light of this finding, the GoI decided to sign CEDAW on 29 July 1980 and to ratify the Convention by way of law. An Indonesian expert on Gender Studies, Sjamsiah Ahmad, stated that the predetermination that CEDAW does not contradict the 1945 Constitution or other legislation constitutes a sufficient indication that CEDAW can be implemented directly in Indonesia’s domestic legal system without the need to enact an implementing legislation.

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372 CWGI, 2007 CWGI-CEDAW, para. 34.
373 Ibid.
374 CEDAW Committee, List of Issues and Questions with regard to the Consideration of Periodic Reports (List of Issues), CEDAW/C/IDN/Q/5, 27 February 2007, para. 3.
375 GoI, 2007 GoI Response-CEDAW, para. 2.
376 Ibid.
377 CEDAW Committee, 2007 CC-CEDAW, para. 9.
382 Ibid, Consideration, para. c – e.
383 Statement of Sjamsiah Ahmad during HRRC’s Consultative Meeting on the Baseline Study, Jakarta, 23 June 2012.
Nonetheless, for the sake of clarity, guidance, and to ensure real and practical enforcement, a clear and definitive statement in legislation describing and prohibiting discrimination against women would be highly beneficial.

b. Gender-based Violence

In relation to gender-based violence in Indonesia, even though GoI’s reports to the HRC and Treaty Bodies did not specifically mention this, the Study concludes that, based on the information provided in the reports, Indonesia penalises some forms of gender-based violence through various legislation such as the Criminal Code, the Law on Human Rights Court, and KDRT Law. 384 The Indonesian Criminal Code penalises the acts of rape, statutory rape, 385 trade in women, abduction of women, and violence against women’s reproductive health. 386 The Law on Human Rights Court includes gender-based violence as elements of genocide and crimes against humanity, crimes classified as grave violations of human rights under Indonesian legal system. 387 Finally, KDRT Law criminalises and penalises violence, especially against women, that takes place in the household. 388

There is no exact definition of gender-based violence under the Indonesian legal system that corresponds to the definition of gender-based violence provided under CEDAW Committee’s General Recommendation 19(6) as a whole. The definition of domestic violence provided in Article 1(1) of KDRT Law has some resemblance to the definition of gender-based violence in the General Recommendation 19(6); however, the scope of application of Article 1(1) of KDRT Law is limited as demonstrated below:

a. According to CEDAW General Recommendation No. 19(6), gender-based violence is defined as:

violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty

b. According to Article 1(1) of KDRT Law, domestic violence is defined as:

Any act against a person especially a woman, which cause misery or physical, sexual, psychological suffering, and/or domestic neglect including threats to perform acts, coercion, or deprivation of liberty against the law within the domestic sphere.

According to a publication by the Indonesian Ministry of Law and Human Rights, the formulation of the definition domestic violence under KDRT Law had taken into account the definition of gender-based violence provided by CEDAW General Recommendation 19(6). 389 However, the context of gender-based violence under Article 1(1) of KDRT Law is only limited to the household while the definition given in CEDAW General Comment 19(6) applies in any situation as long as it is directed to a woman and based on the fact that the person is a woman. This, of course, is a very significant discrepancy in the scope of protection.

c. Harmful Traditional Practices affecting Women

To the knowledge of this Study, Indonesia does not have any legal provisions protecting women from harmful traditional practice such as forced marriage, dowry deaths, acid attacks and FGM as described under CEDAW General Recommendations No. 14 and No. 19(11). To some extent the Criminal Code criminalises acts that cause bodily harm to anyone, including women. However, no legal provision specifically protects women against serious forms of violence that are typically committed in connection with traditional practices or values.

According to AI and CEDAW Committee, practices of FGM in Indonesia still take place. 390 A significant progress in national regulation banning FGM had taken place back in 2006 when the Director General of Medical

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384 Please see table 8 above.

385 The Criminal Code, art. 287. The provision on statutory rape provided in the Indonesian Criminal Code only apply if the victim is a girl and the statutory age in 12 years old.

386 See Table 8 above.

387 Ibid.

388 KDRT Law, art. 1(1).


390 CEDAW Committee 2007 CC-CEDAW, para. 20; AI, Left without a Choice., 18.
Service issued Circular No. HK 00.07.1.3.104.1047a on the Health Impact of Female Circumcision. The Circular stipulated that FGM gives no benefit to women’s health; on the contrary, it causes harm and unnecessary pain. Therefore, all medical staff were prohibited to conduct or assist the execution of FGM.391 Following the adoption of the 2006 Circulation, then Director General of Medical Service urged the Minister of Health to enhance the legal status of the Circular and to involve the Ministry of Religious Affairs in banning FGM.392

However, in 2010, the Minister of Health issued a Ministerial Regulation on Female Circumcision,393 which basically served as a guideline for medical staff on how to conduct or to assist in the conduct of FGM.394 The adoption of the 2010 Ministerial Regulation overrides the 2006 Circular, thus lifting the banning of FGM.395

Many people see this as a step back because, in 2006, the Director General of Health Development issued a circular establishing the negative health impact of FGM on women396 and prohibited medical staff from performing FGM. On the other hand, the 2010 Regulation does not prohibit FGM; on the contrary, it regulates methods of FGM.

### iii. Assessment of Policies Pertaining to Children

#### a. Neglected or Negligent Treatment on Children

A neglected child under the Child Protection Law is defined as a child whose needs, physically, mentally, and socially, are not sufficiently fulfilled.397 Neglect of children is considered as violence against children and punishable under the law.398 The treatment of a child with neglect by a parent, guardian, or caregiver constitutes an aggravating factor for his/her punishment.399

The GoI is obliged to provide special protection to neglected children.400 Special protection guarantees under the Child Protection Law include monitoring, prevention, care, and rehabilitation.401 The Ministry of Social Welfare is responsible for monitoring the implementation of social services provided for neglected children under Child Protection Law.402 If the Ministry finds any indications that parents are neglecting their child then the Ministry can file for a Court Order to place the child in foster care.403

In relation to practices of corporal punishment on children, Article 54 of the Child Protection Law stipulates, “children attending school must be protected against violence and abuse from teachers, school managers, and school mates both in the school or other educational institutions.” The Law on Human Rights guarantees the right of every child not to be subjected to acts of oppression, ill treatment or inhuman penalty.404 According to the Global Initiative to End All Corporal Punishment of Children (EAPC) in its 2007 Briefing for the HRC on Indonesia’s UPR, there is no explicit prohibition of corporal punishment in schools.405 EAPC also highlighted that there is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions as well.406

#### b. Street Children

Until now, there is nothing under any legislation that specifically mentions the term “street children”. According to Article 34 of the Constitution, the State has the obligation to take care of impoverished people and abandoned children. Furthermore, Article 34 stipulates that the State also has the obligation to develop a social security system and provide sufficient public service facilities. In its concluding observation, the Committee

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392 Ibid.


394 Ibid.


396 AI, Left without a Choice, 18.

397 Ibid, 1(6).

398 Ibid, art. 13(1) and 77.

399 Ibid, art. 13(2).

400 Ibid, art. 59.

401 Ibid, art. 71.

402 Ibid, art. 55(4).

403 Ibid, arts. 57 – 58.

404 Law on Human Rights, art. 66.


406 Ibid.
against Torture highlights that Indonesia has not provided adequate protection to street children against violence in accordance with Articles 2 and 16 of CAT.407

c. Juvenile Justice: Children in Detention

Indonesian legislation provides protection to children in conflict with the law, including children in detention. Provisions that relate to the treatment of children in detention are provided under Law No. 11 of 2012 on Juvenile Court System replacing Law No. 3 of 1997 on Juvenile Court. The detention of a child in conflict with the law is prohibited if there is a guarantee provided by the parents or guardian that the child in question will not run away or eliminate/contaminate evidence or committed the same criminal act.408 Detention of a child can only be done if the child is of the age of 14 years old or older and suspected of having committed a crime which can cause criminal penalty of 7 years or more.409 The approach toward child detention in Law on Juvenile Court System is in a way more clear than that of the previous law on Juvenile Court which vaguely stipulated that the detention of a child shall only be conducted after carefully considering the child's interest and/or the interest of the society.410 Juvenile detention facilities shall be separated from adults' detention facilities.411 The detention of a child in conflict with the law can be issued by the Police (during the first phase of investigation), the Prosecutor (during the second phase of the investigation), and the Court (during the trial, up to cassation).412

The child who is being detained is entitled to receive legal assistance from one or a group of legal counsel. This right should be conveyed by the institution that issued the detention order to the child's parents, guardian, or foster parents.414 The child has the right to have the presence of a legal counsel or paralegal in every stage of the legal process.415 The legal counsel has the obligation to observe the interest of the child and public order.416

Under the Law on Juvenile Court System, a child in conflict with the law can be detained, for the purpose of investigation and trial, up to 110 days.417 This indicate a significant progress compared to the total number of days that a child can be hold in detention under the previous Juvenile Court Law, which allowed the detention of a child for the whole legal process up to 200 days.418

3 Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

In relation to the implementation of protection of women and children against violence, the Ministry of Women Empowerment (MOWE) is generally responsible for the implementation of CEDAW and State policies on the implementation of women's and children's rights, including protection against violence.419 MOWE has developed the Minimum Service Standard for the Empowerment of Women and Protection of the Child for Integrated Service for Women and Children Victims of Violence as a minimum service standard for the handling of women and children victims of violence.420 The integrated service provided by MOWE includes the

408 Law on Juvenile Court System, art. 32(1).
409 Ibid, art. 32(2).
410 Law No. 3 of 1997 on Juvenile Court. Art. 45(1). This also includes the consideration on the child’s physical, psychological, and sociological development.
411 Law on Juvenile Court System, art. 32 – 33.
412 Ibid, art. 32 – 40.
413 See the Criminal Code, Arts. 1(2), 1(4), 4, and 6. Under the Indonesian Criminal Code, there are two stages of investigation. The first stage of investigation is to determine whether or not a crime has taken place, this stage is known as Penyelidikan. The police force has the soul authority to conduct the investigation at this stage. The second stage of investigation falls under the authority of both the AGO and Police force and is known as Penyidikan. This stage aims at to determine the suspect once the Penyelidikan stage is completed.
414 Law on Juvenile Court System, art. 32 – 40.
415 Ibid, art. 23(1).
416 Ibid, art. 18.
417 Ibid, art. 33 – 38. This is assuming that the case goes all the way to the Supreme Court and that in every phase the detaining institution issued a warrant for extension of the detention.
418 Law No. 3 of 1997 on Juvenile Court, art. 44, and 46 – 49. Under Article 50, an additional of 30 days (maximum) of detention can be given to the child if he or she suffers from a grave physical or mental disorder.
420 Gol, 2011 IPR-CEDAW, para. 49.
establishment of the Integrated Services Unit for the Empowerment of Women and Children (P2TP2A). According to 2007 IPR-CRC, “P2TP2A is established in every province, regency and municipality, to undertake the task of preventing violence, discrimination, harassment, mistreatment, and neglect and of handling, recovering, rehabilitating, and reintegrating child victims.” However, the 2012 Indonesian UPR stated that the GoI had only established P2TP2A in 18 provinces and 113 regencies/municipalities. The GoI added that P2TP2A also functions as information and trauma-healing centres.

Apart from MOWE, the Ministry of Social Affairs is responsible for the protection of neglected children and street children. To implement its mandate, the Ministry of Social Affairs provides trauma centres, shelters, and safe houses for neglected and abused children (and women).

Meanwhile, in relation to legal enforcement of protection of women and children against violence, GoI reports indicated that Indonesia has established a special unit, Women and Children Protection Unit (UPPA), within every district police office to handle criminal cases that involve women and children both as perpetrators and victims. Specifically for the protection of victims of violence, in 2006, Indonesia established the Witness and Victims Protection Institution (LPSK) aiming at protecting victims and witnesses against further violence in relation to criminal proceedings. In the case of the juvenile justice system in Indonesia, the reports mention the close involvement of the Bureau of Corrections (BAPAS) to ensure the fulfilment of the rights of children in conflict with the law in every stage of legal proceeding.

The National Commission for Human Rights (Komnas HAM), the National Commission on Violence against Women (Komnas Perempuan), and the National Commission for the Protection of Children are established by the GoI to oversee the implementation of women and children rights. The GoI also established the National Commission for the Elimination of Worst Forms of Child Labour (KNPBPTA) to deal with, among others, child workers as victims of violence. The legislative body also has a Parliamentary Female Caucus that actively promotes gender perspective and women’s rights in the Parliament.

The most recent development in this context was the signing of a joint decree between the Minister of Social Affairs, Minister of Home Affairs, Minister of National Education, Minister of Religious Affairs, Minister of Health, Minister of Law and Human Rights, and MOWE with the Chief of Indonesian National Police on Improving Social Welfare of Street Children. The signing of this joint decree marked the commitment of these ministries together with the police force to conduct joint monitoring activities to decrease the number of children returning to the streets. The strategy prioritises the role of family-based treatment, with MOWE being the responsible institution to empower the role of families to prevent children from returning to the street.

Even though the reports do not mention the existence of other institutions that might play relevant roles in the implementation and monitoring of the protection of women and children against violence, the Study, for the sake of clarity, finds it necessary to mention several institutions that do play an important role in monitoring the implementation of this State obligation. This is particularly important in relation to the protection of children in conflict with the law against abuse conducted by law enforcers and the judiciary. The said institutions are:

430 Gol, 2011 IPR-CEDAW, para. 162.
431 Gol, 2007 IPR CRC, para. 8
432 Gol, 2011 IPR-CEDAW, para. 162; See also Gol, 2005 IPR CEDAW, para. 38.
433 Gol, 2012 Indonesian UPR, para. 106.
434 Ibid.
435 Ibid.
436 See the part on prevalence of violence above, especially the discussion relating to “Violence against Children in Conflict with the Law” and “Street Children”.

Ranyta Yusran
1) The National Police Commission ---- an independent commission established by the President. One of its main functions that is relevant to the protection of children in conflict with the law is to receive complaints and suggestions from the society regarding police misconduct.\textsuperscript{437}

2) The National Prosecutor Commission ---- an independent commission established by the President. Its authority include to receive and take necessary acts on complaints or reports filed by members of society on misconduct that might have been done by a prosecutor and to monitor and evaluate the performance of the Indonesian prosecutors.\textsuperscript{438}

3) The Judicial Commission ---- the Commission was established as mandated by the Constitution to, among others, supervise the conduct of Indonesian judges.\textsuperscript{439} The Commission also has the power to impose sanctions if a judge is responsible for misconduct or acts unethically.\textsuperscript{440}

b. Complaints Process

Neither reports discussed complaint processes on the handling of violence against women or children in detailed manner. They did, however, cite relevant bodies that have the power to receive and handle complaints filed by victims of violence. In this case, the Study will only cite authoritative bodies identified under the reports and cite relevant regulations pertaining to the complaint mechanisms.

From the institutions identified in the previous section on “Implementing and Monitoring Mechanism”, institutions that have the authority to receive and take action on complaints regarding violence against women and children are as follows:

1. TeSA 129, in 2006, MOWE, in cooperation with national and international NGOs, established a child helpline known as “Telepon Sahabat Anak 129” (TeSA 129) using free dial facilities in Jakarta, Surabaya, Banda Aceh, Makassar, Pontianak, and Sidoarjo.\textsuperscript{441} TeSA 129 aims at providing child protection services to victims of abuse and neglect as well as to serve as a mechanism for child-friendly complaints.\textsuperscript{442}

2. MOWE, An integrated mechanism on recording and reporting of child victims of violence has been developed and made available at every regency/municipality, provincial, and national level, with MOWE as the lead agency.\textsuperscript{443}

3. P2TP2A, in the case of violence against children, victims can file complaints with P2TP2A in accordance with the guidelines provided by MOWE through Regulation No. 2 of 2011 on Guidelines in the Handling of Children Victims of Violence. For the handling of cases of violence against women and children in general, the complaint mechanism through P2TP2A is provided under MOWE Regulation No. 1 of 2010 on Integrated Service System.\textsuperscript{444} P2TP2A should be available in every regency/municipality. According to the said MOWE Regulations, in conducting its duty, it needs the cooperation of relevant UPPA. In the execution of its mandate, P2TP2A faces some challenges as will be described in the section of “Progress Indicators and Challenges” below. In 2009, P2TP2A handled 143,586 cases of violence all over Indonesia.\textsuperscript{445}

4. UPPA (Police Force), in accordance with the 2007 CNP Regulation on UPPA,\textsuperscript{446} every complaint filed in relation to cases of violence against women and children made to the local police office will be referred to UPPA. The procedure and handling of such complaint by UPPA is regulated under 2008 CNP Regulation on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence.\textsuperscript{447} In the execution of its mandate, UPPA faces some challenges as will be described in the section of “Progress Indicators and Challenges” below. Both UPPA and P2TP2A are parts of an Integrated Service Unit provided under MOWE Regulation on the Minimum Service Standard for Women and Children Victims of Violence. Apart from UPPA and

\textsuperscript{438} Presidential Decree No. 18 of 2011 on the National Prosecutor Commission. 4 March 2011, art. 3 – 4.
\textsuperscript{439} Law No. 22 of 2004 on the Judicial Commission. State Gazette 2004:89, 13 August 2004, art. 19
\textsuperscript{440} Ibid, art. 20.
\textsuperscript{441} GoI, 2007 IPR-CRC, para. 68 and 111.
\textsuperscript{442} Ibid, See also GoI. 2008 UPR Indonesia, para. 29.
\textsuperscript{443} Ibid, para. 74.
\textsuperscript{444} See tables 8 – 10 above.
\textsuperscript{445} GoI, 2012 Indonesian UPR, para. 93.
\textsuperscript{446} See table 9 above.
\textsuperscript{447} Ibid.
P2TP2A, there are also other units such as Integrated Crisis Centre (PKT), Protection House and Trauma Centre (RPTC), Social Protection House for Children (RPSA), Women Crisis Centre (WCC), Legal Aid Centre (LBH), and others. Women and Children who are victims of violence as well as witnesses put their complaints and reports through these integrated service units. UPFA and P2TP2A have recorded 534 cases of domestic violence in 2009, which were resolved in 13 provinces. However, there is no information through what ways the complaints were resolved, e.g., whether through out-of-court-settlement or through judicial process. Furthermore, bearing in mind that Indonesia is a Country with a population of more than 240 million people and consists of 33 provinces, the number of recorded cases did not do well to act as a progress indicator for the effectiveness of the work of both institutions. It is feasible that the lack of information from the victims' side on their rights and protection offered might hamper their access to justice, including their access to these two institutions, hence the low number of reported cases.

5. KPAI and KNPBPTA, both Commissions hold a special mandate to deal with complaints relating to children in conflict areas. Gol further adds that both institutions also cooperate in enhancing their legal standing to be authorised for pro justititia investigations with regard to child abuse cases by proposing the amendment of the Law on Child Protection. The mandates of KPAI and KNPBPTA are stipulated under 2003 Presidential Decree on KPAI and 2001 Presidential Decree on KNPBPTA.

6. Komnas Perempuan, even though under Presidential Decree No. 65 of 2005 Komnas Perempuan does not have the authority to handle individual cases directly, many women victims of violence come to Komnas Perempuan and report the violence that they suffer. To respond to the growing reports on violence against women, in 2003, Komnas Perempuan established Complaint for Referral Unit (UPR). UPR will receive complaints from victims and, depending on the needs assessment of each particular complaint, refer complaints to relevant partner institutions for follow-up.

7. MoU on Access to Justice for Women Victims of Violence, signed by the Chief of National Police, the Attorney General, the Supreme Court, Komnas Perempuan, Association of Indonesian Advocates, and the Minister of Law and Human Rights. Indonesia 2012 report to UPR Mechanism stated “the MoU aims to accelerate advocacy processes on violence against women cases”. One of the most important points in the MoU is the affirmation of the obligation of Indonesian Lawyers, under the coordination of the Association of Indonesian Advocates, to render legal assistance to women who are victims of violence on a pro bono basis.

### c. Protection and Rehabilitation

In 2006, the Gol passed the Government Regulation on the Implementation and Cooperation for Recovery of victims of Domestic Violence that serves as guideline for the implementation for integrated efforts to provide services in the recovery of victims of domestic violence. The Government Regulation has established a coordination network consisting of relevant institution for the recovery of victims (medical workers, social workers, volunteers, and religious authorities) under the coordination of MOWE.

The 2011 IPR-CEDAW also indicates the 2007 MOWE Regulation on the Establishment of Coordination Forum on the Cooperation on the Prevention and Recovery of Victims of Domestic Violence as one of the mechanisms that provide protection and rehabilitation to victims.
of violence. To further advance this commitment, in 2010, MOWE passed another regulation on Standard Minimum Services for Women and Children Victims of Violence (MOWE regulation on SPM) that provides integrated services of relevant institutions such as, among others, UPPA, P2TP2A, health care institutions, safe house and trauma centres, Social protection Safe House for Children, Women Crisis Centre, and Legal Aid Centres.

In relation to regional efforts, the GoI reported that, since 2004, regional governments, both at municipal and provincial levels, have passed numerous by-laws on protection of women and children victims of violence. These by-laws provide integrated protection and cooperation mechanisms among relevant institutions in their respective regions. Yogyakarta, Central Java, East Java, Bengkulu, and North Sulawesi are among the provinces that have enacted by-laws on local efforts on protection of women and children victims of violence. Additionally, in 2011, the General Attorney issued a circular letter to all prosecutors in Indonesia concerning the handling of cases of violence against women, which basically lays down guidelines to all prosecutors on the special treatment of women who are victims and/or perpetrators.

For the sake of thoroughness, the Study deems it necessary to include other protection and rehabilitation mechanisms that are not mentioned in either of the reports, since these mechanisms also form important parts in the general protection of women and children against violence. The first mechanism is the mechanism provided under KDRT Law that involves the role of the police and the court to provide protection to victims of domestic violence such as issuing restraining order against the perpetrators. The other mechanism provided under Indonesian legislation is the Witness and Victim Protection regime of Law No. 13 of 2006. The regime provides general protection to victims (and witnesses) in a criminal case (including forms of violence against women considered as crimes under Indonesian legal system) during investigation and court proceedings.

### d. Prevention Strategy

#### i. Prevention Strategy: Violence against Children

Especially for the protection of children against violence, MOWE is leading a public campaign entitled “Stop Violence against Children”. A series of public campaigns is being conducted nationally, starting in Central Java, East Java, West Nusa Tenggara and East Sumba, East Nusa Tenggara, Maluku, and South Sulawesi. The campaign is targeted at raising awareness in homes and families, schools, the judiciary, and other formal sectors.

Though the report does not mention the lead institution, the 2008 Indonesian UPR indicates that the GoI launched a massive campaign to “Stop Early Marriages”, in West Nusa Tenggara and North Coast of Java. A video diary documenting cases of sexual violence against children was produced by child victims to be used as a medium for advocacy to prevent violence and exploitation. Moreover, to raise awareness of the general public, the GoI has made available the CRC Implementation Report on the Internet.

The Ministry of Health, Ministry of Education, Ministry of Social Affairs, and the National Police have developed a number of standard guidelines for the handling of cases of violence against children. They serve as standard operating procedures for health workers, teachers, social workers, and police in preventing violence against children.

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462 Ibid. See also table 10 above on the discussion about the said MOWE Regulation.
463 Ibid, para. 46; See also tables 7 and 8 above on the discussion about the said MOWE Regulation.
464 Ibid para. 203.
465 Ibid.
467 See tables 9 and 10 above on the description of protection and rehabilitation measures provided in KDRT Law.
468 See table 9 above on the description of protection measures provided in the Law on Witness and Victim Protection.
469 GoI, 2008 Indonesia UPR, para. 27.
470 Ibid.
471 Ibid, para. 30.
472 Ibid.
474 GoI, 2008 Indonesian UPR, para. 37(d).
Another strategy to prevent early marriage is the establishment of sanctions by the Ministry of Religious Affairs for chaplains who conduct matrimonial ceremonies for couples under the age of 18. The Ministry has launched a program to raise awareness of the existence of these sanctions.

**ii. Prevention Strategy: Violence against Women**

Meanwhile, in the case of protection of women against violence, since 1999, the GoI has adopted a Zero-Tolerance Policy as a strategy to eliminate violence against women. The policy also engages cooperation from numerous stakeholders from government institutions, women study centres, as well as NGOs. As a result of this cooperation, in 2000, the National Action Plan on the Elimination of Violence against Women was launched.

In 2000, the President enacted Presidential Instruction No. 9 of 2000 that obliges all Government representatives and agencies to mainstream gender sensitivity in their policies, programs, projects, activities and budgets to eliminate gender-based discrimination. In the context of regional autonomy, both the Ministry of Law and Human Rights and the Ministry of Home Affairs have issued guidelines for drafting regional by-laws for regional governments emphasising principles of non-discrimination of women and gender equality.

The Ministry of Religious Affairs also contributes to efforts to prevent violence against women caused by pseudo-religious customs that legitimise violence against women through the improvement of religious curricula and ensuring that the material previously used are replaced with more gender-equitable material. The GoI believes that this is necessary to de-radicalise biased religious views upheld by certain religious groups against women. Adding to this, the GoI also states that it will conduct a widespread, interdisciplinary, integral and holistic research to map the practice of FGM, including studies on numerous physical, biological, sexual, cultural, psychological and religious implications of the practice. The studies are pertinent to produce better policies on the matter.

**4 Role of Non-State Actors**

**a. Assistance to Victims**

Komnas Perempuan in its 2011 independent report to CEDAW Committee mentions that crisis centres at numerous hospitals (63 units) and community-based Women Crisis Centres spread in 20 provinces play an important role in providing assistance to women and children victims of violence in Indonesia. Their efforts in providing assistance for victims are also part of an integrated services mechanism under MOWE Regulation on SPM. There are also more than 75 health centres, community-based crisis centres, and NGOs from all over Indonesia identified as Komnas Perempuan partner institutions in providing assistance and report on women and children victims of violence.

Furthermore, TeSA 129, which is a free child help-line, also developed and maintains close cooperation between the GoI and national and international NGOs.

According to 2011 IPR-CEDAW, several NGOs have been pioneering what is called Pesantren-based women crisis centres to handle cases of violence against women, which are now operating in Jakarta, East Java, Madura, and West Nusa Tenggara. They provide counselling services for women and victims’ empowerment programs.

**b. Prevention Programs**

Since 2005, the MOWE, with support from the Foundation to Monitor Child’s Rights, Child Welfare Foundation, Christian Children’s Foundation, Save the Children UK, Plan International, World Vision...
International Indonesia, and UNICEF, has conducted public consultations in 18 Provinces on violence against children in Indonesia's perspective.\textsuperscript{492}

In the effort to eliminate discrimination against women, 2011 IPR CEDAW acknowledges the active role of NGOs in advocacy through religious approach. It cited an example set out by two NGOs, Puan Amal Hayati and Rahima and Fahima that wage campaigns on Islam partiality to justice and gender equality. The NGOs play an important role in the curriculum reform in Pesantren (Quranic Study) incorporating gender perspective and equality.\textsuperscript{493} The Study sees this effort as a positive initiative to address root causes of violence against women and children, especially causes related to patriarchal culture and religious interpretation that subjugate the position of women and children in society.

c. Monitoring and Cooperation

In August 2007, the OHCHR deployed a human rights adviser to Indonesia to assist in strengthening a human rights-based approach in UN agencies’ programs and developing a joint program to strengthen the capacity of the three NHRI\textsuperscript{s} in Indonesia in handling occurrences of violence against women and in child protection.\textsuperscript{494} However, at GoI’s request, the UN terminated the human rights adviser position in January 2010.\textsuperscript{495}

i. Women

Local NGOs have been actively supporting Komnas Perempuan in the monitoring of cases of violence against women. The NGOs assist Komnas Perempuan in putting together detailed documentation on cases of violence against women that include the number and distribution of cases, advocacy notes, as well as progress and regress in the handling of cases of violence against women.\textsuperscript{496}

The 2011 IPR-CEDAW acknowledges the active involvement of NGOs in the policy-making process relating to the prevention and handling of violence against women as well as protection of women against violence. Some examples resulting from NGOs’ active advocacy of women’s rights are 1) the successful adoption of KDRT Law;\textsuperscript{497} and 2) the active engagement of NGOs in the drafting of the revision of Marital Law and the Islamic Law Compilation.\textsuperscript{498}

Moreover, the 2011 IPR-CEDAW also mentions the constant assistance rendered by the Network for the Advocacy of Policies to Eliminate Violence against Women (JANGKA PKTP), now known as the Coalition Network for Pro-Women National Legislation (JKP3), in assisting the Government and the House of Representative in advocating pro-gender equality policies.\textsuperscript{499} JKP3 consists of various non-government organisations focusing on issues of women’s empowerment.\textsuperscript{500} Most importantly, the Government acknowledges the invaluable role of JKP3 during the drafting of KDRT Law, Law on Health, Law on the Eradication of Human Trafficking, and many others.\textsuperscript{501}

ii. Children

The Study notices that, according to the reports, most of the involvement of non-state actors in monitoring and cooperation on the protection of children against violence occurs by way of engaging with relevant Government Institutions and conducting studies/assessments on specific issues. Some collaboration also aims at developing mechanisms to support the protection of children and prevention against violence.

As has been mentioned in Section C above, at the regional level, both in municipalities and provinces, local governments have established task forces involving NGOs and business organisations in implementing child protection policies. This, according to GoI, is in line with the mandates prescribed under regulations on regional governments, which include the obligation of regional governments to ensure the protection of women and children against violence.\textsuperscript{502} In relation to independent monitoring on the implementation of child protection policies, Komnas HAM, KPAI, and Komnas Perempuan as independent State Institutions have developed a...
mechanism for independent monitoring mechanism on child protection that include joint programs with UNICEF, UNDP, and UNFPA.\textsuperscript{503}

Responding to the need of having a sound documentation on children issues, the GoI has been engaging with UNICEF, ICMC, ACILS, and ECPAT in developing database systems on monitoring on the rights of the child, children faced with legal prosecution, and children outside of family care.\textsuperscript{504} The GoI has secured funding to maintain this database for the period of 2009 – 2014.\textsuperscript{505} KPAI in collaboration with UNICEF Indonesia have conducted a needs assessment to support KPAI independence to implement its mandate to submit reports, investigations results, and recommendations to the President in relation to children protection issues.\textsuperscript{506}

With regard to neglected and street children, in 2007, Ministry of Social Affairs together with UNICEF and Save the Children UK has conducted a comprehensive study on the quality of service provided in foster homes.\textsuperscript{507} The study was conducted in 6 provinces namely Aceh, Central java, West Kalimantan, north Sulawesi, West Nusa Tenggara, and Maluku.\textsuperscript{508}

\section*{5 Progress Indicators and Challenges}

\subsection*{a. Progress Indicators}

\textit{i. Institutional Progress Indicators Pertinent to the Protection of Women and Children against Violence}

Since the enactment of KDRT Law in 2004, the GoI has enacted many laws and regulations, both at the national and regional levels, to support the implementation of KDRT Law. These regulations mostly focus on cooperation among relevant State institutions, law enforcement agencies, and NGOs to provide services and protection to victims of domestic violence, monitoring and handling of cases of domestic violence, and prevention of domestic violence and recovery of victims.\textsuperscript{509} In 2011, substantial progress was made by the GoI in enhancing the institutional capacity of legal enforcers in rendering access to justice through the adoption of the Law on Legal Aid and the Attorney General’s Circulation Letter on the Handling of Cases on Violence against Women.\textsuperscript{510}

The GoI has already established 305 UPPA in police stations in 32 provinces, which comprise 115 senior officials and 982 police officers who are specially trained to provide counselling, medical examinations, escort, and safe houses for women and children victims of violence.\textsuperscript{511} By July 2009, MOWE had assisted in the establishment of 17 P2PTP2A at provincial level and 12 P2TP2A at regency/municipality level.\textsuperscript{512} Komnas Perempuan reported that, by 2011, there are at least 113 P2TP2A established all over Indonesia. Komnas Perempuan also noted that, with the support of civil societies, there are 63 Integrated Crisis Centres integrated to hospitals and 42 Women Crisis Centres established all over Indonesia.\textsuperscript{513} In addition to this, the Minister of Interior had adopted a circular letter on the Acceleration of the Implementation of Minimum Service Standard in relation to MOWE Regulation on SPM. The Circular established 13 Minimum Service Standards, including the Minimum Service Standard for Women and Children Victims of Violence, which aims, among others, to boost regions in Indonesia to establish Minimum Service Standard for Women and Children Victims of Violence.\textsuperscript{514}

\textit{ii. Progress Indicators in the Case of Protection of Women}

The 2007 GoI Response to CEDAW Committee states that the GoI is still discussing the Draft Law on Gender Equality.\textsuperscript{515} This Draft Law will include the definition of discrimination against women in accordance with the definition provided by CEDAW.\textsuperscript{516} At present, the Study notes that the Draft Law is still under discussion by the

\begin{footnotesize}
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\item \textsuperscript{503} Ibid, para. 8.
\item \textsuperscript{504} Ibid, para. 13.
\item \textsuperscript{505} Ibid.
\item \textsuperscript{506} Ibid, para. 11.
\item \textsuperscript{507} Ibid, para. 97 – 98.
\item \textsuperscript{508} Ibid, para. 98.
\item \textsuperscript{509} GoI, 2011 IPR-CEDAW, para. 203; See also the section on Assessment on State Policies above and tables 6 – 10.
\item \textsuperscript{510} Komnas Perempuan, 2011 Note., 38.
\item \textsuperscript{511} GoI, 2011 IPR-CEDAW, para. 203 and 204.
\item \textsuperscript{512} Ibid, para. 205.
\item \textsuperscript{513} Komnas Perempuan, 2011 KP-CEDAW, para. 8.
\item \textsuperscript{514} Komnas Perempuan, 2011 Note, 38.
\item \textsuperscript{515} GoI, 2007 Response to CEDAW Committee, para. 2.
\item \textsuperscript{516} Ibid.
\end{itemize}
\end{footnotesize}
House of Representatives, although MOWE had stated that by the end of 2011, the House of Representatives will enact the Draft Law.

In relation to the prevalence of FGM in Indonesia, the 2011 IPR CEDAW indicates that the Indonesian Council of Ulama (Majelis Ulama Indonesia, MUI) has reached a positive agreement affirming that any practice of genital mutilation is strongly opposed. Nonetheless, they still approve of the practice as long as the methods applied are those that do not harm women. In other words, the MUI does not completely prohibit FGM practice and still opens the possibility of people conducting FGM. Furthermore, as noted above, the Directorate General of Public Health issued a circular in 2006 declaring that the practice of FGM harms and hurts women and prohibiting medical workers from engaging in such practice. Unfortunately, as a response to the issuance of the 2006 circular, MUI issued a decision (fatwa) opposing the 2006 circular as will be discussed in the following section on Challenges (Section 5.b.i below).

The GoI states that it has made progress in raising women awareness against domestic violence. The 2011 IPR CEDAW shows increasing reports made by victims of domestic violence, especially women, to various organisations documented by Komnas Perempuan. The GoI notes that KDRT Law manages to encourage victims to reveal and report domestic violence while, previously, domestic violence was considered as taboo and embarrassment. Furthermore, Komnas Perempuan, in collaboration with other State’s Institutions and civil society organisations, has consistently included reliable statistics on cases of violence against women gathered from Komnas Perempuan branches and its partner institutions all over Indonesia in its annual reports. These reports are accessible to relevant stakeholders.

iii. Progress Indicators in the Case of Protection of Children

According to the Indonesia’s 2012 UPR report, in early 2012, the GoI was still under the process of revising Law No. 3 of 1997 on Juvenile Court so that it will complement the provisions of CRC at the domestic level. The revision will include, among others, the discourse of diversion in the handling of juvenile cases, inclusion of restorative justice approaches, and increasing the minimum age for criminal responsibility from 8 to 12 years. In relation to the improvement of the age of criminal responsibility, the Study notices a positive development reflected in a recent Constitutional Court judgment. In its 24 February Decision, the Constitutional Court declared provisions of the Law on Juvenile Courts which set out the age of criminal responsibility at 8 years as unconstitutional. The Court is of the opinion that the ideal age of criminal responsibility in accordance with the interpretation of the Constitution, taking into consideration the general practice in the international plane, is the age of 12 years. Finally in July 2012, the GoI enacted Law No. 11 of 2012 on Juvenile Court System replacing Law No. 3 of 1997 on Juvenile Court.

Still relevant to the issue of juvenile justice, the Ministry of Law and Human Rights is developing 16 special child penitentiaries that are separate from adult prisons as mandated by the Law on Juvenile Court (now Law on Juvenile Court System) and Child Protection Law. Furthermore, MOWE is formulating a model for child-friendly court and restorative justice in Central Java and West Nusa Tenggara, and has established a law enforcement network that consists of the police force, prosecutors, judges, penitentiary boards, and legal aid foundations.

519 GoI, 2011 IPR-CEDAW, para. 131.
520 Ibid, para. 132.
522 Ibid, para. 192.
524 GoI, 2012 Indonesian UPR, para. 102.
525 Ibid.
527 Ibid, 151 - 152.
528 GoI, 2008 Indonesian UPR, para. 36.
In 2007, the GoI initiated the process of developing a National Action Plan for the Elimination of Violence against Children to address issues of prevention of violence, discrimination, harassment, mistreatment, and neglect, as well as recovering, rehabilitating, and reintegrating child victims. More recently, in 2010, MOWE passed a Ministerial Regulation on National Action Plan on the Prevention and Handling of Violence against Children. The GoI is also in the process of developing regulations aiming at prohibiting all forms of physical and psychological punishments of children at home and in schools. Moreover, in relation to the issue of protection of street children, the GoI, in 2006, with the support of World Bank through its Global Road Safety Partnership, has developed School Children Safety Program to ensure the safety of street children. In 2010, the GoI adopted Presidential Instruction No. 3 of 2010 on Justice for All Development Program, which established the Street Children Social Welfare Program as one of its outputs.

In relation to the urging of the CRC Committee for Indonesia to ratify the two optional protocols of CRC, in 2012, the GoI informed the Working Group on UPR that the draft laws on the ratification of both optional protocols have been submitted to the Parliament and they are expected to be ratified soon. Similar progress is also being made regarding the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the GoI has given its oral commitment to the CEDAW Committee to ratify the Optional Protocol that allows individual complaints to be brought before the Committee in cases of CEDAW violations.

b. Challenges

Even though the GoI mentioned positive developments taking place in relation to the handling of cases of violence against women and children through the establishment of UPPA in each district police office, the 2011 IPR CEDAW indicates several challenges with regard to the actual practice. The Report highlights limited funding and lack of continuity in the special handling mechanism for psychological rehabilitation as some of the challenges faced by UPPA. The Report also notes that the presence of UPPA is still scarce in some provinces such as Maluku, which only has two UPPA in the whole province.

i. Challenges in the Protection of Women against Violence

Since the regional autonomy regime was introduced into the Indonesian legal system, GoI has identified gaps of commitment in the implementation of national human rights commitments at the regional level and this is reflected in various local by-laws, which not only discriminate against women, but also violate women’s rights. Komnas Perempuan, in close cooperation with 367 community-based organisations, has undertaken measures to concretely contribute to identifying local regulations which are discriminative against women on religious and traditional values. Komnas Perempuan continues to monitor gender-biased regional regulations and push for improvement by the local government. However, in spite of vigorous advocacy against regional regulations that condone violence against women, Komnas Perempuan still finds numerous regional regulations that discriminate against women and enable violence against women to take place.

As has been mentioned above (see Section 5.a.ii), despite having issued an agreement on the harmful nature of the practice of FGM, unfortunately, the MUI issued a fatwa “prohibiting the prohibition” of FGM as stated under the Directorate General of Public Health 2006 Circular. The 2010 IPR CEDAW did not give a clear elaboration on the notion “prohibiting the prohibition”; however, in its fatwa the MUI stated that the reason of its

529 GoI, 2007 IPR-CRC, para. 73.
531 GoI, 2007 IPR-CRC, para. 76.
532 Ibid, para. 38.
533 GoI, 2012 Indonesian UPR, para. 105.
534 GoI, 2012 RWG-UPR, para. 10.
535 CEDAW Committee, 2012 CO-CEDAW, para. 7.
537 Ibid.
538 Ibid, para. 49.
539 GoI, 2011 IPR-CEDAW, para. 9 – 10 and 20.
540 GoI, 2008 Indonesian UPR, para. 48.
542 Ibid; see also Komnas Perempuan, 2010 Note, 17 – 20.
543 Ibid, para 132; See also the discussion in part a.ii. above.
opposition was that FGM is considered as “makrumah (memuliakan) and the prohibition of female circumcision is considered as in contradiction with Islamic Law.” Unfortunately, possibly in order to appease the MUI on the matter of FGM, the Ministry of Health in 2010 enacted a Regulation, which, instead of prohibiting the practice, regulates the practice and methods of FGM. This is a discouraging development that is yet to be covered by GoI reports to UN Treaty Bodies in relation to FGM. Clearly, there are contradictory regulations and policies on this contentious subject that the GOI has yet to resolve.

In relation to the prevalence of domestic violence against women, despite the enactment of KDRT law and the increasing awareness in the society, the GoI notes that a thorough and integrated approach in the handling of cases of domestic violence had not been carried out well. One of the main challenges in the fight against domestic violence in Indonesia is the lengthy and complicated legal process that victims have to go through under the KDRT Law regime. To add to this challenge, Indonesia's law enforcers still applied the old stereotypical and gender-biased mind-set in resolving cases of domestic violence. As an example, the judges of the religious courts tend not to use KDRT Law despite the fact that many divorce cases cite domestic violence as the cause of divorce. This is disconcerting since more than 30% of the divorce cases filed in 2006 – 2007 were filed on the ground of domestic violence. Still in relation to the prevalence of domestic violence, CEDAW Committee expresses its concern that until now a monitoring mechanism for the enforcement of KDRT Law is still absent.

CEDAW Committee in its recent concluding observation notes that most Indonesian women are still not aware of their rights under CEDAW; this cripples their capacity to uphold their rights. Moreover, the Committee also states its concern on the lack of awareness among Indonesia's law enforcers with regard to the rights protected under CEDAW as well as Indonesia's failure to "fully and systematically incorporate the Convention throughout Indonesian Law." To emphasise on the lack of awareness of law enforcers, especially in the case of violence against women, the Committee highlights the fact that the police still practice mediation in rape cases, payment of fine as settlement for the case, and the practice of marrying the victim of rape to the rapist.

Another challenge in preventing domestic violence is the Marital Law that places women in vulnerable position in marriage. The GoI is committed to revising the Marital Law, however the process has been going on for years. Numerous State Ministries were appointed as lead agencies in carrying out the process and yet, the GoI argues, the revision of the Marital Law faces challenges from the public that cause the initiative to be put on hold.

CAT Committee noted in 2012 that even though Indonesian Health Law has allowed abortion to be conducted on women victims of rape, victims still find it hard to access the service. Victims have to pass several selection criteria to receive abortion service; this has proven difficult to victims since most of them have limited access to health services due to financial or geographical reasons.

**ii. Challenges in the Protection of Children against Violence**

In general, the GoI indicates that, unfortunately, KPAI only has limited capacity in promoting child protection in Indonesia. Another challenge is the difficulty in effectively implementing P2P2A and TeSA 129, mostly

544 See MUI Fatwa No. 9A of 2008 in Yulianti Muthmainnah: Larangan Khitan Perempuan.
547 **Ibid.** para. 193.
548 **Ibid.** para. 195.
549 **Ibid.** para. 207.
550 **Ibid.**
551 CEDAW Committee, 2012 CO-CEDAW, para. 25(c).
due to the lack of public awareness of the existence of P2TP2A and TeSA 129 and lack of resources.\footnote{GoI, 2007 IPR-CRC, para. 112 – 113.}

Overall, the GoI in its 2007 IPR-CRC views the juvenile justice system in Indonesia as yet to be child-friendly.\footnote{GoI, 2007 IPR-CRC, para. 164.} For instance, the existing juvenile correctional facilities do not have proper facilities and resources to provide mental and physical rehabilitation in order to reintegrate the children back into society.\footnote{GoI, 2012 Indonesian UPR, para. 103.} GoI acknowledges that one of the primary challenges in implementing juvenile criminal procedures is the lack of understanding among law enforcement officers (judges and attorneys), who have been accustomed to using the Indonesian Criminal Code rather than the new Law on Child Protection.\footnote{GoI, 2008 Indonesian UPR, para. 17; See also GoI, 2007 IPR-CRC, para. 164.}

The Criminal Code has laid down general provisions on protection of women and children against violence. In recent years, Indonesia has made heartening developments in increasing the legal protection of women and children against violence through the adoption of Law on Human Rights, Law on Child Protection, Law on Juvenile Court System, KDRT Law, TIP Law, and many others. However, in the course of this study, the Study has noticed a number of legal gaps and uncertainties in the legal framework:

1. Indonesia’s legal framework has yet to penalise sexual harassment at work place;
2. There is no definition of child soldiers;
3. With regard to the age of consent, there are different provisions in different laws setting out or indicating different ages of consent. For example, the age of consent according to the Child Protection Law is 18 years, while marriageable age according to the Marital Law is 16 years old;
4. Early marriage for underage children is still possible under Indonesian legal framework as long as there is parental consent or consent from the child’s guardian;
5. Indonesia still maintains the age of eight as the age of criminal responsibility while CRC clearly stipulates that States Parties shall set out the age of criminal responsibility at 12 years old. The Constitution Court has stated in its 2011 decision that the age of criminal responsibility in Indonesia should follow the age requirement established under CRC; however, amendment of relevant laws has not taken place yet;
6. Indonesian KDRT Law does not extend its protection to violence against women that is conducted by former or current intimate partner who is not bound by wedlock;

\footnote{GoI, 2012 Indonesian UPR, para. 103.}
\footnote{GoI, 2007 IPR-CRC, para. 168.}
\footnote{GoI, 2008 Indonesian UPR, para. 37.}
\footnote{Ibid.}
\footnote{Ministry of Social Affairs, Save the Children, and UNICEF, Someone that Matters, 176 – 177.}
7. The term statutory rape is not clearly defined by Indonesian legal framework. Even though some provisions under the Criminal Code and the Child Protection Law prohibit an act similar to statutory rape, the application of various provisions on the age of consent makes the implementation of these provisions more difficult;

8. The terms sexual violence and sexual harassment are not recognised under the Indonesian legal system. The Criminal Code uses the term “perbuatan cabul” or obscene act to describe sexual violence and sexual harassment and it does not explain types of act that can be considered as “obscene”;

9. International provisions pertaining to protection of women and children during times of armed conflict have not been sufficiently integrated in the Indonesian legal system. For example: Indonesia has not defined the term “armed conflict” in its legal system; Indonesia has yet to criminalise war crimes, which elements of crimes include the criminalisation of gender-related crimes and violence against children; and Even in the existing legislations relevant to the protection of women and children in armed conflict, protection given to women and children against violence is insufficient;

10. Under the Indonesian legal system, there is no specific definition on discrimination against women that corresponds with the definition set up under CEDAW;

11. There is nothing under Indonesian law that provides protection of women from harmful traditional practices such as forced marriage, dowry death, acid attack, and FGM as described under CEDAW General Recommendations No. 14 and No. 19(11);

12. Existing literature indicates that there is no explicit prohibition of corporal punishment of children as disciplinary methods in schools and penal institutions;

13. The existing legal framework is replete with contradictory provisions, inconsistencies, duplicative or overlapping provisions, and is generally unsystematic in defining a framework for the protection of women and children.

b. Gaps in the Literatures

Research and studies on violence against women in Indonesia have grown significantly over the years, especially after the adoption of KDRT Law in 2004. These studies cover multiple aspects of the subject, including assessment of existing national legislations and policies regarding protection of women and children against violence. Various stakeholders, including the GoI, contributed to the body of literature on violence against women and children. In fact, in 2006, the GoI, through Statistic Indonesia and MOWE, conducted a nationwide survey on violence against women and children occurring in various situations. Other reports conducted by non-state actors have collated reports of violence against women and children, ranging from specific regions in Indonesia to nationwide coverage through various NGO networks. They discuss the prevalence of various forms of violence against women and children and even go as far as profiling the perpetrators and victims.

However, the Study concludes that there are some gaps in the information provided in the existing literature. The Study also notices that some studies on the prevalence of violence against women and children in Indonesia have become rather obsolete since they were conducted prior to 2005 and need to be updated in accordance with current developments. Below is a list of gaps of information and studies that the Study has identified:

1. The Study did not come across any data on the numbers of incidents of violence against women and children in general that were being reported to and handled by the police and prosecutors as well as the disposition of these cases in the investigative, prosecutorial, and judicial stages.;

2. In conjunction with the point above, so far the Study has yet to find a comprehensive study analysing from quantitative and qualitative standpoints the effectiveness of national legislation and policies adopted to protect women and children from violence (e.g., KDRT Law, Human Rights Law, Child Protection Law, Criminal Code). No such comprehensive study maps out all the implementing legislation, regulations, and policies pertaining to the protection of women and children against violence;

3. There is no official statistical study/survey conducted subsequent to 2006 that covers the occurrences of violence against women and children throughout Indonesia;
4. On the prevalence of violence experienced by children in conflict with the law, the University of Indonesia and UNICEF conducted the last comprehensive study on the issue in 2003 (Situation Analysis on the Juvenile Justice System in Indonesia). The report covered, for instance, assessment of relevant legislations, prevalence of violence in each stage of legal process, and practices that deviated from the legal framework. Little is known whether the findings of the study are still relevant at present;

5. There is little information on the prevalence of:
   - Economic violence against women and children. For instance, economic violence that might arise from the termination of a marriage either by death or by divorce and issues relevant to how women and children access marital property;
   - Marital rape and statutory rape. Information on the number of reported cases, or investigation, prosecution, and conviction is close to nonexistent;
   - Corporal punishment as disciplinary measure to children;
   - Violence against street children and negligent treatment of children;
   - Violence against women and children belonging to minority groups as well as background information, profiling of perpetrators and victims, and analysis on existing legal framework on the protection of minority groups;
   - Violence against women and children in situations of armed and social conflicts. There are some reports produced in the past on this subject however they need to be updated. Little information is known on women and children who are internally displaced due to armed conflict and social conflict, let alone on the prevalence of violence against them;
   - Forced marriage of underage women. Despite acknowledging early marriage as a form of violence against children, little is known from existing literatures whether the prevalence of early marriage in Indonesia also signifies the prevalence of forced marriage of underage women. There is also insufficient information on the mapping of early marriage in Indonesia, how many unions constituted forced marriage, the familial and social dynamics involved, and whether traditional practices play a significant role in this phenomenon; and
   - Specific harmful traditional practices such as FGM throughout Indonesia. For instance, even though the GoI has stated that FGM is prevalent in Indonesia, this statement was not supported with statistical data;

6. Information on the Indonesian armed forces regulations pertaining to the conduct of the armed forces in situations of armed conflict. The Study perceives that this is due to the difficulties in gaining access to such information from the Indonesian armed forces;

7. There is no clear mapping of national legislation and policies applicable during states of emergency (e.g., situations of armed, social conflicts, and disasters) and the protections afforded to women and children in such circumstances;

8. So far, the Study has not found a comprehensive study analysing the implementation of Indonesia’s international obligations at national and local levels;

9. There is no conclusive data on the number or implementation of regional regulations and municipal enactments that discriminate against women and children and make them vulnerable to violence; and

10. Existing literatures only provide limited information on the role of non-state actors in the protection of women and children against violence. This also applies to the role of non-state actors in perpetrating or encouraging violence against women and children, and the governmental responses to such conduct.

c. Recommended Areas/Subjects for Further Studies

Based on the gaps identified from the existing literature and the national legal framework identified in the preceding sub-sections, the Study encourages stakeholders to focus on conducting further studies in the following areas/subjects:

1. An update to the 2006 GoI nationwide survey on violence against women and children is necessary to confirm the prevalence of violence against women and children at present;

2. Statistical survey on the numbers of incidents of violence against women and children in general that were reported to and handled by the police and prosecutors, as well as the disposition of cases and the number and nature of convictions made by the judiciary. Such a survey should be followed by an assessment of the procedures and practices applied
by the three institutions in handling cases of violence against women and children;

3. Analysis and assessment of the effectiveness of existing national legislation and policies pertaining to the protection of women and children against violence and extensive mapping of all implementing legislation and policies;

4. An update to the 2003 UNICEF Situation Analysis on the Juvenile Justice System in Indonesia;

5. Studies on the prevalence of specific forms of violence against women and children such as:
   - Economic violence against women and children;
   - Marital rape;
   - Statutory rape;
   - Corporal punishment as disciplinary measure for children;
   - Violence against street children and negligent treatment of children;
   - Violence against women and children belonging to minority groups;
   - Violence against women and children in situations of armed and social conflicts;
   - Violence, especially sexual violence, against children who live in childcare institutions;
   - Forced marriage of underage women; and
   - Specific harmful traditional practices such as FGM, acid attacks, and dowry deaths all over Indonesia.

Apart from the prevalence of specific forms of violence, it is necessary for each study to include, for instance, assessment of background information on the root causes and impact of each specific form of violence; profiling of the perpetrators and victims; and, if identified, the contribution of national and regional legislation in the prevalence of such violence;

6. Extensive mapping on national legislation and policies, including regional regulations (if there are any), applicable in times of state of emergency, such as armed conflict, social unrest, and disaster. The study shall focus on the assessment of provisions pertaining to the protection of women and children in the state of emergency. Especially in the case of armed conflict situation, assessment of the implementation of Indonesia’s international obligations prescribed by international instruments that it has ratified or acceded to, particularly those obligations relevant to the protection of women and children, is very essential;

7. A survey on discriminative regional regulations that leave women and children vulnerable to violence and their implementation and impacts. Such a study should include institutional responses to such regional regulations and the role of non-governmental or quasi-governmental groups in encouraging or perpetrating discriminatory practices and violence; and

8. Extensive mapping of the various roles of non-state actors in assisting women and children victims of violence; in the prevention of violence; monitoring efforts; and their cooperation with the GoI on the protection of women and children against violence.

C EXPLOITATION

1 Description of the Problem

On the Definition: According to General Comment No. 13 (2011) on the Rights of the Child to Freedom from all Forms of Violence, exploitation is identified as one of the forms of violence, based on Article 19 of CRC. Furthermore, Article 3(a) of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children defines exploitation to include “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

a. Prevalence of Exploitation

The problem of exploitation of women and children in Indonesia as defined under relevant human rights instruments are prevalent. The reports identify some forms of exploitation of women and children that include labour exploitation (including forced labour, debt bondage, slavery or slavery-like practices), sexual exploitation (including forced prostitution, sale of brides), and sale


of infants for illegal adoptions. Most exploitations of women and children in Indonesia are closely related to issues of trafficking in persons and migration for work.

i. Trafficking of Women and Children

Trafficking as a gateway to exploiting women and children is prevalent in Indonesia. The 2011 Trafficking in Persons Report (2011 TIPR) made by the United States’ Department of State considers Indonesia as a major source country and to a much lesser extent a destination and transit country for trafficking. There are, however, differing estimates of the number of women and children victims of trafficking according to reports of various organisations. To illustrate this, in 2008, UNICEF gives an estimate of at least 80,000 – 100,000 women and children victims of trafficking every year, while, in 2011, the US Department of States, quoting IOM, estimates that there are 6.5 million to 9 million Indonesian migrant workers worldwide, 69% are identified as women, and from this number, 3 to 4.5 million are victims of trafficking. UNODC, on the other hand, takes a more cautious way by not presenting any estimates at all of the victims of trafficking in persons from Indonesia.

The International Organisation for Migration (IOM) is one of the organisations that can provide hard data on trafficking in persons in Indonesia, including trafficking in women and children. Based on its documentation, IOM places Indonesia in the first position for trafficked victims’ country of origin. From March 2005 – December 2010, the International Organisation for Migration (IOM) assisted and documented 3,840 trafficked persons in Indonesia comprising 2,717 women and 905 children. Over eighty per cent (81.01%) of victims were trafficked across the border, with majority of women and children (2,859) trafficked to Malaysia, and 18.99% were trafficked internally. Furthermore, IOM statistics shows that the majority of these victims were recruited by agents (47.34%) and the rest were recruited by legal recruiting agents, friend, family member, neighbour, etc. There were also victims who were kidnapped into trafficking.

<table>
<thead>
<tr>
<th>Recruiter</th>
<th>Total</th>
<th>% Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent</td>
<td>1,818</td>
<td>47.34%</td>
</tr>
<tr>
<td>Legal recruiting agent</td>
<td>1,125</td>
<td>29.30%</td>
</tr>
<tr>
<td>Friend</td>
<td>229</td>
<td>5.96%</td>
</tr>
<tr>
<td>Family Member</td>
<td>228</td>
<td>5.94%</td>
</tr>
<tr>
<td>Neighbour</td>
<td>188</td>
<td>4.90%</td>
</tr>
<tr>
<td>No data</td>
<td>114</td>
<td>2.97%</td>
</tr>
<tr>
<td>Self contact</td>
<td>81</td>
<td>2.11%</td>
</tr>
<tr>
<td>Other</td>
<td>29</td>
<td>0.76%</td>
</tr>
<tr>
<td>Kidnapped</td>
<td>15</td>
<td>0.39%</td>
</tr>
<tr>
<td>Boyfriend</td>
<td>10</td>
<td>0.26%</td>
</tr>
<tr>
<td>Husband</td>
<td>3</td>
<td>0.08%</td>
</tr>
<tr>
<td><strong>GRAND TOTAL</strong></td>
<td>3,840</td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 13 – Number of Trafficked Persons based on Recruiter (Source: IOM Statistics March 2005 - December 2010)

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574 Asia Regional Trafficking in persons Project (ARTIP Project), Country Profile: Indonesia, <www.artipproject.org>, accessed on 23 February 2012.

575 US Department of State, 2011 TIPR, 191.

576 UNICEF, 2008 UNICEF-UPR, 2. The estimates are derived from the statistics provided by MOWE and the Indonesian Police. The Study notices that this estimates has been referred to since 2003.

577 US Department of State, 2011 TIPR, <www.state.gov>, accessed on 23 February 2012. The US TIP report has been using these estimates since 2010.

578 UNODC, Map on the Percentage of Victims from other Regions. <www.unodc.org>, accessed on 23 February 2012.

579 Pusat Kajian Gender dan Anak (Centre for Gender and Child Study, PKGA), Indonesia Terbanyak Korban Perdagangan Manusia (Indonesia with the most Trafficked Victims), 4 November 2011, <www.psw.ipb.ac.id>, accessed on 26 February 2012.

580 IOM Indonesia, General Information of Trafficked Persons (March 2005 – December 2010), 1, <www.iom.or.id>, accessed on 23 February 2012. Older version of IOM statistics was used by the GoI in its 2011 report to the CEDAW Committee, see GoI, 2011 IPR CEDAW, para. 38.

581 Ibid, 4.

582 Ibid, 6.
Traffickers utilise various means to attract and control victims, including promises of well-paying jobs, debt bondage, community and family pressures, threats of violence, rape, false marriages, and confiscation of ID and travel documents. IOM also identifies types of exploitation or human rights violations suffered by the victims. As shown in the table below, these consist of, among others, not being allowed to keep earned money/withholding of salary (84.55%); excessive working hours (79.76%); total denial of freedom of movement (77.08%); verbal/psychological abuse (74.89%).

<table>
<thead>
<tr>
<th>Type of Exploitation</th>
<th>Frequency</th>
<th>%Freq</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not allowed to keep earned money</td>
<td>3,246</td>
<td>84.55%</td>
</tr>
<tr>
<td>Excessive working hours</td>
<td>3,063</td>
<td>79.76%</td>
</tr>
<tr>
<td>Freedom of movement totally denied</td>
<td>2,960</td>
<td>77.08%</td>
</tr>
<tr>
<td>Verbal/psychological abuse</td>
<td>2,876</td>
<td>74.89%</td>
</tr>
<tr>
<td>Total deprivation of wages</td>
<td>2,757</td>
<td>71.82%</td>
</tr>
<tr>
<td>Seizure of documents</td>
<td>2,556</td>
<td>66.55%</td>
</tr>
<tr>
<td>Lack of health care services in the case of illness</td>
<td>2,187</td>
<td>56.94%</td>
</tr>
<tr>
<td>Deprivation of adequate supply of food and water</td>
<td>2,027</td>
<td>52.80%</td>
</tr>
<tr>
<td>Physically abuse</td>
<td>1,813</td>
<td>47.20%</td>
</tr>
<tr>
<td>Poor sanitary state of living place</td>
<td>1,423</td>
<td>37.07%</td>
</tr>
<tr>
<td>Ideological pressure</td>
<td>1,328</td>
<td>34.57%</td>
</tr>
<tr>
<td>Imprisonment</td>
<td>1,114</td>
<td>29.02%</td>
</tr>
<tr>
<td>Traded to various employers</td>
<td>992</td>
<td>25.84%</td>
</tr>
<tr>
<td>Sexual abuse</td>
<td>782</td>
<td>20.37%</td>
</tr>
<tr>
<td>Partial deprivation of wages</td>
<td>612</td>
<td>15.94%</td>
</tr>
<tr>
<td>Rape</td>
<td>363</td>
<td>9.46%</td>
</tr>
<tr>
<td>Freedom of movement partially denied</td>
<td>305</td>
<td>7.94%</td>
</tr>
<tr>
<td>Forced consumption of alcohol</td>
<td>272</td>
<td>7.09%</td>
</tr>
<tr>
<td>Forced use of drugs</td>
<td>205</td>
<td>5.34%</td>
</tr>
</tbody>
</table>

Table 14 – Breakdown of Trafficked Persons based on Type of Exploitation (Source: IOM Statistic March 2005 - December 2010)

The Study finds it difficult to retrieve information from primary sources in relation to the number of cases of trafficking, traffickers, and victims handled by Indonesia’s law enforcers. Thus, the Study has to settle with information provided by secondary sources, namely from UNODC, GoI (MOWE and 2011 IPR-CEDAW), and the US Department of State. However, even though each source claimed that it retrieved its information from Indonesia’s police force, there are discrepancies in the numbers presented. This is demonstrated in the following tables:

<table>
<thead>
<tr>
<th>Year</th>
<th>No. Victims</th>
<th>No. Perpetrators</th>
<th>No. Prosecutions</th>
<th>No. Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>F</td>
<td>C</td>
<td>Total</td>
<td>M</td>
</tr>
<tr>
<td>2004</td>
<td>103</td>
<td>10</td>
<td>113</td>
<td>-</td>
</tr>
<tr>
<td>2005</td>
<td>125</td>
<td>18</td>
<td>143</td>
<td>-</td>
</tr>
<tr>
<td>2006</td>
<td>496</td>
<td>120</td>
<td>616</td>
<td>-</td>
</tr>
<tr>
<td>2007</td>
<td>334</td>
<td>240</td>
<td>574</td>
<td>-</td>
</tr>
<tr>
<td>2008</td>
<td>510</td>
<td>88</td>
<td>598</td>
<td>-</td>
</tr>
<tr>
<td>2009</td>
<td>187</td>
<td>55</td>
<td>242</td>
<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>M</th>
<th>F</th>
<th>Total</th>
<th>Total</th>
<th>Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>81</td>
<td>20</td>
<td>101</td>
<td>-</td>
<td>-</td>
<td>150</td>
<td>88</td>
</tr>
<tr>
<td>2004</td>
<td>103</td>
<td>-</td>
<td>103</td>
<td>-</td>
<td>-</td>
<td>83</td>
<td>30</td>
</tr>
<tr>
<td>2005</td>
<td>125</td>
<td>18</td>
<td>143</td>
<td>-</td>
<td>-</td>
<td>83</td>
<td>27</td>
</tr>
<tr>
<td>2006</td>
<td>496</td>
<td>129</td>
<td>625</td>
<td>-</td>
<td>-</td>
<td>155</td>
<td>58</td>
</tr>
<tr>
<td>2007</td>
<td>331</td>
<td>150</td>
<td>481</td>
<td>139</td>
<td>101</td>
<td>240</td>
<td>88</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>M</th>
<th>F</th>
<th>Total</th>
<th>Total</th>
<th>Total</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>-</td>
<td>141</td>
<td>51</td>
<td>45</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>-</td>
<td>110</td>
<td>37</td>
<td>16</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>-</td>
<td>142</td>
<td>56</td>
<td>36</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>-</td>
<td>252</td>
<td>109</td>
<td>46</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>-</td>
<td>-</td>
<td>129</td>
<td>55</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>-</td>
<td>-</td>
<td>139</td>
<td>84</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>-</td>
<td>106</td>
<td>112</td>
<td>25</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 15 – Comparison of Information on the Handling of Trafficking Cases by Indonesian Law Enforcers Provided by Various Sources

583 US Department of State, 2011 TIPR, 193.
584 IOM Indonesia, General Information of Trafficked Persons, 9.
585 Ibid, Multiple answers were given by the victims.
586 MOWE, Anak yang Diperdagangkan (Trafficking), November 2009, <www.menegpp.go.id>, accessed on 8 March 2012; See also GoI, 2011 IPR-CEDAW, para. 47
588 US Department of State, 2005 – 2011 Trafficking in Persons
More confusingly, according to the 2012 Indonesian UPR, citing the report of the Attorney General’s Taskforce on the Handling of Criminal Acts of Terrorism and Trafficking in Persons, from 2006 – 2009 there are only 97 cases that were prosecuted and 38 convictions.\(^{589}\) Compared to the first section of Table 15 above, the numbers of cases of trafficking in persons handled by the Prosecutor presented by the GoI in its reports do not tally with the number presented in the 2012 Indonesian UPR.

Furthermore, information provided by the reports represents aggregated data related to the handling of trafficking cases in Indonesia. That is, they do not make classifications according to internal and external trafficking. Curiously, in its 2012 UPR Report, the GoI stated that in 2010 alone there were 28,289 Indonesian citizens indicated as victims of trafficking in persons.\(^{590}\) The GoI did not mention whether the number is an official number, its source and the method used to arrive at such conclusion.

\subsection*{a. Cross Border Trafficking of Indonesian Women and Children}

The 2009 Trafficking in Persons Report, issued by the US Department of State, identifies forced labour and debt bondage as the greatest human trafficking threats in Indonesia.\(^{591}\) The 2011 TIPR states that almost all 33 provinces in Indonesia serve as source areas for trafficking with Java, West Kalimantan, Lampung, North Sumatera, and South Sumatera being the biggest source areas in Indonesia.\(^{592}\) This is also confirmed by IOM, which listed 32 provinces as source areas of trafficking.\(^{593}\) In the case of cross border trafficking, destination countries for the victims include, among others, Malaysia, Singapore, Middle Eastern Countries (such as Saudi Arabia, Kuwait, Syria, Egypt, Jordan), Taiwan, Hong Kong, North America, and Europe. Malaysia was indicated as the biggest destination country for women trafficked from Indonesia.\(^{594}\) IOM notices that there are growing trends in trafficking of Indonesian women to Iraq’s Kurdistan for the purposes of domestic servitude and an increasing practice of traffickers kidnapping young girls to Malaysia for prostitution.\(^{595}\) Especially in trafficking of children, UNICEF reported in 2009 that the transnational trafficking route from Indonesia included destinations such as Brunei, Australia, Saudi Arabia, Kuwait, the Netherlands, Germany, and Austria.\(^{596}\) Women and children, especially girl children, are mostly trafficked outside of Indonesia for the purposes of labour and sexual exploitation, such as domestic work, forced prostitution, factory work, waiting, begging, masseuse, sale for illegal adoption.\(^{597}\)

Many Indonesian women migrant workers, especially those trafficked for the purpose of working as domestic workers, are identified as victims of trafficking.\(^{598}\) Exploitation of these women often starts even at the very beginning of their recruitment.\(^{599}\) For example, it is a common practice conducted by Private Agencies for the Placement of Indonesian Migrant Worker (Pelaksana Penempatan Tenaga Kerja Indonesia Swasta, PPTKIS) to hold migrant workers responsible for all the fees and costs of their recruitment, processing, training, and transportation.\(^{600}\) The longer the workers remain in a holding or training centre, the greater their debt will become. The 2011 TIPR concludes that such practice

\begin{itemize}
  \item \(^{589}\) GoI, 2012 Indonesian UPR, para. 122.
  \item \(^{590}\) Ibid, para. 117.
  \item \(^{591}\) US Department of State, 2009 Trafficking in Persons Report (2009 TIPR), <www.state.gov>, accessed on 23 February 2012.
  \item \(^{592}\) US Department of State, 2011 TIPR, 191; In 2008 Indonesian UPR, the GoI breakdowns Java into East and West Java as two of the three provinces with the highest rate in the country for trafficking in persons, the third one being West Kalimantan.; see GoI, 2008 Indonesia UPR, para. 50.
  \item \(^{593}\) IOM Indonesia, General Information of Trafficked Persons, 2.
  \item \(^{595}\) US Department of State, 2009 TIPR, 158.
  \item \(^{596}\) UNICEF, Reversing the Trend: Child Trafficking in East and Southeast Asia, August 2009, 30.
  \item \(^{597}\) 2011 IPR-CEDAW, para. 38-39; ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, November 2007, 55-58.
  \item \(^{598}\) GoI, 2011 IPR-CEDAW, parz. 38; see also IOM estimates in previous paragraph on the number of women migrant women from the overall Indonesia’s work force abroad and their likeliness to fall victim to trafficking quoted in US Department of States, 2011 TIPR, 191.
  \item \(^{599}\) USAID, 2006 TIP-TA, 2.
  \item \(^{600}\) Ibid; See also, US Department of State, 2011 TIPR, 192; and ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 51.
\end{itemize}
qualifies as debt bondage. Some reports suggest that the PPTKIS use these debts as a justification to withhold documents, keep workers in confinement, and to keep these women migrants in a situation of forced labour before they are even deployed to destination countries. After their arrival at the destination countries, these women are employed as domestic workers and suffer further abuse, with their status reduced to domestic servitude with long working hours, no time off, poor quality and limited food, physical, psychological and sexual abuse, and no payment. Some reports suggest that the recruitment agencies or PPTKIS, both in Indonesia and in destination countries, operate similar to trafficking rings, operating as part of organised criminal networks, utilising debts to keep their victims in bondage and servitude. These labour agents often ignore or reject the victims’ pleas for help and refuse to assist them to return home.

The 2011 TIPR indicates that there were Indonesian women who migrated to Malaysia, Singapore, and the Middle East who were subsequently forced into prostitution. These women were convinced by the agents that they were going to work at karaoke bars and restaurants as singers, hostesses, or even domestic workers. However, they are instead forced to provide sexual services upon arrival. In 2008, the GoI banned Indonesian women from travelling to Japan and South Korea as “cultural performers” to curb the possibilities for these women to fall victim to forced prostitution. Individual occurrences show these women being severely indebted, wages being withheld for a long time (if paid), experiencing denial of sustenance if they refuse to entertain clients, being forced to service many clients every day, etc.

KPAI states that in 2007, based on information provided by 23 provinces, more than 2,000 cases of child trafficking were recorded. Children between 15 and 18 are usually trafficked to Malaysia, Hong Kong, and Singapore to be employed as sex workers, mainly through Batam and Jakarta (400 cases) from source areas in Java such as Indramayu and Sukoharjo. An Indonesian NGO, LBH APIK, notes that it handled 458 cases of child trafficking for sexual exploitation in West Nusa Tenggara alone from 2005 to 2007. Individual recruiters, famously known as tekong in Indonesian, are the ones that usually serve as the initial recruiter in rural areas in Indonesia, promising a better job and income to the girl’s family. Fake identity cards are often produced to falsify the age of these children to smooth the process of taking them to other countries.

There are also indications that girls from West Kalimantan and other areas in Indonesia are trafficked as mail-order brides to Taiwan, Hong Kong, and Singapore. Most of the trafficked girls come from Chinese-Indonesia communities. Some of these mail-order brides are forced to work, usually in factories, for free, or sold into the sex industry. Even if these victims are allowed to return to Indonesia, it is based on a condition that they help the mail order bride syndicate, thus increasing the risk of more girls falling victim to trafficking.

The UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography states its concern over reports that indicate many Indonesian women are trafficked to Malaysia for the purpose of selling their babies for illegal adoptions. The governments of

601 US Department of State, 2011 TIPR, 192.
602 Ibid. See also GoI, 2011 IPR CEDAW, para. 37.
605 The Protection Project, 2009 RTIP-Indonesia, 3.
607 ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region., 57.
609 Ibid.
610 Ibid.
611 Ibid.
613 Ibid. GoI, 2005 IPR-CEDAW, para. 66; and ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region., 58
614 Ibid.
615 ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region., 58.
616 GoI, 2005 IPR-CEDAW, para. 66.
617 UN OHCHR, 2008 Compilation of UN Documentation, para. 18.
Malaysia and Indonesia confirm this finding. Traffickers usually approach pregnant Indonesian migrant workers by offering “milk money” to buy milk and other needs of the mothers. The traffickers then separate the babies from the mothers and transport the babies to Johor for adoption by agents that are already waiting at the destination. UN report also notes that these babies are also transported to Singapore for adoption. For one trip to Singapore, the trafficking network receive USD 3,000 – 3,500; and to Malaysia, they receive 9,530. A 2006 MOGE report identifies a woman who sold 880 Indonesian babies overseas. The Indonesian police managed to prevent 25 babies from being sold by arresting the woman. MOGE also identifies two other cases of 80 and 300 babies having been internationally trafficked.

b. Internal Trafficking of Women and Children

Apart from cross border trafficking, internal trafficking in Indonesia is also prevalent. According to IOM documentation of trafficking cases since 2005 to 2010, almost all provinces in Indonesia to some degree act as destination area for women and children victims of trafficking, with Java, Kalimantan, Sumatera, Batam, and Bali being the biggest destinations. IOM statistics indicates most women and children were trafficked to Riau islands province in Sumatera. Women and girls are mainly trafficked into forced prostitution and into servitude as domestic workers. Boys are trafficked to fishing platforms (jermals) in Sumatera, and to fishing boats. There is also an increasing trend of trafficking in children for the purpose of organised begging.

Considering the fact that the rights and obligations of domestic workers are yet to be acknowledged and protected under the Indonesian legal system, save for some provisions under the KDRT Law, it is difficult to find out the exact number of domestic workers in Indonesia. Some reports, however, indicate that the number of domestic workers in Indonesia is high and it will likely grow over the years since the workforce participation rate of Indonesian women is on the rise. As an illustration of the above notion, some of the estimates on the number of women and girl children working as domestic workers is shown in the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Source</th>
<th>Estimate and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The National Network for Domestic Workers Advocacy (Jala PRT) – 2010</td>
<td>There are 4 million domestic workers, 30% children.</td>
</tr>
<tr>
<td>2</td>
<td>UN Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography – 2006</td>
<td>Over 680,000 domestic workers in Indonesia are reported to be children under the age of 18, over 90% are girls.</td>
</tr>
<tr>
<td>3</td>
<td>ILO Jakarta – (unknown, included in ILO 2010 Special Edition on Domestic Workers)</td>
<td>As many as 2.6 million Indonesians, predominantly women, aged 13 to 30, are engaged as domestic workers, serving an approximately 2.5 million Indonesian households.</td>
</tr>
<tr>
<td>4</td>
<td>ILO – 2005</td>
<td>There are an estimated 700,000 children working as domestic workers in Indonesia.</td>
</tr>
<tr>
<td>5</td>
<td>University of Indonesia and the International Program on the Elimination of Child Labour – 2003</td>
<td>There are 2.6 million women domestic workers in Indonesia. Close to 35% are below 18.</td>
</tr>
</tbody>
</table>

Table 16 – Compilation of Estimates on the Number of Women and Children Domestic Workers in Indonesia


Ibid.

Ibid.

ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 58.

Ibid.


IOM Indonesia, General Information of Trafficked Persons, 4.

International Catholic Migration Commission (ICMC), When They were Sold: Trafficking of Women and Children in 15 Provinces of Indonesia, November 2006., 27; US Department of State, 2011 TIPR, 193; and ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region., 53.


Ibid.

Ibid, 36; ICSW, Trafficking and Related Labour Exploitation., 53.
In 2006, ICMC concluded that, unlike their cross-border counterpart, “The role of recruiting agents was far less significant in the case of in-country domestic workers”.\(^{635}\)

Generally, women and girls domestic workers tend to move from poor hinterland, such as East and Central Java, Lampung, north Sumatera, Aceh, West and North Sumatera, to economic hubs, such as Jakarta, Surabaya, Medan, Yogyakarta, Samarinda, Pontianak, and Makassar.\(^{636}\) A 2006 study by Atmajaya Catholic University shows that it is rather unlikely to identify cases of debt bondage among in-country domestic workers due to the lesser cost needed to be spent for transport.\(^{637}\) However, there are many domestic worker supplier agencies acting as go-betweens between prospective employers and the job seekers and they are paid by the prospective employers.\(^{538}\) Many of these agencies targeted rural women and girls arriving in big cities looking for work, recruiting mainly in inter-city bus terminals and train stations.\(^{639}\) Based on a Human Rights Watch study in 2005, there are high demands for child domestic workers since they cost less than adults and “can be easily managed”.\(^{640}\)

In relation to sexual exploitation of women and children resulting from internal trafficking in Indonesia, again, it is hard to tell the exact number of women and children that become victims of sexual exploitation. There are estimates put forward by several reports on the number of women and children trafficked for sexual exploitation; however, these reports rarely describe how they arrived at such estimates. Below are some examples of estimates on the number of women and children who have been sexually exploited in Indonesia:

<table>
<thead>
<tr>
<th>No.</th>
<th>Source</th>
<th>Estimate and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Jakarta Post – 2012</td>
<td>At least 40,000 Indonesian children are currently being sexually exploited across the country.(^{641})</td>
</tr>
<tr>
<td>2</td>
<td>ECPAT International data – 2012</td>
<td>The number of children working in the commercial sex industry could be as high as 150,000.(^{642})</td>
</tr>
<tr>
<td>3</td>
<td>Unknown</td>
<td>A number of sources estimate that there are 500,000 sex workers in Indonesia.(^{643})</td>
</tr>
<tr>
<td>4</td>
<td>UNICEF – (date unknown)</td>
<td>It is estimated that 100,000 children and women are trafficked each year in Indonesia and it is estimated that 30% of the women in prostitution in Indonesia are below the age of 18, and 40,000 to 70,000 of Indonesian children are victims of sexual exploitation.(^{644})</td>
</tr>
<tr>
<td>5</td>
<td>Directorate General of Tourist Destination Development of the Ministry of Culture and Tourism of Indonesia – (unknown, quoted in 2011 TIPR)</td>
<td>An estimated 40,000 to 70,000 Indonesian children have been exploited in prostitution within the country.(^{645})</td>
</tr>
<tr>
<td>6</td>
<td>ICMC - 2003</td>
<td>There are 140,000 to 230,000 sex workers in Indonesia. This is based on the extrapolation of the number of registered sex workers provided by the Indonesian Coordinating Ministry of Social Affairs in 2001.(^{646})</td>
</tr>
</tbody>
</table>

Table 17 – Compilation of Estimates on the Number of Sexually Exploited Women and Children in Indonesia

In 2011, the Ministry of Social Affairs recorded 50,276 sex workers all over Indonesia.\(^{647}\) This number, despite


\(^{632}\) ILO Jakarta, Special Edition on Domestic Workers: Recognizing Domestic Work as Work, April 2010, 2.

\(^{633}\) USAID, 2006 TIP-TA, 3.

\(^{634}\) ICMC, When They were Sold, 37 – 38.

\(^{635}\) Ibid, 37.

\(^{636}\) Ibid.

\(^{637}\) Ibid.

\(^{638}\) Ibid.

\(^{639}\) Ibid.

\(^{640}\) Human Rights Watch (HRW), Always on Call: Abuse and Exploitation of Child Domestic Workers in Indonesia, June 2005 Vol. 17 – No. 7(c), 10.


\(^{642}\) Ibid.


\(^{645}\) US Department of State, 2011 TIPR, 193.

\(^{646}\) ICMC, Trafficking of Women and Children in Indonesia, 65.

indicating a significant decrease of the number of sexual workers in Indonesia.\textsuperscript{648} only captures the number of registered sexual workers who work at regulated brothel complexes or lokalisasi. It does not, however, represent the number of actual sexual workers in Indonesia who might likely fall victim to internal trafficking. Furthermore, the fact that not all women who are sexually exploited are trafficked makes it more difficult to draw estimates, let alone make approximations that sufficiently represent the number of women and children victims of internal trafficking for sexual exploitation.

Internal trafficking for sexual purpose in Indonesia is widespread, mainly from rural to urban areas, as well as to business and leisure tourist destinations in Indonesia.\textsuperscript{649} Especially for children, the demand factor rises due to, among others, the growing number of both foreign and local paedophiles present in Indonesia, especially in tourism destinations such as Bali, Batam, Lombok, Nusa Tenggara, Central Java, Riau Islands, West Java, and East Java, with Batam and Bali being dubbed as the capitals of sexual tourism in Indonesia.\textsuperscript{650} Apart from being hubs of sexual tourism in Indonesia, since the 1990s, Batam and other islands such as Bintan and Karimun in Riau also serve as a transit zone for documented and undocumented labour flows to Malaysia and Singapore.\textsuperscript{651} The 2007 IPR-CRC notes that children are also trafficked for prostitution to Jepara (Central Java) and Yogyakarta; however, no estimates of the number of victims are made.\textsuperscript{652} In 2008, the Directorate General of Tourist Destination Development of the Ministry of Culture and Tourism stated that, from 1972 – 2008, there were more than 13,703 child victims of sexual exploitation in tourist destination in 40 villages in six provinces: Bali, West Nusa Tenggara, Central Java, Riau Islands, West Java and East Java.\textsuperscript{653}

Cases of child trafficking for sexual purposes, such as child prostitution and child pornography, are found in Indramayu (West Java) and Semarang (Central Java).\textsuperscript{654} Additionally, Jakarta and Surabaya are also considered as receiving areas of trafficked victims for sexual exploitation.\textsuperscript{655} West Java is considered as one of the biggest source area of trafficked women and children.\textsuperscript{656} In relation to the profile of traffickers, according to ECPAT International, “there is no common profile of perpetrators who sexually exploit children – they may be young, old, married, single; they come from all types of socio-economic backgrounds and work in all kinds of professions.”\textsuperscript{657} Returning victims may also be used to recruit future victims from their community.\textsuperscript{658}

Surprisingly, despite the trend of trafficking women and children from rural to urban areas, a 2005 ICMC report indicates that more than 3,000 women and girls are trafficked to Papua every year, of which, it estimates, 800 – 1,000 women and girls are trafficked for sexual purposes.\textsuperscript{659} More than 50% of the women and girls trafficked for sexual purposes were forced to remain in prostitution in Papua.\textsuperscript{660} The victims were mostly trafficked from Java and North Sulawesi.\textsuperscript{661} Traffickers usually employ computation of debts to force trafficked women and girls to stay in sexually exploited condition.\textsuperscript{662} The distance and isolated geographical situation of Papua makes it harder for victims to escape.\textsuperscript{663}

In 2008, there was an indication of a new trend where girls are trafficked to jungle brothels in illegal mines and logging businesses in Kalimantan.\textsuperscript{664} The girls are mainly

\begin{itemize}
\item \textsuperscript{648} In 2004, there are 87,543 registered sex workers in Indonesia according to the data provided by the Ministry of Social Welfare; see ICMC, When They were Sold, 416.
\item \textsuperscript{649} ARTIP Project, Indonesia Country Profile (2010).
\item \textsuperscript{650} The Irrawaddy, Asia Draws Paedophiles, Experts Ask Why?, 18 October 2007, www.irrawaddy.org, accessed on 28 February 2012; Trisha Sertori, Trading on Innocence; and ECPAT International, Sex Trafficking on Children in Indonesia; see also UN OHCHR, 2012 Compilation of UN Reports, para. 27.
\item \textsuperscript{651} Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism in Indonesia’s Periphery, The University of Sydney and the University of Western Australia, Indonesian Studies Working Paper No. 14., March 2011, 2.
\item \textsuperscript{652} GoI, 2007 IPR-CRC, para. 176.
\item \textsuperscript{653} ECPAT International, Indonesia Country Progress Card, 8.
\item \textsuperscript{654} Ibid.
\item \textsuperscript{655} Ibid, 7.
\item \textsuperscript{656} Ibid.
\item \textsuperscript{657} ECPAT International, Sex Trafficking of Children in Indonesia.
\item \textsuperscript{658} Ibid.
\item \textsuperscript{659} ICMC, Behind Locked Gates: An Assessment of Trafficking Women and Girls in Papua, October 2005, 77.
\item \textsuperscript{660} Ibid.
\item \textsuperscript{661} Ibid.
\item \textsuperscript{662} Ibid, 78.
\item \textsuperscript{663} Ibid, 79.
\item \textsuperscript{664} ECPAT International, Sex Trafficking on Children in Indonesia; Marianne Kearney, Illegal Logging Trade Forces Jungle Brothel in Indonesia, The National, 24 May 2008, <www.bavmet.com>,
\end{itemize}
between the ages of 13 and 17; they are trafficked from within the island believing that they will be working as waitresses or maids. However, unfortunately, the Study cannot find further reports or analyses on this trend.

In the case of male children, they are usually internally trafficked to work at fishing platforms or jermals mostly along the eastern coasts of North Sumatera and straits of Malacca situated many kilometres out to the sea. These children mostly come from various villages in North Sumatera. On jermals, children are forced to work long hours at sea in a hazardous environment where usually there is only one small shelter in the middle of about 20 by 40 metres of platform without appropriate, if any, sleeping arrangements. The work that these children do may start as early as 2 am and go on until midnight. There are also reports of emotional, verbal, physical, and sexual abuse by children or by foremen. A representative of an Indonesian NGO, who specialises in monitoring the operation of these jermals, estimates the average age of workers between 14 to 17 years old.

According to Rosenberg, children working on jermals can be categorised as trafficked because they went through processes of recruitment, moved from their homes, and then confined in jermals in the ocean. The jermals’ foremen or individual recruiters (known as calo in Indonesia) usually approach the parents and promise them that their children will be employed for sorting and drying fish on the shore while, in reality, they will be confined in jermals. The traffickers mostly approach families that live in plantations or urban areas and do not know much about the fishing industry and how jermals works. Some recruiters even resort to kidnapping street children and sell them to jermals’ foremen or owners to work off shore. Even the boys that already work on jermals can turn out to be traffickers as well: the foremen usually will promise these boys payment between US$ 2.20 to US$ 11 for every friend that they manage to recruit. Some reports indicate that the number of boys working at jermals is dwindling. However, in its 2010 observation on the implementation of the ILO Convention on Worst Forms of Child Labour in Indonesia (2010 CEACR Observation), the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) estimates that 7,000 children still work at jermals.

There are also increasing trends of trafficking in children for the purpose of organised begging rings. According to 2006 ICMC Report, poor children were being recruited and transferred to other provinces or to other cities to beg by people who take advantage from the earnings of these children. Some reports cite Bali, East Kalimantan, Riau Islands, and South Sulawesi as some of the destinations in Indonesia. One of the modus operandi used by organisers in Riau and East Kalimantan is begging for alms for orphanages by children in the age group of 10 – 15 years old. The 2007 IPR-CRC even

665 Ibid.
667 ICMC, When They were Sold, 71.
668 ICSW, Trafficking and Related Labour Exploitation., 54.
671 ICMC, When They were Sold, 70.
672 Ibid, 71.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

highlights the phenomenon of babies for hire, even by the babies’ own parents, for the purpose of begging on the street.681 The organisers usually offered money to the parents living in the poorest areas in South Sulawesi to allow the children to be taken from them.682 In Bali, the children are taken from districts such as Karang Asem and Buleleng and transferred to Denpasar to beg.683 In Makassar, a child beggar is required to acquire IDR 10,000 (US$ 1.05) per day; some are required to collect at least IDR 50,000 (US$ 5.25).684 The 2006 ICMC Report notes that there are no sufficient information on the extent of the problem and the nature of the exploitation that child beggars are exposed to.685 However, this does not mean that the problem of organised begging rings should not be taken seriously since the phenomenon of children living and working on the streets can still be seen in Indonesia on a day-to-day basis, especially in big cities.686

c. Indonesia as Destination and Transit Country for Trafficking in Persons

To a lesser extent, Indonesia is also dubbed as a destination country, especially for trafficking of women. This is shown from IOM documentation finding that, from 2005 to 2010, 18 women were trafficked to Indonesia to serve as commercial sex workers.687 According to IOM, they came from Cambodia, Ukraine, Uzbekistan, Moldova, and Colombia.688 In 2008, the US Department of State established that women and children from China and Eastern Europe are trafficked to Indonesia for sexual purposes.689 Furthermore, in 2010, the United Nations Inter-Agency Project on Human Trafficking (UNIAP) found that Indonesia has been one of the destination countries for Thai and Vietnamese trafficked women.690 Rosenberg indicates that, since 2002, it has been discovered that women from China, Hong Kong, the Netherlands, Ukraine, Norway, Poland, Russia, Spain, Taiwan, Thailand, and Venezuela have worked as sex workers in Indonesia; however it was unclear to what degree these women were trafficked to Indonesia.691

d. Re-victimisation of Trafficked Women and Children: National and Regional Legislation

To the knowledge of this Study, there is almost no mention of trafficked women and children who were re-victimised by the law in Indonesia due to the shady professions that are forced upon them. As has been mentioned in previous sections, there are national and regional legislations that render women vulnerable to State violence, especially in relation to Indonesia’s Anti-Pornography Law and regional regulations prohibiting prostitution. As also has been addressed earlier in this Section, especially in relation to internal trafficking, women and children are mostly trafficked for sexual purposes including to work as sex workers. The implication of the implementation of such legislation is that the victims may be re-victimised by the State. If the authorities apprehended trafficked victims working as sex workers, the victims will most likely be treated as offenders under these legislation and not as victims of trafficking.

As an example, in 2010, Komnas Perempuan documented a case in Bandung, West Java, where six erotic dancers were sentenced to 15 months in prison for committing pornography under the Anti-Pornography Law.692 As it turns out, four of the six dancers were actually victims of internal trafficking.693 Even though it is not indicated in Komnas Perempuan’s report, the example implies the imminent danger for victims of trafficking to get criminalised and re-victimised under discriminative national and regional legislations. Furthermore, the 2011 TIPR indicates some cases where victims of trafficking in persons were arrested by the Indonesian police through anti-prostitution raids and there were reports that some police officers refused to receive trafficking complaints from victims.694

682 ICMC, When They were Sold, 43.
683 Ibid.
685 Ibid.
687 IOM Indonesia, General Information of Trafficked Persons, 2.
688 Ibid, 2.
689 US Department of State, 2008 Trafficking in Persons Report, 141.
691 ICMC, Trafficking of Women and Children in Indonesia, 2003, 98.
693 Ibid.
694 US Department of State, 2011 TIPR, 194.
Human Rights Watch stated in 2005 that the exploitation of domestic workers, especially underage workers, has become endemic in Indonesia.\(^{703}\) The GoI acknowledges that domestic workers, especially women and children, are prone to exploitation\(^ {704}\) as their profession is not yet protected under the law and not treated equally as other professions protected under the Manpower Law. Forms of exploitation of domestic workers include long working hours (14 to 16 hours a day) with no overtime pay, no time for rest and recreation, no access to education for underage domestic workers, salary below minimum standard, and non-payment of salaries.\(^ {705}\)

### iii. Other Worst Forms of Child Labour

#### Worst Forms of Child Labour in General Setting

According to BPS data, in 2009, there are at least 4.1 million children in the work force in Indonesia.\(^ {706}\) Thirty two per cent (32%) of 4.1 million working children in Indonesia were aged 5 – 14 years.\(^ {707}\) Twenty two per cent (22%) of male children and 29% of female children were working for more than 45 hours a week.\(^ {708}\) BPS adds that if it included children engaged in household activities, which have obvious but indirect economic implication into the equation, then the total working children in Indonesia could reach 5.7 million.\(^ {709}\) There were 687,000 children exclusively engaged in employment, while 3.6% of the children in the work force engaged in both employment and schooling and 2.8% were engaged in housekeeping and schooling.\(^ {710}\)

<table>
<thead>
<tr>
<th>Industry</th>
<th>5-12</th>
<th>13-14</th>
<th>15-17</th>
<th>5-17</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, forestry, hunting, fishery, and plantation</td>
<td>64.3</td>
<td>64.6</td>
<td>53.8</td>
<td>57.2</td>
<td>66.0</td>
<td>44.6</td>
</tr>
<tr>
<td>Manufacturing industry</td>
<td>10.7</td>
<td>8.4</td>
<td>10.8</td>
<td>10.4</td>
<td>6.1</td>
<td>16.7</td>
</tr>
</tbody>
</table>

\(^ {695}\) See Tables 30 and 31 below on the preventive and protection measures in the context of migration especially the provisions of the 2011 Immigration Law.

\(^ {696}\) Immigration Law, art. 88.

\(^ {697}\) See Section B.1.a. above specifically on the discussion concerning Violence against Women and Domestic Workers Abroad and in Indonesia.

\(^ {698}\) HRW, Always on Call, 3.

\(^ {699}\) ILO, Recognising Domestic Workers, 4.

\(^ {700}\) HRW, Always on Call, 3.

\(^ {701}\) ILO, Recognising Domestic Workers.


\(^ {703}\) HRW, Always on Call, 2.

\(^ {704}\) GoI, 2011 IPR-CEDAW, para. 97.

\(^ {705}\) ILO, Recognising Domestic Workers, 4; CEDAW Committee, 2012 CO-CEDAW, para. 37; HRW, Workers in the Shadow, 13 – 14.


\(^ {707}\) Ibid, 40.

\(^ {708}\) Ibid, 27.

\(^ {709}\) Ibid, 36.

\(^ {710}\) Ibid, 38.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

Wholesale trade, retail trade, restaurant and hotels

<table>
<thead>
<tr>
<th>Industry and Age Group</th>
<th>18.3</th>
<th>18.4</th>
<th>19.3</th>
<th>19.0</th>
<th>12.8</th>
<th>28.0</th>
</tr>
</thead>
</table>

Community, social, and personal services

<table>
<thead>
<tr>
<th>Industry and Age Group</th>
<th>4.3</th>
<th>3.4</th>
<th>6.1</th>
<th>5.4</th>
<th>3.5</th>
<th>8.2</th>
</tr>
</thead>
</table>

Others

<table>
<thead>
<tr>
<th>Industry and Age Group</th>
<th>2.4</th>
<th>5.3</th>
<th>9.9</th>
<th>7.9</th>
<th>11.6</th>
<th>2.6</th>
</tr>
</thead>
</table>

Total

<table>
<thead>
<tr>
<th>Industry and Age Group</th>
<th>100.0</th>
<th>100.0</th>
<th>100.0</th>
<th>100.0</th>
<th>100.0</th>
<th>100.0</th>
</tr>
</thead>
</table>

In thousands

<table>
<thead>
<tr>
<th>Industry and Age Group</th>
<th>674.3</th>
<th>6190.9</th>
<th>2759.4</th>
<th>4052.8</th>
<th>-</th>
<th>-</th>
</tr>
</thead>
</table>

Table 18 – Percentage of Working Children by Industry and Age Group and Sex in Indonesia 2009

BPS report shows that working children who live in urban areas work longer (at least 56 hours a week) than those in rural areas (at least 40 hours a week). In general, most working children are found in three major industries in Indonesia, which are agriculture, trade, and manufacturing. The majority of working children in urban areas work as operators and labourers while, in rural areas, children are mostly engaged as agricultural workers. Around 57% of working children aged 5-17 are employed in agriculture, including forestry, hunting, and fishery. There is also the likelihood that children are also involved in plantation work and the comparison between sexes shows that the percentage is higher for boys than girls. The second industry that attracts many working children is trade, including wholesale and retail trades, restaurants, and hotels. Overall, 19% of working children are engaged in trade and females dominate this line of industry. Another form of work involves production-related industries, including transport equipment operators and labourers.

About two third of the working children are mostly unpaid family workers. From the abovementioned industries, places where these children are working include, among others, family dwellings, factories, plantations, construction sites, mines, rivers, shops, houses, restaurants, hotels, mobile places, market stalls, and traffic lights. BPS data shows that the percentage of children working in traffic lights or similar places is higher in the age group of 5-12 years.

In the 2010 CEACR Observation, the CEACR estimates that between 100,000 and 240,000 young persons in Indonesia might be involved in drug trade. CEACR notes that, in 2003, there were 15,000 children involved in the sale, production, and trafficking of drugs in Jakarta alone. Gol report to CEACR states that in the first six months of 2010, 90% of 5,603 children in penitentiaries (mostly boys and street children) were drug users and/or drug dealers.

Worst Forms of Child Labour in Special Situation: the Case of Childcare Institutions

Additionally, the Study would like to bring into attention another condition where worst forms of child labour are prevalent, the exploitation of children living in childcare institutions. In 2007, the Ministry of Social Affairs, together with Save the Children UK and UNICEF, conducted a collaborative study focusing on the treatment of neglected children in childcare institutions (often referred to as orphanages). Due to the lack of data on the number of childcare institutions in Indonesia, the 2007 collaborative study estimates that there are 7,000 childcare institutions spread all over Indonesia. Of these, only about 35 are government-run institutions, three of which are run by the central government through the Ministry of Social Affairs.

According to the data recorded through the Government Subsidy Program for Additional Cost for Social Care Institution (known in Indonesia as the BBM Subsidy),

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711 Ibid, 55.
712 Ibid, 27.
713 Ibid, 53.
714 Ibid, 30.
715 Ibid, 53.
716 Ibid.
717 Ibid.
718 Ibid, 54.
719 Ibid.
720 Ibid, 60.
721 Ibid; 10.4% of working children work in traffic lights and similar hazardous environments.
722 CEACR, 2010 CEACR Observation on Worst Form of Child Labour.
723 Ibid.
724 Ibid.
725 Save the Children and UNICEF, Someone that Matters, 18.
in 2007, 4,305 childcare institutions received subsidy for 128,016 children under their care.\textsuperscript{726} So far, the data gathered through the usage of BBM Subsidy is the only source of information on childcare institutions in Indonesia. Since the first implementation of the BBM Subsidy in 2001, the data gathered by the Ministry of Social Affairs shows that the number of childcare institutions that received the subsidy steadily increased over the years.\textsuperscript{727} The 2007 Collaborative Study shows that, in 2003, there were 2,865 childcare institutions that had received the BBM Subsidy, the number increased to 3,378 in 2004 and continued to increase to 3,673 in 2006.\textsuperscript{728}

The 2007 Collaborative Study discovered that in all childcare institutions, which it had been studying in six provinces in Indonesia covering 37 childcare institutions,\textsuperscript{729} all of these childcare institutions require children under their care to work.\textsuperscript{730} The daily chores given to the children are mostly non-negotiable, ranging from office administration to cleaning bathrooms. The non-execution of these chores would interfere with the running of the institutions and might entail no food and clean environment for the children.\textsuperscript{731} This means that these children have to juggle performing the chores assigned to them, performing religious practices, while at the same time also attending school.\textsuperscript{732} This also means that the institutions relied heavily on the children for the day-to-day care and running of the institutions and made the institutions less inclined to recruit enough staff to run and maintain their facilities and take the burden from the children that they were supposed to care.

Apart from the chores given to the children to support the running of the institutions, there are also works given to them for the monetary benefit of the institutions and external works that have nothing to do with the institutions. The 2007 Collaborative Study shows that these children are often employed to support the childcare institutions’ small business schemes such as:

1. Work to Support the Institutions’ Income: there are children working as cooks and bakers for catering and cake businesses, and they usually get paid between IDR 15,000 to IDR 20,000 (USD 1.5 to USD 2). Usually they are required to work once a month after school.\textsuperscript{733} Children also work as fund raisers to collect alms during Eid (Idul Fitri) holiday to pay for break fasting and other social activities the institutions plan to hold.\textsuperscript{734}

2. Performing as Domestic Helpers: some of the children become baby sitters for the children of the staff, some of them even worked full time.\textsuperscript{735} There is no information on whether these children get paid for their labour. Some of the children also work as launderer for the staff of the institutions before going to school and get paid between USD 1.5 to USD 2 per week.\textsuperscript{736} Another form of labour performed by these children is by becoming domestic helpers in the full sense to donor families during Eid holiday. Children were “lent” to take over the work of domestic workers who go home to celebrate Eid.\textsuperscript{737}

3. Construction Work: in some institutions, children do construction works around the facilities to reduce cost. The forms of work include, among others, painting roof tiles and walls; carry bricks and sands; producing concrete and paving blocks; and erecting fences.\textsuperscript{738} The obligation to work applies to both boys and girls. One example took place in the Darul Aitam child care institution, where every four children were required to produce 100 concrete blocks per day during the Fasting month (Ramadhan).\textsuperscript{739}

The 2007 Collaborative Study also found that child’s works may in fact be the key requirement for these children to be allowed to stay in the institutions. This is indicated through the common main sanction imposed on children who refused to work, which is expulsion from the institution.\textsuperscript{740} Unfortunately, apart from the practice of the 35 childcare institutions examined by the 2007 Collaborative Study, little is known about the

\textsuperscript{726} Ibid.
\textsuperscript{727} Ibid, 18 – 19.
\textsuperscript{728} Ibid, 19.
\textsuperscript{729} Ibid, 6 : The provinces are consisted of Aceh, West Nusa Tenggara, North Sulawesi, West Kalimantan, North Maluku, and Central Java.
\textsuperscript{730} Ibid, 197.
\textsuperscript{731} Ibid.
\textsuperscript{732} Ibid.
\textsuperscript{733} Ibid, 199.
\textsuperscript{734} Ibid, 200.
\textsuperscript{735} Ibid, 199.
\textsuperscript{736} Ibid.
\textsuperscript{737} Ibid.
\textsuperscript{738} Ibid, 200.
\textsuperscript{739} Ibid.
\textsuperscript{740} Ibid, 201.
practice in other childcare institutions. The prevalence of worst forms of child labour in childcare institutions has not received enough attention from the GoI, this is indicated by the absence of this issue in the GoI’s various reports to the human rights mechanisms.

b. Root Causes of Exploitation and Aggravating Practices

i. Definition of Exploitation under Indonesian Legal System

Exploitation of a person, especially of a woman or a child, is considered as a crime and punishable under Indonesian legal system. Various legislation and regulations in Indonesia contain definitions of exploitation that mainly interlace with the crime of trafficking in persons. However, since 2007, the definitions of exploitation and those related to exploitation are accumulated under one legal umbrella, the 2007 TIP Law.

1. Definition of Exploitation (Article 1(7) of TIP Law):
   An act, with or without the consent of the victim, that includes, but not limited to, prostitution; forced labour or service; slavery or slavery-like practice; subjugation; extortion; physical exploitation, sexual exploitation, or exploitation of reproduction organ; or unlawfully removing or transplanting organ or tissue; or exploiting a person’s skill by another person in order to acquire economic gain both materially and immaterially

2. Definition of Trafficking in Person (Article 1(1) of TIP Law):
   Any acts to recruit, transport, harbour, deliver, transfer or receipt of a person by means of the threat or use of force, abduction, locking up, fraud, deception, abuse of power or abuse of position of vulnerability, debt bondage or to provide payment or benefit, in order to obtain the consent of a person that holds control over another person, both conducted internally and across the border, with the purpose of exploitation or to cause exploitation of a person.

3. Definition of Sexual Exploitation (Article 1(8) of TIP Law):
   Any form of exploitation of sexual organ or other organs of the victim for the purpose of gaining profit, including, but not limited to, prostitution and sexual abuse.

4. Definition of Debt Bondage (Article 1(15) of TIP Law):
   Any act to put a person in a condition where he/she is required or forced to bind his/herself or his/her family or persons under his/her care or his/her personal services as a form of payment of his/her debt.

ii. Exploitation of Women and Children in General

The Study deems that the root-causes of violence against women and children described in the previous chapter (see section B.1.b above) are also relevant to the issue of exploitation of women and children, since, according to the definition of exploitation given by the CRC Committee, exploitation is also a form of violence. Poverty, patriarchal culture and religious interpretation, discrimination, traditional practice toward women and children, globalisation, and uncontrolled modernisation are considered as root-causes that render women and children vulnerable to violence as well as exploitation.

In relation to exploitation of children, the GoI confirms that child labour is caused by poverty, marginalisation, the inability to fulfil basic needs, abandonment, disabilities, destitution, and alienation (geographically, socially, and culturally). The GoI adds in its 2011 IPR-CEDAW that cultural context and increasing consumerism in the community drove women and children into trafficking, which facilitated their exploitation. Tradition and culture that justify ownership, stereotyping and subordination of women and children in the family and society encourage even families and closest people like neighbours, friends, and even spouses to facilitate or encourage the trafficking of women and children.

742 See Section B.1.b. above.
743 GoI, 2008 Indonesian UPR, para. 15.
745 Ibid; See also PNBAI WG, 2015 National Program, 48.
iii. Supply and Demand Sides of Trafficking of Women and Children

Reports indicate that the need to make a better living for their family coupled with rampant poverty and restricted access to basic education and lack of employment opportunities constitute push factors that cause women and children in vulnerable condition to become victims of trafficking and exploitation. According to GoI and ILO, girls are highly vulnerable especially as gender imbalance and inequality often result in daughters being deprived of educational opportunities and forced to contribute to household income at a very young age. Because of this, many girls are willing to be employed anywhere in the country and/or being forced into early marriage. ILO indicates that most early marriages ended up with divorce; divorced girls then usually will find it hard to be accepted by the community and chose to migrate to find a job or resort to prostitution. Together with the growing numbers in the work force, and population, Indonesia presented an abundant supply of cheap labour that traffickers find hard to resist. Adding to this, IOM's records shows a strong correlation between the abovementioned factors with limited access to education in making women and children vulnerable toward trafficking.

Reports also indicate that the geographical situation in some regions in Indonesia contributes in fostering internal trafficking and it also makes it harder to monitor the safe immigration of women and children to acceptable forms of employment. Some destinations of trafficking in Indonesia, such as Papua, fishing platforms in the bays of Malacca and North Sumatera, and the jungle of Kalimantan, are geographically isolated and hard to reach, making it almost impossible for victims to escape. Additionally, the geographical condition of Indonesia gives more space for traffickers to run their clandestine operation and to avoid law enforcers.

Meanwhile, the demands for cheap labour and sexual service have been the driving force for both cross-border and internal trafficking. Women and children are mostly targeted because they are inherently vulnerable and controllable. ECPAT states that the growing presence of paedophiles in Indonesia, especially in tourist destinations areas, boosts the ever increasing demand for child sex workers and creates the opportunity for internal trafficking of children to bloom.

iv. Aggravating Factors

The Study identifies at least three factors that aggravate the vulnerability of women and children to fall victims to trafficking. The first aggravating factor is related to the lack of birth registration. The 2011 TIPR notes that 60% of children under the age of five do not have official birth certificates. The GoI explains that many women face difficulties getting birth certificates for their children, including women who give birth out of wedlock, women in unregistered religious/traditional marriages, poor or marginalized women who may themselves not have a Birth Certificate or an Identity Card or the money to pay to obtain such documents. This condition is further exacerbated by lack of information on the procedure and bureaucratic obstacles. Without official birth certificates, both children and adults are at higher risk for being trafficked since they are not protected by the laws and they will find difficulties in proving their age and nationality or residency making them prone to
exploitation.\textsuperscript{760}

The second aggravating factor is the lack of capacity of local governments to draft local laws on the prevention and handling of trafficking in women and children.\textsuperscript{761} The same also applies to legislation, both at national and regional level, that still discriminate against women and children and can undermine the handling of trafficking.\textsuperscript{762} The third aggravating factor is related to the rampant corrupt practices of Indonesian officials, including the police force, which eventually hinder effective enforcement action.\textsuperscript{763} The 2011 TIPR indicates that the corruption in the police force even gets police personnel involved in the act of trafficking both directly and indirectly, further denying protection to the victims.\textsuperscript{764}

\textbf{c. Impact of Exploitation}

In its 2005 IPR-CEDAW, the GoI states that women that were forced into prostitution risk being mentally and physically abused, suffering from sexually transmitted diseases, and obviously risking their future.\textsuperscript{765} In 2011, the GoI supports this statement by relying on information on the impact of exploitation provided by IOM based on the data of victims collected in 2005 – 2010.\textsuperscript{766} IOM statistics on victims of trafficking show that, from 3,840 victims of trafficking documented by IOM, 3,738 victims received medical recovery and more than 70% suffered sexually transmitted disease.\textsuperscript{767} Around 104 victims suffered from physical trauma and 330 victims suffered from psychological disturbance.\textsuperscript{768} Furthermore, IOM statistics show that 2,762 suffer various forms of psychological trauma such as depression, anxiety, post-traumatic symptoms, suicidal ideations.\textsuperscript{769} Often, due to traditional values, victims of sexual exploitation are blamed by her family or society and seen as entirely responsible for what happened to them and sometimes are even criminalised.\textsuperscript{770} Such social stigma to the victims might push the victims to fall into the same cycle. For example, victims of forced prostitution may resort back to prostitution or, even worse, become traffickers preying on potential victims in their home village or town.\textsuperscript{771} The exploitation and trafficking of children destroy children’s opportunity to have a normal life and their right to education.\textsuperscript{772}

\section*{2. De Jure State Responses}

Part (a) of this section will focus mainly on international conventions that oblige States to protect women and children against exploitation that have not been addressed in the Chapter concerning Violence against Women and Children (Section B.2.a., Table 6) above. The list will mainly include UN Conventions pertaining to protection of women and children against exploitation, ILO Conventions, and regional commitments (ASEAN) either as reflected in the reports or where the Study sees that particular instruments are relevant to be included in this section. The same also applies to parts (b) and (c) on State’s policies setting up the State’s responsibility to protect women and children against exploitation.

Apart from Indonesia’s reports to the HRC and UN Treaty Bodies and the shadow reports and responses, this section will also include reports produced by the IOM, United Nations Office on Drugs and Crimes (UNODC), and ILO that are relevant to the issue of exploitation of women and children, as well as other reports produced by foreign States, NGOs, and thematic projects. However, in the discussion on policies, the Study shall not omit relevant international treaties listed in Table 6 on whether the reports give recommendations on the State’s commitments and reservations in relation to these treaties that are pertinent to the issue of exploitation.

\begin{footnotesize}
\begin{enumerate}
\item Ibid, 2008 Indonesian UPR, para. 37.
\item For examples, see Section C.1.a. above on Re-victimisation of Trafficked Women and Children: National and Regional Legislations.
\item USAID, 2006 TIP TA, 11.
\item Ibid, 2005 IPR-CEDAW, para. 64.
\item Ibid, 2005 IPR-CEDAW, para. 41.
\item IOM Indonesia, General Information of Trafficked Persons, 10.
\item Ibid, 10 – 11.
\end{enumerate}
\end{footnotesize}
### a. Bases of State Responsibility

#### i. International and Regional Treaties and Instruments

<table>
<thead>
<tr>
<th>No</th>
<th>International and Regional Instruments</th>
<th>Date of Signature, Ratification, Accession, or Adoption</th>
<th>Instrument of Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>1999 Global Code of Ethics for Tourism</td>
<td>1 October 1999 (Adpt.)</td>
<td>—</td>
</tr>
<tr>
<td>7.</td>
<td>2001 Yokohama Global Commitment against Commercial Sexual Exploitation of Children</td>
<td>20 December 2001 (Adpt.)</td>
<td>—</td>
</tr>
</tbody>
</table>

#### ILO Conventions

<table>
<thead>
<tr>
<th>No</th>
<th>International and Regional Instruments</th>
<th>Date of Signature, Ratification, Accession, or Adoption</th>
<th>Instrument of Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1930 ILO Convention No. 29 concerning Forced Labour</td>
<td>12 June 1950 (R)</td>
<td>—</td>
</tr>
<tr>
<td>2.</td>
<td>1948 ILO Convention No. 88 concerning the Organisation of the Employment Service</td>
<td>8 August 2002 (R)</td>
<td>Presidential ILO Decree No. 36 of 2002</td>
</tr>
<tr>
<td>3.</td>
<td>1949 ILO Convention No. 98 concerning the Right to Organise and Collective Bargaining</td>
<td>15 July 1957 (R)</td>
<td>Law No. 18 of 1956</td>
</tr>
<tr>
<td>4.</td>
<td>1950 ILO Convention No. 100 concerning Equal Remuneration</td>
<td>11 August 1958 (R)</td>
<td>Law No. 80 of 1957</td>
</tr>
<tr>
<td>5.</td>
<td>1957 ILO Convention No. 105 concerning the Abolition of Forced Labour</td>
<td>07 June 1999 (R)</td>
<td>Law No. 19 of 1999</td>
</tr>
</tbody>
</table>

773 GoI, 2005 IPR-CEDAW, para. 103. The report did not provide information on the instrument of ratification. The most viable explanation that this Study can put forward is the fact that Indonesia was a former Dutch colony until 1945 and the Netherlands ratified ILO Convention No. 29 in 1933. Under international law, the Netherlands’ ratification should also bind Indonesia as its colony at that time. After its independence, in 1950 Indonesia became a member of the ILO and resumed its responsibility under its former coloniser. For Dutch’s ratification of ILO Convention No. 29, see <www.ilo.org>, accessed on 20 October 2011.

774 The ratification of this Convention by Indonesia in 2002 was not mentioned in 2008 Indonesian UPR, 2005 IPR-CEDAW, and 2002 IPR-CRC. However, the Study deems it necessary to include this information since the ratification provides a basis for Indonesia’s responsibility to provide good employment service to its citizens, including women.

775 2005 Indonesia’s Periodic Report to CEDAW Committee, para. 104.

776 Ibid.

777 The ratification of this Convention by Indonesia in 2002 was not mentioned in 2008 Indonesian UPR, 2005 IPR-CEDAW, and 2002 IPR-CRC. However, the Study deems it necessary to include this information since the Convention is greatly relevant to the prevalence of forced labour in Indonesia.
### ASEAN Instruments

<table>
<thead>
<tr>
<th>No</th>
<th>International and Regional Instruments</th>
<th>Date of Signature, Ratification, Accession, or Adoption</th>
<th>Instrument of Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>1999 ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour</td>
<td>8 March 2000 (R)</td>
<td>Law No. 1 of 2000[^779]</td>
</tr>
</tbody>
</table>

### Table 19 – Indonesia’s International and Regional Commitments relating to the Elimination of Exploitation of Women and Children

According to the information provided by the UN relating to UNTOC and its protocols, Indonesia has made reservations to UNTOC, the 2000 Trafficking Protocol, and the 2000 Migrant Smuggling Protocol. All of Indonesia’s reservations are related to the non-application of the dispute settlement provisions in the Conventions and its Protocols. Indonesia’s reservations are still in force up to this moment[^782]. On the other hand, Indonesia did not make any reservation to any ILO Convention, since ILO does not allow its Member States to make reservation to its Conventions. Likewise, the 2004 Treaty on Mutual Legal Assistance in Criminal Matters, the only relevant regional treaty, also prohibits reservation[^784].

[^778]: Ibid.
[^780]: ASEAN instruments relating to the protection of women and children against exploitation cover binding and non-binding instruments. This entails that not all instruments required signature, ratification/accession by ASEAN Member States. The instruments listed in the table are mainly dealt with the issue of trafficking in women and children. Full version of these instruments can be accessed on the ASEAN website <www.asean.org> or can be found in the ASEAN database of the Centre for International Law <www.cil.nus.edu.sg>.
[^782]: Ibid.
[^784]: 2004 Treaty on Mutual Legal Assistance in Criminal Matters
In their responses to Indonesia’s UPR report and periodic reports, the UN Working Group on UPR and UN Treaty Bodies highlight some recommendations to improve Indonesia’s practice to fight exploitation of women and children, especially in relation to the implementation of protection of women and children under CEDAW and CRC. Some of the recommendations for the GoI to consider are:

1. The ratification of the 2000 Optional Protocol on the Sale of Children to realise the commitment Indonesia has made when it signed the two Protocols in 2001.

2. The full enforcement of anti-trafficking legislation and the national action plan to combat human trafficking. CAT Committee stated its concern at the high estimates of victims of trafficking stated by Indonesia as compared to the limited number of investigations and the absence of information on prosecutions and convictions. CEDAW Committee in 2012 confirms this concern and recommends the GoI to strengthen mechanisms for the investigation, prosecution, and punishment of perpetrators of trafficking in persons. This is in line with the Committee’s previous recommendation in 2007 that required the GoI to provide detailed information, including statistical data, on trends in trafficking and on court cases, prosecutions and victims assisted, as well as the results achieved in prevention.

3. To address the root causes of trafficking and sexual exploitation of women and girls, particularly women’s economic insecurity. The same recommendation is reiterated by CEDAW Committee in 2012, CEDAW Committee adds that in order to address the root causes of trafficking the GoI needs to further enhance the economic potential of women.

4. To establish an appropriate mechanism on data collection, early identification, referral of, support for, and remedy for women who become victims of trafficking.

5. To amend Indonesian provisions under the Law on Citizenship and Nationality related to retention or transmission of Indonesian women citizenship as soon as possible to ensure the safety of Indonesian women who migrate or who are trafficked abroad.

6. To consider to toughen criminal liability for crimes related to trafficking and to study the possibility of inviting the Special Rapporteur on Trafficking in Persons to visit Indonesia.

7. To intensify international, regional and bilateral cooperation with countries of origin, transit, and destination for trafficked women and girls to further curb this phenomenon by engaging in exchange of information, harmonisation of legal procedures especially those related to prosecution and punishment of perpetrators.

8. To resolve problems arising from prostitution such as establishing exit programs for women who wish to leave prostitution, rehabilitation programs, and reintegration into society.

9. To prevent trafficking of children under the guise of adoption, CRC Committee recommended the GoI to amend the current legislation concerning adoption in compliance with CRC provisions, to implement effective monitoring and supervision mechanisms, and to accede to the Hague Convention on the Protection of Children and Cooperation in respect of Inter-Country Adoption.

10. To develop and apply legislation that protects children from sexual exploitation, including a significant increase in the minimum age of sexual consent.

11. To address the root causes of economic exploitation of children and child labour through poverty eradication, easy access to education, and developing comprehensive child labour monitoring mechanisms.

12. To develop the national system of data collection to cover all forms of sale, trafficking and abduction of children, and ensure that all data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects.

785 CEDAW Committee. 2007 CC-CEDAW, para. 6; and HRC, 2008 RWG-UPR, para. 77.

786 CEDAW Committee, 2007 CC-CEDAW, para. 25.

787 UN OHCHR, 2012 Compilation of UN Reports, para. 27.

788 CEDAW Committee, 2012 CO-CEDAW, para. 30(c).

789 CEDAW Committee, 2007 CC-CEDAW, para. 25.

790 Ibid.

791 CEDAW Committee, 2012 CO-CEDAW, para. 30(a).

792 CEDAW Committee, 2012 CO-CEDAW, para. 30(b).

793 CEDAW Committee, 2007 CC-CEDAW, para. 29.

794 UN HRC, 2012 RWG-UPR, para. 108.77.

795 CEDAW Committee, 2007 CC-CEDAW, para. 25; and CEDAW Committee, 2012 CO-CEDAW, para. 30(d).

796 CEDAW Committee, 2012 CO-CEDAW, para. 30(e).

797 CRC Committee, 2004 CO-CRC, para. 52.

798 Ibid, para. 83.

799 Ibid, para. 85.

800 Ibid, para. 89.
13. To ensure that the issuance of birth certificate shall be free of charge and establish a monitoring mechanism.801
14. To ratify the ILO Convention No. 189 concerning Descent Work for Domestic Workers802 and to enact, with a clear timeframe, the draft Law on domestic workers and establish procedures to monitor and safeguard the rights of women domestic workers and to prosecute and punish abusive employers.803
CEDAW Committee further elaborates that the Law on Domestic Workers should be in compliance with the ILO Convention and should at least incorporate provisions on minimum wage, number of working hours per day, overtime pay, off days, social security, freedom of movement, and access to communication and information.804
15. To establish a complaint mechanism where domestic workers can lodge complaints regarding unfair labour practices and abuses as well as to develop support services and shelters for victims.805
16. To establish proper documentation on domestic workers disaggregated by sex, age, and areas of origin.806

Indonesia is a party to various ILO Conventions as mentioned above. As a party, Indonesia is obliged to report regularly on measures that it has taken to implement ILO Convention domestically in either, depending on the status of the Convention established by ILO, every two or five years.807 The Committee of Experts on the Application of Conventions and Recommendations (CEACR) was established to examine the reports submitted by governments on ILO Conventions that they have ratified.808 Below are the recommendations and suggestions that CEACR put forward in relation to the GoI reports on the implementation of several ILO

Conventions domestically:

a. Recommendations related to the implementation of 1999 ILO Convention on Worst Forms of Child Labour:809
1. In relation to the problem of child domestic workers, CEACR urges the GoI to take the necessary steps to ensure that the draft Law on the Protection of Domestic Workers is adopted as soon as possible;
2. In relation to monitoring mechanisms and the efforts of law enforcers to curb trafficking in persons, CEACR urges the GoI to increase its efforts to investigate and prosecute perpetrators of trafficking, as well as increase the awareness among prosecutors and judges of the 2007 TIP Law. CEACR also requests the GoI to strengthen its efforts to prevent children to become involved in the sale, production, and trafficking of drugs;
3. In relation to sexual exploitation of children, CEACR requests the GoI to take more concerted measures in accordance with the Time Bound Programme (TBP) and the National Action Plan on the Eradication of Trafficking in Persons and Sexual Exploitation of Children 2009 – 2014 to:
   - Prevent the trafficking of children and to provide measures for their removal, rehabilitation, and social reintegration;
   - Protect children from becoming victims of commercial sexual exploitation, including sex tourism;
   - Implement vigorously Regulation No. PM 30/HK.201/MKP/2010 on Guidelines on the Prevention of Sexual Exploitation of Children in Tourism; and
4. In relation to children working in fishing platforms or jermals, CEACR urges the GoI to take necessary measures “to ensure that sufficiently effective and dissuasive penalties are applied in practice to persons who engage children in hazardous work on fishing platforms”.

b. Recommendations related to the Implementation of the 1973 ILO Minimum Age Convention:810
1. CEACR urges the GoI to adopt a government
regulation concerning children working outside of an employment relationship as soon as possible to implement relevant provisions of Indonesia’s 2003 Manpower Act;

2. In relation to the implementation of Article 9(3) of the Convention, CEACR urges the GoI to ensure that every employer, regardless of the type of work performed, keeps a register indicating the name and age or date of birth of persons whom he/she employs who are less than 18 years of age as soon as possible; and

3. CEACR highlights the fact that there many children below the age of 15 engaged in labour, it urges the GoI to double its efforts to prevent children under minimum age to engage in child labour.

c. Recommendations related to the Implementation of 1930 ILO Forced Labour Convention:

1. CEACR considers the provisions under Law No. 39 of 2004 on the placement and protection of Indonesian workers abroad as vague and have many shortcomings risking Indonesian migrant workers to exploitation;

2. CEACR also notes that other related legislations focus heavily on addressing the shortcomings of workers placement and placement-related procedures rather than on workers’ protection;

3. In relation to Indonesian migrant workers in Malaysia, CEACR advises the GoI and the Government of Malaysia to take immediate steps to prevent practices such as withholding workers’ passports by the employers, to guarantee standard labour protections, and to provide measures to prevent and respond to cases of worker abuse. Similar safeguards should also be included in all agreements between Indonesia and other receiving countries.

There is no indication in reports considered for this Study on the realisation or implementation of ASEAN instruments related to the prohibition, prevention, and the handling of exploitation of women and children in Indonesia. Hopefully, the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) can fill in the lacunae and guard the implementation of ASEAN treaties and instruments.

ii. Bilateral Treaties

Apart from international and regional treaties and instruments that describe Indonesia’s responsibility to prohibit and handle the occurrences of exploitation of women and children, Indonesia has also established bilateral agreements with other countries concerning extradition and mutual legal assistance in criminal matters (MLA) with the purpose to enable bilateral or cross border investigation efforts and extradition of offenders in relation to exploitation-related crimes especially trafficking. Below is a list of bilateral agreements that Indonesia has signed and ratified.

<table>
<thead>
<tr>
<th>Country</th>
<th>Title of the Treaty</th>
<th>Signature</th>
<th>Ratification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Treaty between the Republic of Indonesia and the Republic of Korea on Mutual Legal Assistance in Criminal matters</td>
<td>30 March 2002</td>
<td></td>
</tr>
</tbody>
</table>

In the case of the implementation of regional commitments, unlike the review mechanism set out for UN treaties as described above, ASEAN has yet to have its own review mechanism to oversee the individual implementation of ASEAN treaties and instruments by ASEAN Member States, especially for treaties and instruments related to the prohibition, prevention, and the handling of exploitation of women and children.

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### Table 20 – Countries to which Indonesia has Extradition and MLA Treaties

Extradition treaties between Indonesia and other countries include trafficking in persons as an extraditable offence. The extradition treaties also apply the *aut dedere aut judicare* principle, meaning that contracting parties have the obligation to extradite an offender of an extraditable offence when there is a request for extradition or to prosecute the offender under its national law if there is no request for extradition or if the requested State refused to grant the extradition request made by the other party. Indonesia has signed extradition treaties with Singapore, China, and India; however, it has not ratified those treaties until now. In a recent meeting between the President of Indonesia and Singapore’s Prime Minister, both Governments stated that they will resume efforts to realise the implementation of extradition arrangements between Indonesia and Singapore.\(^{812}\)

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812 Susi Fatimah, SBY: Perjanjian Ekstradisi dengan Singapura Terhenti (SBY: Extradition Treaty with Singapore has been put into a Halt), 13 March 2012, <international.okezone.com>, accessed 14 March 2012.
In relation to mutual legal assistance in criminal matters, Indonesia has only signed and ratified MLA treaties with China and Australia. Indonesia has signed two other MLA Agreements with Hong Kong and South Korea in 2008 and 2002 respectively; however, the DPR only confirmed its plan to ratify the MLA treaty with Hong Kong in 2012. Indonesia finally ratified the MLA Agreement with Hong Kong on 28 March 2012.

b. State Policies against Exploitation

This section will follow the classification of legislations and policies set out in section B.2.b. above, which consists of preventive, protective, and curative legislations and policies relating the prohibition of exploitation of women and children. Furthermore, unlike Section B.2b. above, this section will not divide the legislation and policies into general and specific legislations and policies related to women and children separately.

The 2008 Indonesian UPR, 2005 and 2011 IPR-CEDAW, and 2002 and 2007 IPR-CRC identified legislation and policies related to the general protection of women and children against exploitation, which consist of:

1. The Criminal Code;
2. KDRT Law;
3. Victim and Witness Protection Law;
4. Law on Child Protection;
5. Law on the Eradication of Trafficking in Persons (TIP Law);
6. Law No. 13 of 2003 on Manpower (Manpower Law);
7. Law No. 1 of 2008 on Information and Electronic Transaction (ITE Law);
8. Law No. 44 of 2008 on Pornography;
9. Law No. 8 of 2010 on the Prevention and Suppression of the Crime of Money Laundering (Anti Money Laundering Law);
10. Law No. 35 of 2009 on Narcotic (Anti Narcotic Law);
11. Government Regulation on Procedures and Methods for Integrated Services for Witnesses and Victims of Trafficking in Persons (Law on Integrated Service for TIP Victims);
12. Government Regulation on the Facilitation, Support, and Recovery of Children as Victim or Subject of Pornography (Government Regulation of Children Recovery from Pornography);
13. Presidential Decrees on the National Action Plan to Combat the Worst Forms of Child Labour;
14. Presidential Decree on the National Action Plan to combat the Commercial Sexual Exploitation of Children;
15. Presidential Decree on the National Action Plan to Combat Trafficking of Women and Children;
16. Presidential Decree on National Committee for


813 Erwin, RUU Timbal Balik Hukum Pidana Indonesia dengan Hongkong Disahkan (Draft Law on the Ratification of Mutual Legal Assistance between Indonesia and Hong Kong Enacted), <sumbawanews.com>, accessed on 9 March 2012.
816 Gol, 2008 Indonesian UPR, para. 10.
818 Gol, 2002 IPR-CRC, para. 15 and 20; and Gol, 2007 IPR-CRC, para. 2.
825 Government Regulation No. 9 of 2008 on Procedures and Methods for Integrated Services for Witnesses and Victims of Trafficking in Persons, State Gazette 2008:22, 4 February 2008. See the comment on note 162.
826 Government Regulation No. 40 of 2011 on the Facilitation, Support, and Recovery of Children as Victim or Subject of Pornography (Government Regulation on Children Recovery from Pornography), State Gazette 2011:86, 9 September 2011.
the Elimination of Worst Forms of Child Labour (Presidential Decree on KNPBPTA);\textsuperscript{830}

17. Presidential Regulation on the National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Presidential Regulation on PHCTIP Taskforce);\textsuperscript{831}

18. Presidential Instruction on Policy Reform for the Placement and Protection of Indonesian Worker;\textsuperscript{832}


20. MOWE Regulation on Early Awareness against the Crime of Trafficking in Persons;\textsuperscript{834}

21. MOWE Regulation No. 1 of 2009 on Minimum Service Standard for the Integrated Service for Witness and/or Victim of Trafficking in Persons at the Regency/Municipality Level;\textsuperscript{835}

22. Minister of Social Affairs Regulation No. 110/HUK/2009 of 2009 on Requirements for Child Adoption;\textsuperscript{836}

23. MOWE Regulation on Minimum Service Standard for Women and Children Victims of Violence (MOWE Regulation on SPM);

24. Regulation of the Chief of Indonesian National Police Forces on the Organisation and Management of Special Women and Children Unit (CNP Regulation on UPPA);

25. Regulation of the Chief of Indonesian National Police Forces (CNP Regulation) on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence

Under Indonesia domestic legislation, exploitation and trafficking, as a means to deliver victims to be exploited, is classified as violence especially against women and children. Therefore, many legal measures relating to exploitation and trafficking in women and children have already been discussed in the previous chapter on violence.\textsuperscript{837} Especially in relation to protective and curative measures for exploitation and trafficking of women and children, most of the legislations have already been described in the Chapter on violence against women and children above except for specific legislations referred in points 5 – 20 above.


\textsuperscript{831} Presidential Regulation No. 69 of 2008 on the National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Presidential Regulation on PHCTIP Taskforce), 6 November 2008. For further description on the PHCTIP Taskforce, refer to section C.3.a. below.

\textsuperscript{832} Presidential Instruction No. 6 of 2006 on Policy Reform for the Placement and Protection of Indonesian Worker (Presidential Instruction on Indonesian Worker Policy Reform), 2 August 2006.


\textsuperscript{834} MOWE Regulation No. 9 of 2011 on Early Awareness against the Crime of Trafficking in Persons and Sexual Exploitation of Children. State Gazette 2011:714, 16 November 2011.

\textsuperscript{835} Unfortunately, the Study does not have any access to this Regulation. To the knowledge of the Study, this Regulation is still in force partially after the adoption of the 2010 MOWE Regulation on SPM.

\textsuperscript{836} Minister of Social Affairs Regulation No. 110/HUK/2009 of 2009 on Requirements for Child Adoption, 19 October 2009.

\textsuperscript{837} See Section B.2.b. above.
## a. Preventive Measures

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 1.  | Criminal Code           | The Criminal Code has some provisions relating to the prohibition and punishment of sexual exploitation of children and trafficking of women and children (Articles 295 – 297). The acts are as follow:  
   a. Deliberately causing or facilitating the commission of any obscene act between a child under his/her care with another person as a profession/habit;  
   b. Intentionally causing or facilitating any obscene act by other person and doing such act as a profession/habit; and  
   c. Committing trade in women and underage boys.  
   Additionally, Indonesian Criminal Code also applies extraterritorial jurisdiction for Indonesian nationals abroad that commits an act that has been criminalised both by Indonesian and the other State's Criminal Code (Article 5). |
| 2.  | Child Protection Law    | Articles 78, 81, 82, and 87 – 88 prohibit and punish the following acts:  
   a. To knowingly and deliberately allow or leave a child to be economically or sexually exploited when the child needs help and must be assisted;  
   b. To force a child to engage in sexual intercourse with him/her or with other person by employing violence or threat of violence or tricks or ruses or persuasions;  
   c. To deliberately force a child to engage in indecent behaviour by employing violence or threat of violence or by employing tricks or ruses or persuasions;  
   d. To unlawfully recruit or use a child for military purposes or to involve children in armed conflict or social unrest, or even that involves violence, or misuse of political activities; and  
   e. To economically or sexually exploit a child with the intent to make profit for himself or others. |
   b. Articles 3 – 6 of the Law prohibits and punishes the following acts:  
      1. The act of getting a person into Indonesia with the intention of exploiting him/her in or outside of Indonesia;  
      2. The act of taking an Indonesian citizen outside of Indonesia with the intention of exploiting him/her outside of Indonesia;  
      3. The act of adopting a child with the intention of exploiting the child; and  
      4. The act of sending a child into or outside of Indonesia with any means that cause the exploitation of the child.  
   c. Articles 7 – 8 and 16 – 17 deal with aggravating factors.  
   d. Article 26 stipulates that the consent of a victim will not eliminate the prosecution of a perpetrator.  
   e. The Law prohibits and punishes anyone that directed another person to commit trafficking or become accomplice to commit trafficking or to plan or conspire to commit trafficking (Articles 9 – 12).  
   f. The Law criminalises corporations that are involved in trafficking (Articles 13 – 15).  
   g. Central and local governments are responsible in the prevention of trafficking in persons (Articles 56 – 58) |
| 4.  | Anti-Pornography Law    | a. The Law defines pornography as: any sexual materials created by human in the form of pictures, sketches, photos, writings, voices, sounds, motion pictures, animations, cartoons, poems, conversations, body movement, or other forms of message communication through various forms of communication media and/or representations in public that cause sexual arousal and/or violates norms in community (Article 1)  
   b. The Law criminalises the act of child pornography and involvement of children in pornography or other exploitation of sexual related acts (Articles 11 and 37) |
| 5.  | Manpower Law            | a. Article 74 prohibits employing children in works that constitute worst forms of child labour such as:  
   1. Forced labour or slavery;  
   2. All types of works that employ, provide, or offer children for prostitution, pornography, porn performance, or gamble;  
   3. All types of works that employ, provide, or involve children in the production and trade of alcohol and drugs; and  
   4. All types of works that can endanger the health, safety, or moral of children.  
   b. Companies are prohibited to employ a person below the age of 18 (with some exceptions to children above the age of 13 and below the age of 15). |
| 6.  | ITE Law                 | The Law criminalises the act of distributing or transmitting or to make available or accessible electronic information or document containing immoral/indecent content (Article 27) and the Law increases the penalty of such act if the act includes child exploitation (Article 52). |
| 7.  | Anti Money Laundering Law | According to the Anti money Laundering Law, the proceeds of crimes shall include, among others, assets derived from trafficking in persons and prostitution. Indonesia shall have jurisdiction over these predicate offences when they are perpetrated both within and outside of Indonesia (Article 2(1)). |
| 8.  | Anti Narcotic Law       | Articles 133 – 134 criminalise any persons that direct, give or promise to give, provide opportunity, encourage, force, deceive, or persuade a child to using or to get involved in the production and trade of drugs |

Table 21 – List of Preventive Measures Provided under General Legislations and Policies on Exploitation of Women and Children
### b. Protective Measures

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
</table>
| 1. | TIP Law | a. Investigation, prosecution, and court examination on child witness or victim of trafficking shall be done by taking into consideration the principle of best interest of the child, and the child is entitled to be accompanied by his her parent, guardian, and/or legal counsel (Articles 38 – 40)  
   b. Protection of witnesses and victims of trafficking shall be conducted in accordance with the provisions under the Victim and Witness Protection Law (Article 43)[838]  
   c. Witnesses and/or victims of trafficking and their family are entitled to have the identity undisclosed and receive police protection during and after the conclusion of the legal process (Articles 44 and 47)  
   d. To give protection to victims and/or witnesses of trafficking during the whole legal process, local governments are obliged to establish special service room in every precinct to conduct investigation and integrated service unit in every city/regency (Articles 45 – 46).[839] |
| 2. | Child Protection Law | The issuance of a birth certificate shall be the responsibility of the government, and be carried out in practice at a level that is not lower than that of the village or sub-district (Article 28) |
| 3. | Anti-Pornography Law | a. The Law ensures legal certainty and protection to citizens especially women and children (Article 3)  
   b. The Law obliges every person to protect children from pornographic influence and prevent the spread of information related to pornography to reach children (Article 15) |
| 4. | Manpower Law | a. Minister of Manpower is under the obligation to protect children working in informal sector (Article 75)  
   b. Establishment of designated working hours for women workers to work in particular hours and/or in particular conditions (Articles 76 – 78)  
   c. The rights for women workers to receive annual leaves; maternity leaves; sick leaves; and overtime payment (Articles 79 and 81 – 85)  
   d. The Law sets out special requirements to employ children above the age of 13 and below the age of 15 (Articles 69 -71)  
   e. Separation of children and adults working place (Article 72) |
| 5. | Government Regulation on Integrated Service for TIP victims | a. The application of integrated services for victims and witnesses of trafficking in persons require cooperation and coordination among relevant government institutions and other relevant institutions (Article 1(1)).  
   b. The scope of the Government Regulation includes services in health rehabilitation, social rehabilitation, return and social reintegration, advocacy, counselling, and legal aid for victims and witnesses of TIP in and outside of Indonesia. In the case of children, the rendering of services will be done in accordance with the best interest of the child (Article 4).  
   c. The Government Regulation ensures the rights of victims and witnesses of trafficking as well as their family to receive health and social rehabilitations, return, social reintegration and legal aid through an Integrated Service Centre (PPT)  
   d. PPT shall be established in every region and city or regency in Indonesia by each regional government. The Centre can also give its services to victims and witnesses of domestic violence (Article 6).  
   e. MOWE is responsible to establish, formulate and adopt minimum standard for service and standard operation procedure on the return and social reintegration to be followed by each PPT (Articles 7 – 8).  
   f. Regional governments are obliged to provide all necessary facilities to accommodate the work of PPT; private owned hospitals may also contribute to provide necessary facilities for PPT (Articles 9 – 10).  
   g. Relevant institutions are obliged to provide medical personnel, psychologist, psychiatrist, and social worker to support the application of integrated services (Article 11). |

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838 For the description of protective measures provided under the victim and witness protection law, see table 9 in section B.2.b. above  
839 For the description of the function of police women and children unit, see the description on CNP Regulation on the Establishment of Special Service Room and Inspection Procedure for Victim and Witness of Violence and CNP Regulation on PPA in table 9 above.
### National Action Plan to Combat the Worst Forms of Child Labour

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
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</table>
| 6.  | National Action Plan to Combat the Worst Forms of Child Labour | a. The national action plan serves as guidelines for the implementation of the national action program to eliminate the worst forms of child labour (Article 2).  
   b. The national action plan contains detailed 20 year planning, describing, in general, the goals that the GoI wants to achieve in relation to the elimination of the worst forms of child labour (Chapter 2):  
   - First Phase (5 years):  
     - To enhance public awareness to eliminate the worst forms of child labour;  
     - To map the problems relating to the worst forms of child labour and efforts to eliminate them; and  
     - To implement the program on the elimination of the worst forms of child labour prioritising on child labour in offshore platforms and deep sea diving, child labour in mines, child labour trafficked into prostitution, child labour in footwear industry, child labour in the production and distribution of narcotics, psychotropic substances, precursors, and other addictive substances.  
   - Second phase (10 years):  
     - Replication of model practice on the elimination of worst forms of child labour that has been implemented during the first phase;  
     - Development of program on the elimination of worst forms of child labour; and  
     - Availability of policies and implementation tools for the elimination of worst forms of child labour.  
   - Third phase (20 years):  
     - Effective institutionalisation of national movement on the elimination of worst forms of child labour; and  
     - Mainstreaming of the elimination of worst forms of child labour. |
| 7.  | National Action Plan to combat the Commercial Sexual Exploitation of Children | a. The national action plan serves as a basis and guidelines for the GoI and the public in eradicating trafficking sexual commercial exploitation of children (Article 1).  
   b. To ensure the enhancement of protection efforts for children victims of sexual commercial exploitation; the prevention and handling of trafficking practices; as well as to push for the adoption or refinement of anti sexual commercial exploitation of children (Article 2).  
   c. The task force on the sexual commercial exploitation of children to oversee, report, and coordinate the implementation of the national action plan as well as to engage in international coordination on measures for prevention and the handling of sexual commercial exploitation of children (Article 4).  
   d. MOWE acts as the responsible Minister for the implementation of the national action plan (Article 5).  
   e. A regional task force will also be established in every region in Indonesia to ensure the implementation of the national action plan (Article 6).  
   f. The national action plan contains detailed 5 year planning describing the role of every relevant institution mentioned in the action plan to combat sexual commercial exploitation of children that consist of (Chapters 3 and 4):  
   - Coordination and cooperation among States institutions;  
   - Prevention of sexual commercial exploitation of children;  
   - Protection of children against sexual commercial exploitation;  
   - Rehabilitation and reintegration of children victims to sexual commercial exploitation;  
   - Children participation; and  
   - Monitoring and evaluation. |
   b. To ensure the enhancement of protection efforts for victims of trafficking, especially women and children; the prevention and handling of trafficking practices; as well as to push for the adoption or refinement of anti trafficking legislations (Article 2).  
   c. The task force on trafficking is established to oversee, report, and coordinate the implementation of the national action plan as well as to engage in international coordination on measures for prevention and the handling of trafficking of women and children (Article 4).  
   d. The Ministry of Social Welfare acts as the responsible Minister for the implementation of the national action plan (Article 5).  
   e. A regional task force will also be established in every region in Indonesia to ensure the implementation of the national action plan (Article 6).  
   f. The national action plan contains detailed 5 year planning describing the role of every relevant institution mentioned in the action plan to combat trafficking in women and children that consist of (Chapter 3):  
   - The adoption of legal norms and action against traffickers;  
   - The implementation of rehabilitation and social reintegration for victims of trafficking;  
   - The implementation of preventive measures; and  
   - The establishment of cooperation and coordination in eradicating trafficking in women and children among relevant institutions at the national and regional levels as well as at the international level. |
<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
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</table>
| 9.  | Presidential Decree on KNPBPTA | a. Worst forms of child labour include (Article 1):  
· Any forms of slavery or slavery-like practice such as the sale and trafficking of children, debt bondage, servitude and forced labour, including child soldier;  
· The use, supply, or offer of children for prostitution, production of pornography, or to perform pornography acts;  
· The use, supply, or offer of children for criminal acts, especially for the production and trade of drugs; and  
· Works those are dangerous for children's health, safety, or moral.  
b. The KNPBPTA is chaired by the Minister of Manpower and Transmigration (Article 2).  
c. The Committee is responsible for:  
· Formulating the national action plan to eliminate the worst forms of child labour;  
· Conducting monitoring and evaluation on the implementation of the national action plan; and  
· Identifying and conveying the issues pertinent to the implementation of the national action plan to relevant authorities in order to find solutions in accordance with national legislations. |
| 10. | Presidential Regulation on PHCTIP Taskforce | a. The National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang, or PHCTIP Taskforce) is established to prevent and handle the crime of trafficking in persons at national and regional levels. Each Taskforce at differing level acts as a coordinating body for the prevention and handling on cases of trafficking in persons (Arts. 1 and 2).  
b. Apart from being a coordinating body, the Taskforce also has the duty to:  
· Advocate, train, and garner national and international cooperation on the prevention and handling of trafficking in persons;  
· Monitor the development on the implementation of protection of victims that include rehabilitation, repatriation, and social reintegration;  
· Monitor the development on the enforcement of the Law; and  
· Conduct reporting and evaluation. |
| 11. | Presidential Instruction on Indonesian Worker Policy Reform | In the Annex of this Presidential Instruction, the GoI listed some protective measures provided for Indonesian Migrant Workers against exploitation and violence:  
a. The GoI to provide legal aid service for Indonesian workers within and outside of Indonesia. Legal aid service abroad will be provided by Indonesian Embassy and Consular;  
b. The GoI to establish Citizen Service on Labour in 6 Countries (South Korea, Brunei, Singapore, Jordan, Syria, and Qatar).  
c. The GoI to provide reliable healthcare and psychological services for Indonesian migrant workers. |
| 12. | MOWE Regulation on Early Awareness against the Crime of Trafficking in Persons | a. This Regulation sets out a guideline (Annex) for relevant Government institutions, regional governments, NGOs, and the society to raise awareness in preventing the occurrence of trafficking in persons (Art. 3)  
b. The early awareness programs include (Art. 5):  
· Advocating early awareness policies in preventing trafficking in persons;  
· Campaigning, coordinating, and cooperating at municipality/regency level and Indonesia’s diplomatic representatives abroad; and  
· Empowering vulnerable groups prone to trafficking in persons. |
b. The Regulation distributes responsibilities on the handling of cases of trafficking in persons and sexual exploitation of children to specific Government institutions:  
· Ministry of National Education is responsible for prevention and child participation;  
· Ministry of Health is responsible for rehabilitation of health;  
· Ministry of Social Affairs is responsible for social rehabilitation, repatriation, and social reintegration;  
· Ministry of Law and Human Rights is responsible for the development of legal norms;  
· The National Police is responsible for enforcing relevant legislations; and  
· The Coordinating Ministry of Welfare is responsible for coordination and cooperation. |

Table 22 – List of Protective Measures Provided under General Legislations and Policies on Exploitation of Women and Children

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840 The PHCTIP Taskforce was established by a Presidential Regulation in 2008, see explanation in this Table above.
### c. Curative Measures

<table>
<thead>
<tr>
<th>No.</th>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>TIP Law</td>
<td>Victims of trafficking are entitled to receive restitution and rehabilitation (Articles 48 – 55)</td>
</tr>
<tr>
<td>2.</td>
<td>Anti-Pornography Law</td>
<td>The GoI and other institutions are responsible to provide recovery measures for children that have fallen victims to pornographic acts and shall be regulated further by a Government Regulation</td>
</tr>
</tbody>
</table>
| 3.  | Government Regulation on Integrated Service for TIP victims | a. In order for victims and witnesses to access their rights under this Government Regulations they can report directly to a PPT or to the police force and have their rights accommodated (Articles 14 – 15).  
   b. Protection houses or trauma centre shall be made available by all regional governments and civil society to provide protection to victims and witnesses of trafficking (Article 16).  
   c. In cases where victims and witnesses are located abroad, GoI diplomatic representation shall provide protection and accommodate their return. If necessary, a PPT can also be established abroad attached to Indonesia’s diplomatic office (Articles 17 – 18).  
   d. In cases where victims and witnesses are found in Indonesia but not in their place of origin, then the head of the region where they are found shall establish coordination with the head of the region of their place of origin and star the return process and accommodate them to the PPT in the place of origin (Article 19).  
   e. If the victims and witnesses are not Indonesian nationals, the Ministry of Foreign Affairs are responsible to coordinate with the victims’ or witnesses’ diplomatic representation to assist with their return process (Article 20).  
   f. To render assistance to victims and witnesses of trafficking, the PPT can coordinate with government or private-owned hospitals, safe houses or trauma centres to assist the recovery of victims and witnesses (Article 21). |
| 4.  | Government Regulation on Recovery of Children from Pornography | a. Parties responsible for providing and ensuring support and recovery for children who are victims or subjects of pornography are consisted of relevant government institutions (both at the central and local level), social institutions, educational institutions, religious institutions, family, and/or society (Article 2).  
   b. Facilitation, support, and recovery services for children involved in pornography acts are attainable, among others, at health or medical facilities, social centres, Islamic boarding schools, education centres (Article 8).  
   c. The Government Regulation provides a general outline of the responsibilities of each responsible party in the providing facilitation, support, and recovery for children who are victims or subjects of pornography (Chapters II – IV).  
   d. Recovery of children includes recovery of mental and physical recovery and social recovery (Chapter IV). |

Table 23 – List of Curative Measures Provided under General Legislations and Policies on Exploitation of Women and Children

### c. Assessment of State Policies

#### i. Trafficking in Persons

Trafficking of women and boys and sexual commercial exploitation of women and children are already considered as crimes and punishable under Indonesia’s Criminal Code. Unfortunately, the Criminal Code does not provide any definition of trafficking. It was only after the enactment of Law No. 21 of 2007 on the Eradication of Trafficking in Persons (TIP Law) that Indonesia had a definition of the act of trafficking in persons. Article 1(1) of TIP Law defines the act of trafficking in persons as:

Any acts to recruit, transport, harbour, deliver, transfer or receipt of a person by means of the threat or use of force, abduction, locking up, fraud, deception, abuse of power or abuse of position of vulnerability, debt bondage or to provide payment or benefit, in order to obtain the consent of a person that holds control over another person, both conducted internally and across the border, with the purpose of exploitation or to cause exploitation of a person.

The definition implies that Indonesia has jurisdiction of the crime of trafficking in persons that was done either internally or across borders. The definition of trafficking in persons provided under Article 1(1) of

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841 Criminal Code, art. 295 – 297.
TIP Law is similar to the definition of trafficking in persons provided in Article 3(a) of the 2000 Trafficking Protocol. Indonesia later on ratified UNTOC and its Trafficking Protocol in 2009, affirming its obligation to prevent and combat trafficking occurrences. However, the definition of trafficking in person under Article 2 of the TIP Law differs slightly from the definition given under Article 1(1). While Article 1(1) implies the application of jurisdiction for trafficking in persons in Indonesia and across border, Article 2 of TIP Law, which criminalises the act of trafficking in persons, does not include trafficking that is conducted “across border” in its elements of crime.

Articles 2 – 6 of TIP law set out the criminalisation of trafficking in persons in and outside of Indonesia, especially in women and children. The penalties for trafficking in persons consist of both fines (US$13,000 – US$65,500) and imprisonment (3 – 15 years). Furthermore, The TIP Law recognises a number of aggravating factors, which consequently entail heavier punishment for perpetrators, up to one-third of the maximum sentence and fine:

a) If the crime causes grave bodily or psychological harms, or transmitted disease that may cause threat to the victim’s life, pregnancy, or damage to the victim’s reproduction organ; or
b) If a government/state official is proven to have abused his/her power to cause the crime to take place; or
c) If the crime is committed by perpetrators as part of an organised group; or
d) If the crime is committed against children

The TIP Law gives special attention to the trafficking of children, by criminalising the act of adoption with the intention of exploiting the child and criminalising the transfer of a child abroad with any means that cause the exploitation of the child. Prosecution of the act of trafficking will still be carried out against perpetrators of the crime even if the victim has given his/her consent.

Trafficking is an extraditable offence under Indonesian laws. Indonesia has recognised trafficking in women and children as an extraditable offence since 1979 through the enactment of Law No. 1 of 1979 on Extradition. Article 2 of the Extradition Law implies that an extradition of an offender does not necessarily need to be done based on a treaty concluded between Indonesia and a requesting State. Even if an extradition is done based on a treaty, the Law does not imply that the treaty must be concluded strictly on a bilateral basis. Furthermore, Indonesia's practice is in conformity with the provision reflected in Article 16 of UNTOC, the parent Convention of the Trafficking Protocol, that State Parties should recognise offences under UNTOC as extraditable offences between them.

UNTOC requires a State Party to establish jurisdiction to try an offender that was found in its territory if it does not extradite the offender to another State Party requesting for an extradition, in line with the principle of aut dedere aut ajudicare (to extradite or to prosecute) or quasi-universal jurisdiction. This provision also applies to offenders who are nationals of the requested State. Additionally, one of the aims of the Convention in applying this principle is to avoid a State trying to protect an offender by not extraditing him/her to a requesting State over the crime of trafficking under the sole basis that the offender is a national of the requested State. Indonesia’s legislation has established trafficking as an extraditable offence and ensure that it will submit the offender to the competent authority in the requesting State without undue delay if it decides not to prosecute in its own courts. Since the Indonesian TIP Law applies generally to all nationals who committed the act in Indonesia and to perpetrators of trafficking in persons who committed the crimes outside of Indonesia but got apprehended in Indonesia, the legal framework allows Indonesia to extradite.

843 TIP Law, art. 2.
844 Ibid, art. 2 – 6.
845 Ibid, art. 7 – 8 and 16 – 17.
846 Ibid, art. 5 – 6.
848 Law No. 1 of 1979 on Extradition (Extradition Law), State Gazette 1979:2. 18 January 1979. Annex
849 Ibid, art. 2(2).
850 Ibid, art. 2(1).
851 UNTOC, art. 16(10).
852 Ibid, art. 15(3) and 16(10).
853 Ibid.
854 TIP Law, Implied in the art. 1(1) and 2(1).
855 Ibid, art. 2(1)
Indonesian laws guarantee protection to victims and witness of trafficking in persons including to provide legal representation, to be heard in Court, to provide medical assistance, to provide social assistance, to provide temporary residence, and to accommodate the return of victims to their place of origin. In relation to a child victim or witness, the State shall provide the assistance of a social worker or probation officer (assigned by the Ministry of Law and Human Rights) and it is compulsory that the child be accompanied by the social worker or probation officer at all stages of the legal process. The Law establishes a special unit at every police precinct to handle victims and witnesses of trafficking in persons and provides that their identity shall remain confidential.

TIP Law only ensures the rights of victims of trafficking in persons to receive restitution, including monetary restitution, and rehabilitation. Restitutions for victims are made by the offenders once the Court decides that they are guilty of trafficking in persons and includes the order for reparation in its judgment. Unfortunately, to the best knowledge of this Study, the Indonesian legal framework does not provide restitution for victims of trafficking in persons in the case where the Court does not prove the alleged perpetrator guilty of the crime. Also, to the knowledge of the Study, there is no provision under the Indonesian legislations dispensing with criminal liability for victims of trafficking in persons if they were discovered or arrested by the authorities under compromising conditions that constitute an offense under Indonesian law. For instance if a victim of trafficking was exploited as a nude dancer and she was caught by the police violating Indonesia’s Anti-Pornography Law, she will still be investigated and prosecuted based on Indonesia’s Anti-Pornography Law.

ii. Exploitation of Women and Children

TIP Law defines exploitation as:

An act, with or without the consent of the victim, that includes, but not limited to, prostitution; forced labour or service; slavery or slavery-like practice; subjugation; extortion; physical exploitation, sexual exploitation, or exploitation of reproduction organ; or unlawfully removing or transplanting organ or tissue; or exploiting a person’s skill by another person in order to acquire economic gain both materially and immaterially.

Sexual exploitation is further defined as any form of exploitation of sexual organ or other organs of the victim for the purpose of gaining profit, including, but not limited to, prostitution and sexual abuse. The act of exploiting or causing a person, especially woman and child, to be exploited is punishable under the law. Sexual commercial exploitation of women and children is also criminalised under the Indonesian Criminal Code and Child Protection Law.

Exploitation of Children

Indonesian legislations provide protection for children against specific forms of exploitation by criminalising any person that involves children in:

1. The use, production, and trade of drugs. The anti-narcotic law even goes as far as stipulating death penalty for a defendant that has been proven to involve children in his/her drug operation.
2. Sexual exploitation of children, especially in engaging children to perform in the production of child pornography and involvement of children in pornography or other sexual-related acts.
3. The distribution of pornographic material that involve children through all kinds of media.

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856 See the list of protective and curative measures described in Tables 9, 10, 22, and 23 above.
857 Law on Juvenile Court System, art. 23. For a clearer description, see table 12 above.
858 TIP Law, art. 44 – 45.
859 Ibid, art. 48 – 50.
860 Ibid, art. 48(3).
861 An example can be found in Komnas Perempuan, 2010 Note., 21 – 22; see also the elaboration of the case in section B.1.a. above.
862 Ibid, art. 1(7).
863 TIP Law, art. 1(8).
864 Ibid, art. 2
865 Criminal Code, art. 295 – 297; and Child Protection Law, art. 78, 81, 82, and 88; See table 21 above.
866 Anti Narcotic Law, art. 133 – 134.
867 Ibid, art. 133.
868 Anti-Pornography Law, art. 11 and 37.
including the Internet. 869

4. The unlawful recruitment and use of children for military purposes or to involve children in any way in a situation of armed conflict or social unrest or event that involves violence or misuse of political activities. 870 Unfortunately, Indonesian legislation does not give a clear definition of child soldier.

5. Any worst forms of child labour, which, among others, by nature or the circumstances in which the works are carried out, will likely harm the health, safety, or moral of children as listed in Article 74 of the Manpower Law. 871

6. The unlawful harvesting of child’s organ and/or tissue. 872

In section B.1.b. above, it has been established that early marriage constitutes one of the root causes of exploitation and trafficking of girls and eventually women. However, Indonesia’s legal framework is not clear in prohibiting early marriage, as indicated in the previous section. The Marital Law sets a low minimum age for a girl to get married, 16 years old. 873 Additionally, there is also conflicting provisions regarding the age of consent between the provisions provided under the Criminal Code (15 years old) and the Child Protection Law (18 years old). If it depends on the Criminal Code and Marital Law, early marriage of children between the age of 15 and 16 is still possible. 874

Indonesia ensures every child’s right to be registered and have his/her birth certificate issued soon after his/her birth. 875 The government is responsible for the achievement of this right. 876 In 2006, Indonesia’s legislation ensured that, in principle, every child can get his/her birth certificate for free. 877 Both the Law on Child Protection and on Citizenship oblige regional governments to take an active role in providing birth certificates and encouraging parents to have their babies registered. 878 According to the 2005 Regulation of the Ministry of Home Affairs, a free birth certificate is given to children registered within 60 days since the day of birth. 879 In 2012, there are at least 283 regencies/municipalities in Indonesia that have issued regional regulations providing free birth certificates. 880

Exploitation of Women

In relation to women working as sexual commercial workers, Indonesian legislation does not explicitly prohibit prostitution; however, legislations prohibit any person to facilitate or cause obscene acts or obtain economical gain from obscene acts. 881 The national legislation does not offer any definition on prostitution nor does it expressly criminalise prostitution. However, at the local level, some municipalities have enacted regional regulation on the banning of prostitution. 882 Even though such regional regulations do not classify prostitution as a crime, alleged women sexual commercial workers are subject to police raids and potential arrest and even detention. 883 Furthermore, in Indonesia, to avoid raids, usually female sexual commercial workers operate in registered brothel complexes established based on regional regulations. However, national legislation stays silent on whether such establishments are allowed. 884

Regarding the protection of women and children domestic workers, apart from protection against domestic violence, 885 the Indonesian legal system does not offer protection to the rights of domestic workers

869 ITE Law, art. 27 and 52.
870 Child Protection Law, art. 87.
871 For the list of worst forms of child labour, refer to table 21 above. Additionally, the national Action Plan to Combat Worst Forms of Child Labour and Presidential Decree on national Committee for the Elimination of Worst Forms of Child Labour (table 22 above) also contain lists of worst forms of child labour but lacking penalties.
872 Child Protection Law, art. 85(b).
873 Marital Law, art. 7.
874 See the elaboration in section B.1.b. above.
875 Child Protection Law, art. 28.
876 Ibid.
877 Law No. 27 of 2006 on Citizenship, art. 27.
878 Ibid; Child Protection Law, art. 28.
879 Regulation of the Minister of Home Affairs No. 28 of 2005 concerning the Guidelines on the Implementation of Regional Population and Civil Registration., art. 15(5).
880 GOL, 2012 RIPR-CEDAW, para. 63.
881 Criminal Code. Arts. 296 and 506.
882 For further discussion on such regional regulations, see section B.1.a.
883 For example, see Tangerang Regional Regulation No. 8 of 2005 on Prohibition of Prostitution, 23 November 2005, art. 6.
884 UNDP, Legal Environments, Human Rights and HIV Responses among Sex Workers in Asia and the Pacific, Asia Pacific Regional Centre, August 2011, 11 – 12
885 KDRT Law. Art. 2(1c).
and the absence of such protection has made domestic workers vulnerable to exploitation. Many reports urge Indonesia to adopt and implement a law on the protection of domestic workers, however until now the GoI and the Parliament have not shown any indication that they will enact the law soon.886

Indonesia’s Manpower Law guarantees equal rights and conditions of employment to all workers and mandates institutions to apply the non-discrimination principle.887 Indonesia also provides legal protection to ensure labour safety by enacting Law No. 1 of 1970 on Labour Safety requiring the GoI and employers to ensure a safe working environment for workers.888 Especially for women and children, the Law provides further affirmative action and protection, such as maternity leave, menstruation leave, social security, and separation of work place.889 However, as indicated in GoI’s report to CEDAW Committee, the abovementioned guarantees and protections do not extend to workers in the informal sector such as sexual commercial workers.890 Meanwhile, in relation to remuneration of employees, the Law only stipulates that remuneration of workers should be in compliance with relevant legislation and shall not be paid below the established minimum remuneration.891 there is no express provision stating equal remuneration for men and women. The Law leaves it to the agreement achieved between the employer and worker in the work agreement.892

3. Implementation, Monitoring and Enforcement

In 2009, the Coordinating Ministry of Welfare adopted a Ministerial Regulation on the National Action Plan on the Eradication of the Crime of Trafficking in Persons and Child Sexual Exploitation for the period of 2009 – 2014.893 According to the 2012 Indonesian UPR, the National Action Plan consists of comprehensive programs in the prevention, protection, and assistance to victims, including victims of child prostitution.894 Moreover, in the report of the Working Group on UPR, in accordance with the National Action Plan the GoI states that it has established 23 task forces at the provincial level and district-level task forces in 76 regencies/municipalities.895

a. Implementing and Monitoring Mechanisms

The implementation and monitoring of protection of women and children against exploitation in Indonesia engage the participation of various government bodies/agencies. Most State institutions or agencies involved in the implementing and monitoring mechanisms on the protection of women and children against exploitation are basically the same as the institutions or agencies involved in the protection of women and children against violence as discussed in Section B.3.a above.

Particular to the efforts to eradicate trafficking in persons, the GoI has established a National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang or PHCTIP Taskforce) in 2008 that acts as a coordinating body for the efforts to prevent and handle cases of trafficking in persons.896 The Coordinating State Minister for Welfare is appointed by the President to act as the Chairman of the PHCTIP Taskforce.897 The PHCTIP taskforce is also authorised to conduct evaluation on the implementation of legislations relevant to the eradication of trafficking in persons.898 PHCTIP taskforce is established at the central (in the Capital City of Indonesia), provincial, and city/regency levels.899 The work of PHCTIP has been made accessible since 2008 after MOWE launched the taskforce’s website at www.gugustugastrafficking.org.900

886 HRW, Workers in the Shadows, 11; CEDAW Committee, 2007 CC-CEDAW, para. 23; and CEACR, 2010 CEACR Observation on Worst Form of Child Labour.

887 Law on Manpower, art. 5 – 6.


889 Ibid, Chapter X, Sections 2 and 3.

890 GoI, 2011 IPR-CEDAW, para. 98.

891 Law on Labour Safety, art. 88 – 90.

892 Ibid, art. 91.

893 See Table 22 above.

894 GoI, 2012 Indonesian UPR, para. 119.

895 UN HRC, 2012 RWG-UPR, para. 74.

896 GoI, 2011 IPR-CEDAW, para. 46; GoI, 2012 RIPR-CEDAW, para. 47; see also Presidential Decree No. 69 of 2008 on the National Taskforce for the Prevention and Handling of the Crime of Trafficking in Persons (Presidential Regulation on PHCTIP Taskforce), 6 November 2008, art. 1.

897 Presidential Regulation on PHCTIP Taskforce, art. 6.

898 GoI, 2012 RIPR-CEDAW, para. 47.

899 GoI, 2011 IPR-CEDAW, para. 46.

900 Ibid.
The PHCTIP Taskforce, in carrying out its mandate, has developed partnerships with various parties including international organisations and NGOs as well as various Indonesian National Human Rights Institutions. The Taskforce shall establish guidelines to be followed by regional and municipality/regency governments in developing local policies and regulations pertinent to the handling of cases of trafficking in persons. The GoI is at present developing a guideline on capacity development for the taskforce, which will be completed in 2012.

Apart from MOWE and the Coordinating State Minister for Welfare, the Ministry of Social Affairs also plays an important role in the monitoring of the implementation of legislations against exploitation of women and children. Within its mandate the Ministry of Social Affairs is responsible to follow up cases of trafficking in persons and to carry out capacity building for law enforcement officers to improve their response and capability in handling trafficking cases.

NHRIs play a significant role in implementing and monitoring legislation relating to the protection of women and children against exploitation. As in the case of protection of women and children against violence, Komnas HAM, Komnas Perempuan, KPAI are in general tasked to monitor the implementation of rights of women and children guaranteed under Indonesian legislations, including protection against exploitation. On a more specific nature, KNPBPTA was established in 2001 with a specific mandate, among others, to conduct monitoring and evaluation on the implementation of the National Action Plan to Combat the Worst Forms of Child Labour adopted in 2002.

GoI Report to CEDAW Committee also indicates the role of regional governments in recording and reporting occurrences of trafficking in persons in their respective province or city or regency as mandated under relevant legislation on the eradication of the crime of trafficking in persons. In 2012, seven provinces in Indonesia concluded several MoUs providing legal bases for comprehensive cooperation in eradicating trafficking in persons and providing assistance to victims. Reports indicate that under the integrated service unit scheme, centres such as P2TP2A, WCC, UPPA, and PPT are also responsible in recording and monitoring occurrences of trafficking in persons.

b. Complaints Process

The 2012 Indonesian UPR stated that the Ministry of Social Affairs has developed a public complaint mechanism, however it did not give an explanation on the process of this public complaint mechanism nor did it explain the relevant authorities tasked to receive public complaints. The GoI considers the National Police, according to the 2011 IPR-CEDAW, as the sole body in Indonesia with the authority to handle perpetrators of trafficking in persons. Similar to the complaint mechanism provided for women and children victims of violence, women and children victims of exploitation can bring their complaint to the UPPA established by the Indonesian Chief of Police in every precinct. After the enactment of TIP Law in 2007, the Flower Operation was established specifically to handle the investigation of cases of trafficking in persons. Additionally, the Indonesian Attorney General Office has established a special taskforce specifically dedicated to investigation and prosecution of perpetrators of trafficking in persons.

Women and children victims of trafficking as well as witnesses, can channel their complaint or report through an Integrated Service Centre (PPT) that deals specifically in rendering services to victims and witnesses of trafficking in persons. The PPT is also equipped to provide victims and witnesses with legal aid to help them get through the legal process. Witnesses

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902 GoI, 2012 RIPR-CEDAW, para. 47.
903 Ibid, para. 48.
904 Ibid, para. 50.
905 Ibid, para. 46.
906 GoI, 2007 IPR-CRC, para. 8.
907 Presidential Decree on KNPBPTA, art. 4.
908 GoI, 2011 IPR-CEDAW, para. 46.
909 GoI, 2012 RIPR-CEDAW, para. 49.
911 GoI, 2012 Indonesian UPR, para. 123.
912 GoI, IPR-CEDAW, para. 52.
913 For the description on complaint mechanism for victims of violence, refer to Section B.3.b. above.
914 See table 22 in Section C.2.b. above concerning Government Regulation on the Integrated Service Centre (PPT) above.
915 Ibid.
and victims of trafficking and exploitation can also have their complaints and reports conveyed through other integrated service units such as P2TP2A and WCC.916

Similar to the complaint process in cases of children victims of violence, KPAI and KNPBPTA are the two national commissions that can receive and process complaints relating to exploitation of children.917 KPAI and KNPBPTA are even, to some extent, involved in the investigations of cases of exploitation of children.918

c. Protection and Rehabilitation

In the PHCTIP Taskforce structure, the Ministry of Social Affairs and Ministry of Health are the responsible State institutions for the recovery of victims of trafficking in persons.919 In relation to repatriation of victims, the responsibility lies on the collaboration between the taskforce and provincial and regency/municipality governments.920 Apart from this, the PHCTIP Taskforce has also established a number of Repatriation Taskforce units operating in 12 key regions consisting of: Medan, Tanjung Pinang, Batam, Tanjung Balai Karimun, Dumai, Entikong, Nunukan, Pare Pare, Tanjung Priok, Tanjung Emas, Tanjung Perak, and Mataram.921 These units aim to assist with the repatriation of victims from Malaysia and to coordinate integrated work with areas of origin of problematic workers and Indonesian representatives in Malaysia.922 In 2010, Protection Houses were established in cities such as Baturaden, Makassar, Bandung, Mataram, Tanjung Pinang, Lampung, Malang, Pontianak, and Semarang for victims of trafficking in persons.923

Even though it is not mentioned in either of the reports, under the Manpower Law, the Ministry of Labour and Transmigration is responsible to render protection to children working in informal sectors and ensure the implementation of minimum age of employment (age 15 years).924 Women and children victims or witnesses of trafficking in persons as well as exploitation are entitled to receive protection and rehabilitation provided by LPSK under the Witness and Victim Protection Law in the course of a criminal proceeding against perpetrators.925 Meanwhile, pertinent to the integrated service unit scheme, service centres such as P2TP2A, WCC, UPPA, and PPT at all levels (provincial and regency/municipality) offer protection and rehabilitation that extend to victims and witnesses of trafficking cases.926

d. Prevention Strategy

Prevention efforts against trafficking in persons under the structure of PHCTIP Taskforce are entrusted to the Ministry of National Education as the leading institution.927 The Ministry is tasked to provide guidance and support for the establishment of taskforces and sub-taskforces to prevent trafficking in persons in municipalities/regencies allegedly serving as source areas for trafficking in persons.928 The Ministry establishes gender mainstreaming working groups in the education sector at every level of governance and ensures the accessibility of education by women, especially those coming from marginal communities.929 In its 2012 Report, the GoI stated that the Ministry of National Education has established 83 PHCTIP Taskforces in 16 provinces whose mandates include victims’ empowerment through education and special trainings.930

The GoI endeavours to raise stakeholders’ and public’s awareness on the crime of trafficking in persons by conducting prevention campaigns through mass media, advertising, facilitation of prevention programs in regencies/municipalities, development of prevention programs in source regions through women empowerment, integration of trafficking in persons into school curricula as well as through various community

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916 MOWE Regulation on SPM. Annex.
917 See Section B.3.b. above.
918 Ibid.
919 GoI, 2011 IPR-CEDAW, para. 46.
920 Ibid.
921 Ibid, para. 111.
922 Ibid.
923 GoI, 2012 Indonesian UPR, para. 120.
924 Manpower Law, art. 69 – 71 and 75.
925 See table 9 above on the description of protection measures provided in the Law on Witness and Victim Protection.
927 Gol, 2011 IPR-CEDAW, para. 46; see also Gol, 2008 Indonesian UPR, para. 78.
928 Gol, 2011 IPR-CEDAW, para. 93.
929 Ibid.
930 Gol, 2012 Indonesian UPR, para. 118.
programs in areas prone to trafficking.\textsuperscript{931} The Ministry of Social Affairs is the responsible institution for these campaigns; it has also established Family Welfare Consultation Institutions in 485 regencies/municipalities in Indonesia.\textsuperscript{932} Furthermore, the GoI, through MOWE, has developed a pilot project called Desa Prima (Perempuan Indonesia Maju Mandiri or Progressive Indonesian Women Village Model) and has been implemented in 33 provinces, 104 regencies, 133 municipalities, and 184 villages in Indonesia.\textsuperscript{933}

On the issue of the lack of birth certificate as an aggravating factor for exploitation and trafficking in persons, the 2011 GoI report to CEDAW Committee commends the positive progress of regencies’ and municipalities’ practice of providing birth certificates free of charge for the poor.\textsuperscript{934} Moreover, in 2011, MOWE adopted a Ministerial Decision on the Establishment of the Coordinating Forum for the Acceleration of the Issuance of Birth Certificates\textsuperscript{935} regulating better coordination among central authorities and NGOs to monitor and ensure the acceleration of the issuance of birth certificates.

4. Role of Non-State Actors

Most Non State Actors involved in rendering assistance to victims, participating in prevention programs, and taking part in monitoring and cooperation in eradicating exploitation of women and children have already been discussed in Chapter B.4 on protection of women and children against violence. This Section will only identify non-state actors and their initiatives that specifically relate to the protection of women and children against exploitation.

a. Assistance to Victims

The GoI notices that Labour Unions have re-emerged as one of the players in advocating workers rights including women workers.\textsuperscript{936} In 1997, the Consortium of Defenders of Indonesian Migrant Workers (KOPBUMI), a coalition of Indonesian NGOs, was established. KOPBUMI aims at encouraging the adoption of legislation guaranteeing the protection of Indonesian migrant workers and their families.\textsuperscript{937} Indonesian migrant workers organisations have also emerged in several countries of destination, such as the Union of Indonesian Migrant Workers (Saudi Arabia) and the Association of Indonesian Migrant Workers (Hong Kong), lending support for Indonesian migrant workers in those countries.\textsuperscript{938}

IOM assisted the GoI in establishing four integrated service centres especially for trafficking victims in Jakarta, Surabaya, Makassar (South Sulawesi), and Pontianak (West Kalimantan).\textsuperscript{939} These shelters provide temporary shelter as well as medical, psychological, social, legal, and recreational services.\textsuperscript{940} Women and children victims of trafficking and exploitation can also access services provided by non-State actors mentioned in the previous section.\textsuperscript{941}

b. Prevention Programs

ILO has been supporting the GoI through various programs to achieve the GoI’s goal to eliminate the worst forms of child labour by 2016.\textsuperscript{942} Several of the programs that it supports pertaining to prevention of exploitation of children involve support for the formulation of the Law on Domestic Workers that gives protection to child domestic workers and prohibits the hiring of children under the age of 15 as domestic workers.\textsuperscript{943} ILO also provides assistance to the GoI to strengthen the program for the eradication of trafficking in children, child exploitation and sexual labour\textsuperscript{944} and the program for the abolishment of the use of child workers on off-shore fish traps in North Sumatera, child workers in shoe factories and child workers in coal mines in Bangka and Belitung.\textsuperscript{945}

\textsuperscript{931} GoI, 2011 IPR-CEDAW, para. 93; see also GoI, 2012 Indonesian UPR, para. 123.

\textsuperscript{932} GoI, 2012 Indonesian UPR, para. 123.

\textsuperscript{933} Ibid.

\textsuperscript{934} GoI, 2011 IPR-CEDAW, para. 134.

\textsuperscript{935} MOWE Decision No. 66 of 2011 on the Establishment of the Coordinating Forum for the Acceleration of the Issuance of Birth Certificates, 26 October 2011.

\textsuperscript{936} GoI, 2011 IPR-CEDAW, para. 111.

\textsuperscript{937} Ibid.

\textsuperscript{938} Ibid.


\textsuperscript{940} Ibid., para. 28.

\textsuperscript{941} See Section B.4.a. above.

\textsuperscript{942} GoI, 2008 Indonesian UPR, para. 20 – 21.

\textsuperscript{943} Ibid, para. 21a.

\textsuperscript{944} Ibid, para. 21c.

\textsuperscript{945} Ibid, para. 21e.
NGOs and UN agencies such as UNICEF are engaged in conducting trainings for teachers, focusing on the prevention of child abuse and exploitation in a number of schools. ECPAT International in 2009 launched its “Stop Sex Trafficking of Children and Young People” campaign garnering commitments from various parties to contribute to social change to secure a safe world for children.

UNICEF and its local partners support the GoI initiative to enhance the birth registration system, especially local governments in 18 districts in implementing free-of-charge birth registration. From a legal framework development perspective, UNICEF supports the development and implementation of legislation, policies, and programs, such as the Child Protection Law, the National Action Plan on Trafficking, and others. Apart from the above supports, UNICEF also works closely with the GoI and local partners in addressing issues of exploitation of children through trafficking and sexual exploitation. UNICEF support in preventing trafficking sexual exploitation of children consists of: conducting advocacy on the implementation of TIP Law and the ratification of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography; capacity building; a public campaign to raise awareness against trafficking and sexual exploitation of children.

Donor institutions such as the Australian Agency for International Development (AusAID) and the United States Agency for International Development (USAID) are rendering assistance in preventing trafficking in persons in Southeast Asian region including Indonesia. AusAID involvement, for example, is realised in the establishment of Asia Regional Trafficking in Persons (ARTIP) Project that centers on the prevention of trafficking in persons by focusing on the criminal justice sector in Southeast Asian Countries including Indonesia. In terms of elimination of child labour, ILO’s International Program on the Elimination of Child Labour in Indonesia focuses on the elimination of child domestic labour, street children, child labour in plantations, and trafficking in children through provision of education services and supporting the GoI financially to help children to stay in or go back to school and by building the program capacity to combat child labour.

Local NGOs, such as Solidaritas Perempuan, are well known for their activism in anti-trafficking issues. At the community level, Solidaritas Perempuan has been very active in conducting public campaigns on the issue of trafficking in persons. Most importantly, Solidaritas Perempuan is also very active in providing legal training to the public, and especially to women, to produce community paralegals.

In the recent years, the private sector has also become aware of the prevalence of sexual exploitation of children. In the tourism industry, for example, the Carlson Hotels and Accor Hotels adopted the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (the Code). Accor has implemented the Code across its 40 hotels in Indonesia. The Code requires those who have adopted it to establish ethical policies on commercial sexual exploitation of children, training their personnel, requiring suppliers to repudiate commercial sexual exploitation of children, provide information for travellers, and annual reporting on implementation. Microsoft also participated in the implementation of the Code.

947 Ibid, 17.
in the prevention of child pornography and sexual exploitation of children online by co-developing the Child Exploitation Tracking System.\(^\text{961}\) Indonesia is the second country after Canada to utilise this system.\(^\text{962}\)

**c. Monitoring and Cooperation**

In May 2007, the Inter-Parliamentarian Union (IPU) and UNICEF launched a handbook entitled “Eliminating Violence against Children”.\(^\text{963}\) The Handbook is specifically designed for Parliamentarians promoting active and effective follow-up to the study on eliminating violence against children, identifying legal reforms to protect children, and suggesting possible parliamentary initiatives relating to the elimination of violence against children.\(^\text{964}\) In 2009, ICMC and USAID in collaboration with MOWE developed and published a handbook that provides guidelines for the PHCTIP taskforce and other relevant government institutions or agencies on understanding the crime of trafficking in persons; protection of victim and witness; and documentation and reporting.\(^\text{965}\)

The GoI and the IOM have been working in close cooperation to maintain a detailed register of identified and resolved cases of trafficking in persons to enable deeper understanding of the trafficking in persons phenomenon in Indonesia.\(^\text{966}\) The aim of this collaboration is to better the assistance that can be rendered to the victims of trafficking to recover and to have access to justice.\(^\text{967}\) Apart from that, IOM is supporting MOWE to follow up trafficking cases and carry out capacity building for the law enforcers\(^\text{968}\) as well as assisting the PHCTIP Taskforce in establishing and maintaining a comprehensive database on victims of trafficking in persons.\(^\text{969}\) IOM also renders its assistance in the handling of cases of trafficking in persons by developing training programmes for law enforcers (police, prosecutors, and judges) aiming at strengthening their capacity in protecting victims of trafficking, to this end IOM published Guidelines for Law Enforcement and the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases.\(^\text{970}\)

UNICEF, ICMC, ACILS, and ECPAT Indonesia (National Coalition for the Elimination of Commercial Sexual Exploitation of Children) collaborated in developing databases for recording and reporting victims of child trafficking and commercial sexual exploitation of children.\(^\text{971}\) The GoI indicates that these non-state actors work closely with Bappenas, MOWE, and local governments.\(^\text{972}\) In the case of monitoring and evaluating Indonesia's performance in keeping up with its obligations under ILO Conventions, ILO's CEACR plays an important role in receiving Indonesia's reports, observing the implementation of ILO Conventions relevant to prohibition of exploitation of women and children, and imparting recommendations urging the GoI to make improvements to better protect women and children from exploitation.\(^\text{973}\)

In 2005, Solidaritas Perempuan came up with a schema that provided specific overviews of the elements of trafficking in persons that were experienced in each stage of migration process, especially migration for the purposes of work, in accordance with stages set out by Indonesia's formal labour export program.\(^\text{974}\) Solidaritas also conducts monitoring on the implementation of Indonesia's TIP Law and engages in active dialogue on their findings with the Ministry of Labour and Transmigration and the PHCTIP Taskforce.\(^\text{975}\)


\(^{962}\) Ibid.


\(^{964}\) Ibid.


\(^{966}\) Gol,2011 IPR CEDAW, para. 42.

\(^{967}\) Ibid.

\(^{968}\) Ibid, para. 45.

\(^{969}\) Ibid. para. 38 – 42.


\(^{972}\) Ibid, para. 14 – 16.

\(^{973}\) The CEACR is tasked to examine the growing number of Government’s reports on ILO Conventions that they have ratified. For further description on CEACR please refer to <www.ilo.org> or for a list of CEACR recommendations to Indonesia please refer to <www.ilo.org/ilolex>, accessed on 14 April 2012.

\(^{974}\) Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism, 10.

\(^{975}\) Solidaritas Perempuan, Program on Migration and Trafficking in Persons/HIV/AIDS.
5 Progress Indicators and Challenges

a. Progress Indicators

i. Trafficking in Women and Children

At the central level, 14 government institutions have included Programs and Activities for Prevention and Handling of Criminal Act of Trafficking in Persons in their Strategic Plan. In addition, Indonesia has also adopted two National Action Plans relating to eradication of trafficking in persons and exploitation of children. Furthermore, with the support of various organisations, the GoI has developed a database for recording and reporting victims of child trafficking.

In order to realise the instruction contained in Article 45 of TIP Law, by 2011, the GoI had established 305 UPPA in police precincts countrywide to handle and render protection to women and children victims of trafficking. Special instructions relating to investigations involving children have been disseminated among various police stations in each district. Furthermore, by 2008, GoI had established 36 Integrated Service Centres or PPT to render assistance to women and children victims of trafficking in notorious pockets of trafficking in Indonesia. It has also established a hotline specifically dedicated to receive reports that will be dealt directly by the Criminal Investigation Unit (Bareskrim or Badan Reserse Kriminal Polisi). Positive developments in the implementation of TIP Law is also shown through the establishment of the Flower Operation specifically designed to investigate and deal with cases of trafficking in children and women.

To address poverty as one of the main root causes of trafficking in women and children, the GoI strives to improve economic conditions of women, especially those who live in rural areas. To this end, the GoI develops, among others, the National Community Empowerment Programme (PNPM) in trafficking-prone regions. For example, in Aceh, PNPM funds are used to establish P2TP2A in the region to give protection to women and children against violence and exploitation. The PNPM is under the responsibility of the Coordinating State Ministry of Welfare and planned to continue at least until 2015.

The GoI claims that the adoption of regional regulations on eradication of the crime of trafficking in persons has shown positive progress through the decrease in the number of trafficking of persons in some provinces. As seen above, however, uncertainty in regard to trafficking statistics make generalizations about trends difficult to verify. Until 2011, the GoI states that several regions in Indonesia, such as North Sumatera, North Sulawesi, East java, and West Kalimantan, have adopted local regulations on anti-trafficking, moreover, the report also recorded that there are at least 15 provinces and 242 regencies and cities that have moved up to maintain recording and reporting of occurrences of trafficking in persons. Pertaining to the issue of providing easy access for birth certificates, regional governments have taken progressive measures to cut down the bureaucracy, which resulted in reducing the cost for citizens to get birth certificates for their children and identity cards.

The Ministry of Education, responsible for the efforts to prevent trafficking in women and children from occurring, established gender-mainstreaming working groups in the education sector both at central and regional levels accessible to women who are handicapped by poverty, geographic, social, and conflict/disaster impediments. At the moment, the Ministry of Education is in the process of formulating guidelines on the prevention of human trafficking, which will contain provisions for coordination at the central and regional levels, prevention campaigns with

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976 GoI, 2012 RIPR-CEDAW, para. 50.
979 GoI, 2011 IPR-CEDAW, para. 49.
980 GoI, 2008 Indonesian UPR, para. 54 – 55.
981 Ibid, para. 55.
982 TIP Law, art. 46.
983 GoI, 2008 Indonesian UPR, para. 55.
984 Ibid, para. 52; see also UNICEF, 2008 UNICEF-UPR, 6.
985 GoI, 2011 IPR-CEDAW, para. 51; see also UNICEF, 2008 UNICEF-UPR, 1.
986 Ibid.
987 Ibid, para. 172.
988 Ibid, para. 6.
989 Ibid, para. 19.
990 Ibid, para. 48.
991 Ibid, para. 70.
992 Ibid, para. 93.
the support of mass media, facilitation and prevention programmes administered by municipalities/regencies, women empowerment programs in source areas, and improvement of women’s education and life skills. A pilot program on the prevention of trafficking in women and children is underway in Wonogiri regency aiming at providing services and empowerment for migrant workers and their families as well as former migrant workers.

Since 1999, the GoI has been engaging in international, regional, and bilateral cooperation to eradicate and prevent trafficking in women and children. Most notable is the conclusion of several bilateral treaties on Mutual Assistance in Criminal Matters with Australia and the signing and ratification of the Treaty on Mutual Legal Assistance in Criminal Matters by ASEAN countries, including Indonesia. Indonesia also engages in the overseeing of cross-border migration with its neighbouring countries, Malaysia and Philippines, through the establishment of the General Border Committee.

ii. Protection of Indonesian Migrant Workers Abroad against Exploitation

The enactment of Presidential Instruction No. 2 of 2006 and the establishment of the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) marked the reform process in Indonesia's labour sector. BNP2TKI has developed mechanisms for the effective placement and improved protection of migrant workers including the application of wage standards, revocation of the license of problematic PPTKIS, and others. BNP2TKI endeavours to implement its supervision function over PPTKIS and to promptly close down PPTKIS that are proven to violate the Law in relation to the recruitment and placement of migrant workers or that are not capable in providing sufficient trainings for Indonesian workers. Until 2008, the GoI listed approximately 260 PPTKIS countrywide. PPTKIS are mostly located in Jakarta, Bogor, Tangerang, and Bekasi (all in the vicinity of the Capital).

Meanwhile, relevant to the implementation of the Presidential Instruction on Indonesian Worker Policy Reform for the protection of Indonesian workers abroad, the GoI, through the Ministry of Foreign Affairs, has established citizens’ Advisory Services attached to various Indonesian diplomatic and consular missions abroad, especially in the countries of destination, to render assistance to Indonesian migrant workers especially women abroad that experience violence and exploitation. The reports state that there are at least six Citizens’ Advisory Services established in Brunei, South Korea, Jordan, Qatar, Syria, United Arab Emirates, and Singapore. The GoI is planning to make such services available in at least six other countries. As a continuing effort, the Ministry of Foreign Affairs also provides protection through its diplomats, starting from the most junior level, by applying the rules of thumb: legal, humanitarian, and political approaches. As an indication of the Ministry’s active role in the protection of Indonesians abroad against exploitation, the Indonesian Embassy in Singapore is working closely with local NGOs to identify and prevent cases of trafficking in persons.

Regarding repatriation, Indonesia has established the Coordinating Team for the Repatriation of Problematic Indonesian Migrant Workers and Their Families (TKPTKIB). According to GoI, the Team has worked effectively in dealing with hundreds of thousands of regular and incidental deportations of Indonesian migrant workers from Malaysia.

iii. Protection of Women and Children against Exploitation in General

In 2007, the GoI developed a database for recording and reporting victims of child sexual exploitation. The

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993 Ibid.
994 Ibid, para. 121.
995 GoI, 2007 IPR-CRC, para. 190.
996 Ibid.
997 Ibid, para. 191.
998 GoI, 2008 Indonesian UPR, para. 53 and 55
1000 GoI, 2008 Indonesian UPR, para. 53.
development of such database is supported by various NGOs and organisations. The Government is also in the process of developing a monitoring and evaluation mechanism for the process of adoption to prevent the occurrences of trafficking in children and illegal child adoptions.

Specifically in the case of early marriage and its relation to violence against and exploitation of children, in 2008, the GoI launched a massive campaign to stop early marriages in West Nusa Tenggara and North Coast of Java. Another initiative to prevent exploitation was realised through the production of a video diary documenting cases of sexual violence against children in Indramayu (West Java). The production of the documentary was done with the participation of children victims of sexual violence; the video is going to be used as an advocacy tool to prevent exploitation.

In the same year, the GoI developed and promoted policies and programs for eliminating the worst forms of work for children and established Kutai Kertanegara Regency (East Kalimantan) as a pilot region for “Child Labour Free Zone”. The program includes, among others, the elimination of child domestic workers and the elimination of child trafficking for labour and sexual exploitation.

Regarding protection of domestic workers, MOEWE, Ministry of Labour and Transmigration, and the Coordinating State Ministry for Welfare took the initiative to prepare an academic text for a Draft Law to protect domestic workers. The Draft Law was finally included in Indonesia’s 2010 Prolegnas to be discussed by the Parliament.

b. Challenges

i. Trafficking in Women and Children

The 2008 Indonesian UPR notes that one of the challenges that the GoI faces in eradicating trafficking in women and children is the lack of capacity of local governments to draft local laws on the prevention of trafficking in women and children. The 2011 IPR CEDAW later on notes that “lack of awareness among the public and law enforcement apparatus is the most basic challenge in prosecuting perpetrators of trafficking in persons.” The same concern was also voiced by the GoI in 2007, putting more emphasis on children, and stating that the government apparatus and the public are lacking an understanding on the danger and impact of trafficking in persons to children.

Komnas Perempuan’s 2010 Note gives the impression that the lack of capability of law enforcers to recognise victims and implement TIP Law will result in the re-victimisation of victims of trafficking in persons, especially women and children, by the State. This concern was best illustrated by a case discussed above, involving female dancers in West Java who were convicted under Indonesia’s Anti-Pornography Law but later on discovered to actually be victims of trafficking. In the opinion of the Study, the illustration put forward by Komnas Perempuan also highlights another challenge to the protection of women and children against trafficking and exploitation: the contradictory and overlapping laws that leave women and children in vulnerable conditions and make law enforcement uncertain and more difficult. To overcome this challenge, harmonisation of laws should be the utmost priority, as should be the training of law enforcement and judicial institutions on the content and implementation of this legal framework. The GoI acknowledges this concern by adding that the adoption of contradicting policies and legislations are also due to the lack of synergy and coordination among decision makers.

The GoI report adds that the handling of trafficking in persons has become more difficult since the TIP Law is not equipped with extra-territorial jurisdiction, which means that it cannot apply to TIP that takes place outside of Indonesia. This condition is further
exacerbated by the lack of accurate data on cases of TIP in Indonesia since TIP is a crime that is clandestine in nature and also because of the lack of uniformity in data collection methodology among relevant government agencies as well as NGOs.\textsuperscript{1026} Attention is also given to the fact that there is no quantitative data on the extent to which the 2007 TIP Law has been implemented in legal proceedings.\textsuperscript{1027} The report further highlights that qualitative studies that have been done to scrutinise the implementation of this Law indicate that only in few cases do the law enforcers actually apply the TIP Law.\textsuperscript{1028} This underscores the point made above about the development of a clear legal framework and the capacity of judicial institutions to apply that framework effectively.

The Report then continues by adding that up to 2008, the regional governments have yet to develop reliable database on the handling cases of trafficking in persons for their respective region.\textsuperscript{1029} The 2007 GoI report to CRC Committee highlights the importance of PHCTIP Taskforce at the local level so as to enhance the local effort to eradicate trafficking in persons.\textsuperscript{1030} Meanwhile, in relation to external cooperation, the GoI emphasises the need to intensify international, regional, and bilateral cooperation with other countries that serve as destination and transit countries to eradicate trafficking in persons.\textsuperscript{1031}

The GoI acknowledges that poverty and lack of job opportunities caused victims of trafficking to be unwilling to go back to their homes.\textsuperscript{1032} This Study concludes that these two considerations can potentially make victims vulnerable to being re-trafficked. The GoI further acknowledges in 2008 that in order to overcome this challenge, Indonesia’s National Development Programs need to be strengthened and should prioritise the improvement of women’s living standards.\textsuperscript{1033}

\section*{ii. Exploitation of Women and Children}

Until now, Indonesia has not realised its commitment to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography. The GoI acknowledges this as one of the challenges in eradicating sexual exploitation of children.\textsuperscript{1034} Moreover, in Indonesia the handling of cases of trafficking in persons most of the time overshadows the occurrences of commercial sexual exploitation of children. Adding to the complication of addressing this problem is the lack of reliable and systematic data on the commercial sexual exploitation of children.\textsuperscript{1035}

The Joint Submission by the National Coalition for the Elimination of Commercial Sexual Exploitation of Children stated that the Indonesian legal framework has failed to criminalise individuals or companies who advertised, promoted, or arranged child sex tourism.\textsuperscript{1036} Furthermore, the implementation of the National Plan of Action on the Eradication of the Crime of Trafficking in Persons and Child Sexual Exploitation is lacking of proper coordination among and monitoring mechanism at national and local levels.\textsuperscript{1037}

As has been pointed out in the preceding section, exploitation of babies including for street begging activities is prevalent in Indonesia. The main challenge in addressing this issue, the GoI points out, is, again, the insensitivity and the lack of understanding of law enforcers regarding the rights of the child and child protection.\textsuperscript{1038} This challenge often resulted in the lack of initiative to rescue children.\textsuperscript{1039}

Despite the establishment of KNPBPTA in 2001 and the adoption a National Action Plan to eradicate worst forms of labour for children, Indonesia is yet to have an integrated data system on children engaging in worst forms of labour.\textsuperscript{1040} Challenges to eradicate the worst forms of child labour are posed by the society, which perceives working as a part of the education process for

\begin{thebibliography}{99}
\bibitem{1026} Ibid.
\bibitem{1027} Ibid, para. 47.
\bibitem{1028} Ibid.
\bibitem{1029} Ibid, para. 55.
\bibitem{1030} GoI, 2007 IPR-CRC, para. 93.
\bibitem{1031} GoI, 2011 IPR-CEDAW, para. 51.
\bibitem{1032} GoI, 2008 Indonesian UPR, para. 55.
\bibitem{1033} Ibid.
\bibitem{1034} GoI, 2007 IPR-CRC, para. 187.
\bibitem{1035} Ibid.
\bibitem{1036} UN OHCHR, 2012 Summary of Stakeholders’ Reports, para. 31.
\bibitem{1037} Ibid.
\bibitem{1038} GoI, 2007 IPR-CRC, para. 195.
\bibitem{1039} Ibid.
\bibitem{1040} Ibid, para. 176.
\end{thebibliography}
a child to prepare them to be an adult.\textsuperscript{1041}

Shifting to the issue of women and girls domestic workers in Indonesia, the legal status of domestic workers is still uncertain. Under Indonesian legislations, domestic workers are yet to be recognised as workers entitled to legal rights and protections, leaving domestic workers vulnerable to various forms of exploitation. Komnas Perempuan notes that the adoption of a Law on Domestic Worker has yet to come to fruition despite the commitment stated by the Indonesian President in 2011 on the protection of domestic workers in Indonesia.\textsuperscript{1042} Most importantly, the Draft Law is meant to clarify the work relationship between the employers and domestic workers. Komnas Perempuan indicates that the Draft Law has received weak support from the legislative.\textsuperscript{1043}

Finally, according to ECPAT International, despite the progress made by the Government through the adoption of various National Action Plans to eradicate trafficking and exploitation of women and children\textsuperscript{1044} many stakeholders do not use these National Action Plans as guidelines.\textsuperscript{1045} The implementation of these national action plans is very limited and, ECPAT notes, the National Action Plans are lacking focus and prioritisation, minimum standards and benchmarks, and indicators.\textsuperscript{1046} Furthermore, although the GoI has established taskforces at national and regional levels to monitor the implementation of these National Action Plans, ECPAT points out that coordination and cooperation among stakeholders are still weak.\textsuperscript{1047}

\textbf{iii. Assistance to Victims of Exploitation}

On the rights of victims, the 2008 Indonesian UPR emphasises the need to establish more crisis centres in areas considered as main sources of trafficking.\textsuperscript{1048} Even though the 2008 Indonesian UPR does not mention the need to establish more crisis centres in areas considered as destination areas for trafficking, the Study suggest that the establishment of crisis centres in these areas is also of equal importance. Komnas Perempuan further highlights that the establishment of integrated service centres by the GoI has yet to be supported by appropriate infrastructure and qualified human resources.\textsuperscript{1049} Komnas Perempuan points out that, for example, P2TP2A’s membership is structural in nature rather than based on professionalism and experience in related fields.\textsuperscript{1050} Furthermore, the GoI acknowledges that lack of funds and sufficient facilities as well as skill and competent staff are common challenges across all service centres.\textsuperscript{1051} This condition can potentially weaken P2TP2A’s ability to deliver optimal services and can hamper its coordination function with other relevant service centres.\textsuperscript{1052}

Despite having established Advisory Services at the Indonesian Diplomatic Representations’ premises in destination countries for Indonesian migrant workers, Komnas Perempuan notes that the services relating to the handling of cases of violence and exploitation are still limited.\textsuperscript{1053} The services provided by Indonesian Embassies, such as shelters and legal aid, are still considered as insufficient.\textsuperscript{1054} In relation to undocumented migrant workers, particularly in Malaysia, their fates are still uncertain. It is often the case that Indonesian undocumented migrant workers in Malaysia got deported to the border area of Malaysia and Indonesia, leaving them prone to trafficking in persons and re-trafficking.\textsuperscript{1055}

\section*{6. Gaps and Recommendations for Further Studies}

\textbf{a. Gaps in Indonesia’s Legal Framework and Policies}

Indonesia has a quite extensive legal framework and

\textsuperscript{1041} Ibid, para. 179.
\textsuperscript{1042} Komnas Perempuan, 2011 KP-CEDAW, para. 43 – 45.
\textsuperscript{1043} Ibid.
\textsuperscript{1046} Ibid.
\textsuperscript{1047} Ibid.
policies on the protection of women and children against exploitation. The adoption of the TIP Law in 2007 along with its numerous implementing legislation and regulations down to the ministerial level has proven to be the most important step that the GoI has taken to curb trafficking of women and children in and from Indonesia. Regardless of these substantial developments, the Study gathered from existing literatures that there are some gaps that the legal framework has not covered and practices that frustrate the protection of women and children from exploitation and even abuse. These gaps and unfavourable practices include, among others:

1. Except for the protection from domestic violence provided under KDRT Law, Indonesia does not provide legal acknowledgement, let alone protection, of domestic work as a form of labour with rights and obligations protected under the law;
2. Indonesian Marital Law still allows the marriages of girls below the age of 16 with the consent of their parents, making underage girls vulnerable to early and forced marriage and sexual exploitation;
3. Even though the definition of trafficking in persons under the TIP Law hints at the application of cross border jurisdiction, other provisions in the Law stipulate that Indonesia has no jurisdiction on an act of trafficking that is conducted across the border;
4. Many regional regulations in Indonesia promote, condone, or justify discriminative treatment against women, making them vulnerable to violence and exploitation. For example, regional regulations on anti-prostitution often subjected women who are suspected of prostitution to penal sanction even though prostitution is not categorised as a crime under the Criminal Code. The regional regulations do not differentiate between women who are forced into prostitution and women who join the profession by their own volition;
5. To the best knowledge of this Study, the Indonesian legal framework does not provide restitution for victims of trafficking in persons in the case where the Court does not prove the alleged perpetrator guilty of the crime. Also, there is no provision under the Indonesian legislations dispensing criminal liability for victims of trafficking in persons if they were discovered or arrested by the authorities under compromising conditions that constitute an offense under Indonesian law; and
6. For the purpose of prosecution of perpetrators of trafficking in persons, Indonesian legislation only guarantees the prompt return of victims of trafficking who are foreign nationals. The legal framework does not prescribe special protective measure to ensure these victims’ cooperation for the prosecution of perpetrators of trafficking in persons (for example, securing their visa to ensure that they stay legally in Indonesia and providing legal counsel).

b. Gaps in the Literatures

The literatures under review discussed extensively the problem of exploitation of women and children including the phenomenon of trafficking in persons. However, the Study finds that on some subjects related to exploitation of and trafficking in women and children, the existing literature has already been rendered obsolete and needs evaluation and updating. For example, most existing literature on the prevalence of specific forms of exploitation are based on surveys or studies conducted in mid-2000 and late 1990s, which of course need to be revisited in order to assess whether the problems experienced in the past are still prevalent at present time and whether there are new developments and prevalence of other problems that need to be included.

The Study also finds some gaps that have not been addressed in the existing literature. Some of these gaps include:
1. The number of women and children that have become victims of exploitation and trafficking in persons is based on reported cases; however, there is not yet an effort to produce a study that reflects collated data on reported cases of exploitation of and trafficking in women and children from various reliable sources and classifying them based on prevalence of specific forms of exploitation, authorities who received and handled the reports, etc. The problem of under-reporting and its impact on data collection and analysis also deserves serious attention;
2. There is no reliable data on the number of domestic workers in Indonesia, which thus makes it difficult for the Study to determine the number of women and children engaging in that profession. Estimates on the number of domestic workers in Indonesia come without reference to reliable methodologies (see Table 16 above);
3. The official number of sex workers issued by the GoI does not include the number of unregistered sex
The Study has not managed to find comprehensive information, let alone collated, on the various roles of non-state actors in the subject of protection of women and children against exploitation and trafficking in persons;

15. Little information is known on the success rates of regional efforts to curb cross-border trafficking in women and children in Southeast Asia. For example, little is known on ASEANAPOL’s role in coordinating the cooperation between ASEAN Member States’ police forces, handling of, and preventing the occurrences of trafficking in persons in Southeast Asia or efforts conducted by ASEAN Member States through ASEAN+ forums such as the Bali Process; and

16. No progress report can be found on the implementation of GoI’s plans of actions to:
   - combat worst forms of child labour;
   - combat the commercial sexual exploitation of children; and
   - combat the trafficking of women and children.

**c. Recommended Areas/Subjects for Further Studies**

Based on the gaps in the literature and the legal framework as identified above, the Study suggests stakeholders to consider conducting further studies in the following areas/subjects:

1. Evaluation of the studies on prevalence of trafficking in women and children need to be conducted and updated in accordance with the current developments. The Study deems it necessary to include research and
analysis on the prevalence of criminal organised groups in trafficking in persons’ phenomenon in Indonesia, including its network, pattern, and scope of work;

2. Prevalence of exploitation of women and children. The Study notes that little study has been done on:
   - Children as street beggars, including babies for hire phenomenon;
   - Child sex tourism;
   - Sale of children for the purpose of adoption;
   - Harvest and sale of body organs;
   - Sexual exploitation of women and children in jungles, mines, and logging sites in some provinces in Indonesia;
   - Women and children involved in the sale, production, and trafficking of drugs in Indonesia;
   - Children living in childcare institutions; and
   - Prevalence of exploitation of women and children in the eastern part of Indonesia, such as Papua, Gorontalo, and Maluku;

3. Integrated statistical study on reported cases of exploitation of and trafficking in women and children based on reports received by various Government’s bodies, police force, NHRIs, international organisations or UN funds/programmes, and non-state actors. The statistical study then needs to be classified in accordance with specific forms of exploitation and the occurrences of internal and external trafficking in persons. In relation to trafficking in persons, disaggregate data on the number of external and internal trafficking in persons cases handled by the Indonesian authorities should be included;

4. Reliable methodologies to decide on reasonable estimates on the number of:
   - Victims of external and internal trafficking in persons, especially women and children;
   - Women and children commercial sex workers;
   - Sexual exploitation of women and children;
   - Domestic workers; and
   - Children engaging in worst forms of labour;

5. Assessment of national legislations and policies, including those adopted at the local level, which might potentially re-victimise victims of trafficking in persons and assessment of other legislations and policies that might offer protection for or exempt victims of trafficking in persons from being re-victimised by the law.

6. Assessment of the role of local governments and their regional regulations in providing protection against exploitation of and trafficking in women and children and in handling such cases, including:
   - The number of regional regulations on the protection of women and children against exploitation in general and trafficking in persons;
   - The challenges faced by provincial and regency/municipal governments in adopting and implementing regional regulations on the protection of women and children against exploitation in general and trafficking in persons;
   - Expected impacts from the adoption and implementation of such regional regulations; and
   - Implementation of such regional regulations that have been identified in curbing exploitation of and trafficking in women and children, and monitoring and evaluation of the regional regulations;

7. Assessment on the performance of Indonesian law enforcers and judiciary in implementing and upholding TIP Law in legal proceedings, including data on the number of trafficking cases handled by the police, prosecuted, and convictions rendered by the Court;

8. Assessment and evaluation on the implementation/fulfilment of Indonesia’s various plans of actions on the protection of women and children against exploitation:
   - National action plan to combat the worst forms of child labour;
   - National action plan to combat the commercial sexual exploitation of children; and
   - National action plan to combat the trafficking of women and children;

9. Extensive mapping of the role of non-state actors in the assistance of women and children victims of exploitation and trafficking in persons, prevention of exploitation and trafficking in women and children, and monitoring and cooperation with the GoI on the protection of women and children against exploitation and trafficking in persons; and

10. Extensive mapping and assessment of regional efforts to curb trafficking in persons in Southeast Asia, including cooperation among ASEAN Member States in exchanging information, investigative efforts, and extraditions as well as the role of ASEAN for example through ASEANAPOL and ASEAN+ forums such as the Bali Process.
D  ABUSE AND DISCRIMINATION IN MIGRATION

1  Description of the Problem

Migration is defined as the movement of a person or group of persons from one geographical unit to another across an administrative or political border, with the intention of settling indefinitely or temporarily in a place other than their place of origin. Included in this definition is the movement of refugees, displaced persons, irregular migrants as well as economic migrants.

*IOM, Labour Migration from Indonesia (2010)*

a. Prevalence of Abuse and Discrimination in Migration

i. Prevalence of Abuse and Discrimination of Women in Migration

Available Statistics and Data

Indonesia is well known as a major source country of unskilled international migrant workers, especially in sectors such as construction, domestic work, and agriculture.¹⁰⁵⁶ IOM observes that since the GoI started its Government-administered placement of migrant labour from Indonesia in 1969, the number of Indonesian migrant workers increased significantly between 2004 and 2007, from 380,690 in 2004 to 696,746 in 2007 where women constituted 78% of the labour force abroad.¹⁰⁵⁷ In 2011, BNP2TKI, Indonesia’s national authority responsible for the placement and protection of Indonesian workers abroad, records 581,081 Indonesians working abroad, of which 64% of this number is comprised of women.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total Documented Migrant Workers</th>
<th>Female</th>
<th>%</th>
<th>Male</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>293,865</td>
<td>213,824</td>
<td>73</td>
<td>80,041</td>
<td>27</td>
</tr>
<tr>
<td>2004</td>
<td>380,690</td>
<td>296,615</td>
<td>78</td>
<td>84,075</td>
<td>22</td>
</tr>
<tr>
<td>2006</td>
<td>680,000</td>
<td>542,000</td>
<td>80</td>
<td>138,000</td>
<td>20</td>
</tr>
<tr>
<td>2007</td>
<td>696,746</td>
<td>543,859</td>
<td>78</td>
<td>152,887</td>
<td>22</td>
</tr>
<tr>
<td>2008</td>
<td>644,731</td>
<td>437,864</td>
<td>78</td>
<td>123,241</td>
<td>22</td>
</tr>
<tr>
<td>2009</td>
<td>632,172</td>
<td>528,984</td>
<td>84</td>
<td>103,188</td>
<td>16</td>
</tr>
<tr>
<td>2010</td>
<td>575,804</td>
<td>451,120</td>
<td>78</td>
<td>124,684</td>
<td>22</td>
</tr>
</tbody>
</table>

Table 24 – Placement of Indonesian Labour Migrants by Gender¹⁰⁵⁸

As illustrated in the table above, Indonesian women migrant workers on average comprise more than 77% of Indonesian migrant workers. IOM refers to this phenomenon as the feminisation of labour migration.¹⁰⁵⁹

The Study found competing and contradictory data on the number of registered Indonesian migrant workers claimed to be cited from BNP2TKI’s or the Ministry of Labour and Transmigration’s data by various organisations. Those data, among others, are reflected in the table below:

<table>
<thead>
<tr>
<th>No.</th>
<th>Source</th>
<th>Number of Indonesian Migrant Workers</th>
<th>Citing Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Ministry of Labour and Transmigration</td>
<td>2,679,536 with 1,5 million workers work in Saudi Arabia alone (as of February 2010)</td>
<td>Statistic Indonesia¹⁰⁶⁰</td>
</tr>
<tr>
<td>2.</td>
<td>BNP2TKI</td>
<td>4,310,000 (in 2010)</td>
<td>Komnas Perempuan¹⁰⁶¹</td>
</tr>
<tr>
<td>3.</td>
<td>BNP2TKI</td>
<td>748,825 in 2008</td>
<td>IOM¹⁰⁶²</td>
</tr>
<tr>
<td>4.</td>
<td>BNP2TKI</td>
<td>1,085,658 Indonesian migrant workers in Malaysia in December 2008</td>
<td>IOM¹⁰⁶³</td>
</tr>
<tr>
<td>5.</td>
<td>Ministry of Labour and Transmigration</td>
<td>2,700,000 in 2006 and 400,000 migrant workers working in the Middle East alone in 2004</td>
<td>Australian AID¹⁰⁶⁴ and IOM¹⁰⁶⁵</td>
</tr>
</tbody>
</table>

Table 25 – Various Data on the Number of Registered Indonesian Migrant Workers cited by Various Organisations


¹⁰⁵⁷ IOM, Labour Migration from Indonesia: an Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East, Jakarta: 2010, 9.


¹⁰⁵⁹ IOM, Labour Migration from Indonesia, 3.


¹⁰⁶¹ Komnas Perempuan, 2010 Note, 29.


¹⁰⁶³ Ibid, 3.


¹⁰⁶⁵ IOM, Labour Migration from Indonesia, 4.
In comparison with the data presented by BNP2TKI in Table 24 above, the Study finds rather huge discrepancies in the number of registered Indonesian migrant workers. The different data claiming to come from official sources (BNP2TKI and the Ministry of Labour and Transmigration) will prove to cause confusion and bring up the question of reliability of the data provided even by the official authorities. Apart from this issue, there is also data presented by other institutions or organisations that reveal a substantial discrepancy compared to data presented by BNP2TKI. For example, UNICEF presents competing data on the number of Indonesian migrant workers in 2003: while BNP2TKI data shows that there were 293,865 (see Table 24 above) Indonesian workers abroad, UNICEF reported that there were about 670,000 registered Indonesian workers in Peninsular Malaysia alone.1066 In light of the issue of reliability of data, a dependable methodology of documentation as well as a sound means of dissemination of information to all stakeholders is needed to ensure access to reliable data on the number of registered Indonesian migrant workers.

In relation to the contribution made by Indonesian migrant workers to the Indonesian economy, Bank of Indonesia, the central bank in Indonesia, reports that, in 2009 and 2010, Indonesian migrant workers contributed USD 6.6 (2009) and 5.03 (2010) billion in remittances.1067 In 2009, the largest amount of remittance came from Malaysia (USD 2.3 billion), followed by Saudi Arabia (USD 2.2 billion).1068 Komnas Perempuan provides no gender disaggregated data on remittances; however in 2009, IOM stated that 79% of the registered Indonesian workforce is comprised of women.1069 Various organisations focusing on migrant labour estimate that the number of Indonesian workers abroad is beyond the number reflected in the BNP2TKI report. Putting irregular migration into the equation, IOM estimates 2.7 million Indonesian migrant workers working abroad in 2007 with destination countries such as Malaysia, Saudi Arabia, Taiwan, Singapore, Hong Kong, Republic of Korea, and United Arab Emirates.1070 From the number of Indonesian migrant workers abroad, IOM notes that women have comprised 68% to 88% of workers officially deployed abroad, and, in 2009, the IOM recorded that nearly 40% of the total outgoing migrant workers worked in Saudi Arabia.1071 World Bank, on the other hand, estimates that there are 4.3 million Indonesians working abroad.1072 Meanwhile, the International Council on Social Welfare (ICSW) estimates that 450,000 Indonesian workers migrate to Southeast Asia alone every year through the Government-sponsored labour export program, particularly to Singapore, Malaysia, Thailand, and, to a lesser extent, Brunei.1073 The most recent estimate was made by Komnas HAM, stating that there are at least 4.5 million Indonesian migrant workers abroad and they are often experiencing physical and sexual violence.1074

The majority of Indonesian women migrants are employed as domestic workers or caregivers and plantation workers (especially in Malaysia).1075 Domestic work is often not addressed in the Manpower Law of the receiving countries and, since this work is conducted in the private confinement of households, it is difficult for local authorities to monitor and prevent abuses and for the workers to seek assistance when necessary.1076 IOM is of the opinion that this condition heightens the vulnerability of domestic workers to exploitation, physical and psychological abuse, and withholding of payment.1077

1067 IOM, International Migration and Migrant Workers’ Remittances in Indonesia, ix ; see also, Komnas Perempuan, 2011 KP-CEDAW, para. 35.
1068 IOM, International Migration and Migrant Workers’ Remittances in Indonesia, 1.
1069 Ibid.
1070 IOM, Labour Migration from Indonesia, 4.
1071 Ibid, 9; see also IOM, Situation Report on International Migration in East and Southeast Asia: Regional Thematic Working Group on International Migration including Human Trafficking, Bangkok: 2008, 34.
1072 IOM, Situation Report on International Migration in East and Southeast Asia, 33.
1073 ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 23 and 50.
1074 UN HRC, 2012 Summary of Stakeholders’ Reports, para. 10.
1075 IOM, Labour Migration from Indonesia, 3 and 9.
1076 Ibid.
1077 Ibid.
Abuse and Discrimination against Indonesian Women Migrant Workers

Abuse and discrimination against Indonesian women migrant workers are prevalent. The GoI acknowledged that abuse of women migrant workers even starts from pre-departure stages in Indonesia. CEDAW Committee expressed its concern over the high fees and burdensome administrative requirements imposed in Indonesia on its departing and returning migrant workers. Moreover, based on the research made by the Department of Indonesian Studies at the University of Sydney in 2011, the authors identified the forms of abuses suffered by women migrant workers at pre-departure stage to cover restriction on their freedom of movement, sexual harassment, physical assault, and debt bondage. The impact of the abuse during pre-departure stage is often extended to the placement of women migrant workers in the destination countries. CAT, for example, expressed its concern at the reports of ill treatment by Indonesian recruiting agencies, which placed these women in debt bondage, forced labour, and other abusive situations in the destination countries. The abuses are generally committed by recruiting agencies and local authorities. Upon their return to Indonesia, women migrant workers also face abuse, such as sexual harassment, extortion, and deception at airports or other transportation transit areas. Perpetrators of these abuses include Government officers, policeman, airport authorities, and brokers. However, so far the Study has not found any information pertaining to the number of Indonesian women migrant workers that have experienced abuses during pre-departure and arrival stages.

1078 GoI, 2005 IPR-CRC, para. 108.
1079 CEDAW Committee, 2007 CC-CEDAW, para. 32.
1081 UN HRC, 2012 Compilation of UN Documentations, para. 58.
1082 Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism, 11; see also Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, vi.
1083 Ibid.
1084 Ibid.
Table 26 – Compilation on the Fees and Salary Deduction faced by Indonesian Workers (Source: CARAM Asia)

According to regulations listed in Table 26, before they can work as migrant domestic workers, these workers are obliged to pay their recruitment and placement fees to PPTKIS. Usually, the payment of these fees are done after they start working and this leads to, as indicated in Table 26, 2 – 15 months of work without pay. It is a similar situation to debt bondage and, in a way, indicating State violence against migrant workers.

BNP2TKI reported that 59,821 cases of violence against Indonesian women migrant workers took place in the destination countries in 2010. Violence against these women takes the forms of physical abuse (4,341 cases); sexual abuse (2,979 cases); employer-related problems (4,380 cases); and unpaid salaries (2,821 cases). BNP2TKI discovered that most cases of abuses against Indonesian women domestic workers (5,563) took place in Saudi Arabia. The number of Indonesian migrant workers who experienced abuse in destination countries decreased in 2011, with BNP2TKI documenting 44,526 migrant workers who suffered abuse in the hands of their employers. Unfortunately, the Study does not come across any age disaggregated data of the victims.

According to GoI reports, these women suffer from very long work hours without rest, forced labour, mistreatment, and sexual abuse. The Indonesian Embassy in Malaysia recorded the highest number of deportation of Indonesian irregular migrant workers at 261,789 cases, of which women comprised the majority of those deported. Since 2004, the Malaysian Government have conducted sweeping operations to capture irregular immigrants; those who were captured were often subjected to detention, fine, and flogging. In Singapore, the majority of cases of abuse take the form of wage deduction and physical abuse and harsh working conditions that resulted in the death of 154 Indonesian migrant workers between 1999 and 2007. There are even accounts of Indonesian women migrant workers being convicted for practicing witchcraft against

1086 Ibid, 18.
1087 Ibid.
1088 Ibid.
1089 Ibid.
1090 Komnas Perempuan, 2010 Note, 29; see also Komnas Perempuan, 2011 KP-CEDAW, para. 37.
1091 Ibid.
1093 Komnas Perempuan, 2011 Note, 34.
1094 Komnas Perempuan, 2010 Note, 29; see also Komnas Perempuan, 2011 KP-CEDAW, para. 37.
1096 Parjoko Midjan, Dampak Sosial Migrasi Internasional bagi Indonesia (The Social Impact of International Migration to Indonesia), 16 September 2010, 2.
1097 Komnas Perempuan, 2010 Note, 29.
1098 IOM, Labour Migration from Indonesia, 56.
their employer’s family. One charge of witchcraft was brought to the Court against an Indonesian woman domestic worker in Saudi Arabia and she was convicted and sentenced to 10 years in prison and 200 lashes. Another case also took place in Saudi Arabia where four Indonesian domestic workers were beaten up by their Saudi employers after being accused of practicing witchcraft against the employer’s family. Two of the four women died because of the beating and the other two were admitted to the intensive care unit in Riyadh. Later on, these two women were convicted and sentenced to 150 strokes of canning before getting deported back to Indonesia.

In Saudi Arabia, Indonesian women migrant workers continue to have their rights violated by the judiciary. For instance, in 2011, an Indonesian domestic worker in Riyadh was found guilty of murdering her employer and was sentenced to death by decapitation. The execution was carried out without informing the Indonesian Embassy or giving the opportunity to the defendant to appeal her case. Another case involved an Indonesian domestic worker who was tried in Riyadh. The woman was also convicted and sentenced to death for murdering her employer but later on was saved from the execution room after the GoI paid “blood money” to the family of the deceased. Both women claimed that they acted in self-defence because both employers were abusive.

Apart from government officials, the judiciary of the receiving countries, and their employers, individual accounts from Indonesian women migrant workers also indicate that the employment agency in the receiving countries also take part in the abuse of these women. The victims’ testimonies revealed that, whenever they sought refuge at their employment agencies in the Middle East, for example, instead of offering protection, most of these agencies subjected them to further physical abuse, confinement, or illegally transferred them to new employer in another country, even to war-torn countries such as Iraq and Palestine.

Komnas Perempuan reports that Indonesian migrant women are also prone to becoming drug mules or couriers and some ended up facing heavy penalties in Malaysia. Ministry of Foreign Affairs’ data shows that, until December 2011, there were 210 Indonesian citizens facing the possibility of death penalty, 132 cases of which are related to drugs and 64 cases are related to murder. Unfortunately, disaggregated data is not available in Komnas Perempuan 2011 report; however, if the trend from 2011 still prevails, then there is a possibility that women comprise nearly 10% of the alleged perpetrators.

Migration and Decentralisation

Some reports criticise the Indonesian legal regime on the governance of placement and protection of migrant workers, especially in relation to the lack of regional regulations regulating the protection of migrant workers coming from specific regions. From 2006 up to 2011, the reports identified only one provincial regional regulation and six regional regulations at the regency/municipal level that regulate the protection of migrant workers originating from the said province and regencies/municipalities.

The lack of protection on provincial and regency/municipal levels is exacerbated by the “centralistic” approach of the governance of Indonesia’s overseas

1099 GoI, 2011 IPR-CEDAW, para. 37; see also ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 56.
1100 ICSW, Trafficking and Related Labour Exploitation in the ASEAN Region, 56; The initial sentence was death penalty before commuted to imprisonment and flogging.
1101 Ibid.
1102 Ibid; see also, ILO.
1104 Ibid.
1105 Ibid.
1106 ILO, Tales of Survival: Migrant Domestic Workers’ Stories in Their Own Words, 24 September 2011.
1107 Ibid; Similar experience with the employment agencies in the receiving countries are constantly repeated by the victims.
1108 Komnas Perempuan, 2010 Note, 30.
1109 Komnas Perempuan, 2011 Note, 34.
1110 Komnas Perempuan, 2010 Note, 30.
employment, where the responsibility for the placement of migrant workers mainly lies on the shoulders of the central Government but the protection of migrant workers is still lacking adequate attention.\textsuperscript{1113} Even BNP2TKI acknowledged that this centralistic approach proves to be problematic since 80% of problems faced by migrant workers occur in their place of origin.\textsuperscript{1114} Those problems range from identity fraud, extortion, to illegal recruitment and mostly happened at the local level, far from the reach of the central authorities.\textsuperscript{1115}

The lack of regional regulations rendering protection to migrant workers is attributed to a gap in the Indonesian legal system related to the unsynchronised legislations on decentralisation and migrant workers-related laws.\textsuperscript{1116} There is no clear definition of the role of local governments in the issue of overseas employment and the laws leave this issue as a grey area.\textsuperscript{1117} Some local governments used this window to adopt regional regulations imposing local taxes on migrant workers who are going to work overseas or who are transiting in their regions.\textsuperscript{1118} These local governments base the adoption of such regional regulations on the principle of autonomy, even though their actions actually violate the Manpower Law and Indonesia’s ratification of ILO Convention No. 88 on Organisation of Employment Service.\textsuperscript{1119}

\textit{ii. Prevalence of Abuse and Discrimination of Children in Migration}

\textbf{Indonesian Stateless Children}

The issue of Indonesian stateless children in Sabah, Malaysia, is prevalent. SOS Children’s Villages Canada (SCVC) estimates there are more than 50,000 stateless Indonesian children in Sabah.\textsuperscript{1120} These children are the offspring of Indonesian plantation workers in Sabah. They become stateless because they do not have birth certificates and, in Malaysia, the absence of birth certificates has caused these children to live in a legal limbo and unable to access government services in Malaysia, including health and education, or to return legally to Indonesia.\textsuperscript{1121} The unavailability of access for birth certificates for these children is usually caused by the legal status of the migrant workers who entered Malaysia illegally or the non-recognition of the marriage of migrant workers under Malaysian law.\textsuperscript{1122}

SCVC observes that these children usually become child labourers in plantations or street children, where they are potentially vulnerable to drug abuse, petty crimes, or child abuse.\textsuperscript{1123} A survey has proven that more than 50% of these children end up working as child labourers.\textsuperscript{1124} In 2008, Komnas Anak’s Commissioner, Arist Merdeka Sirait, told the media that about 72,000 children of Indonesian migrant workers in Sabah were forced to work at plantations without regulated employment hours.\textsuperscript{1125} These children were placed in isolated barracks with no access to transportation.\textsuperscript{1126} The Commissioner later on added that the practice of bonded labour is very common at all plantations in Sabah and nothing significant had been done by the Malaysian Government to rectify the condition of the children of Indonesian migrant workers.\textsuperscript{1127} Unfortunately, despite the gravity of the issue of stateless Indonesian children abroad, none of the GoI reports to the UN Treaty Bodies addressed the prevalence of this problem.

\textbf{Children of Migrant Workers Left behind in Indonesia}

As for the issue of the relationship between migrating parents, especially women migrant workers, and their children living in Indonesia, so far, unfortunately, the Study has not found any report that sufficiently

\begin{flushleft}
\textsuperscript{1113} Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 7.
\textsuperscript{1114} Ibid, 1.
\textsuperscript{1115} Ibid.
\textsuperscript{1116} Ibid, 34.
\textsuperscript{1117} Ibid.
\textsuperscript{1118} Ibid.
\textsuperscript{1119} Ibid.
\textsuperscript{1121} Ibid; see also The Star, Society’s Learning Centres Teaching Stateless Children for Past 20 Years, 27 February 2012, <thestar.com.my>, accessed on 15 April 2012; ILO, Tales of Survival, 4 – 5.
\textsuperscript{1122} SCVC, Stateless Children Live an Uncertain Life.
\textsuperscript{1123} Ibid.
\textsuperscript{1124} Anthea Mulakala, Sabah’s Stateless Children.
\textsuperscript{1126} Ibid.
\textsuperscript{1127} Ibid.
\end{flushleft}
addressed the issue. According to a 2005 UNICEF study among Philippines, Indonesia, and Thailand, it is only the Philippines that maintains reliable data on all aspects of international migration of its nationals, including data on children of migrants.\footnote{1128}{John Bryant, Children of International Migrants in Indonesia, 1.} Despite the lack of data, the 2005 UNICEF study tries to make reasonable estimates of the number of children that are left by their parents to work abroad based on the average duration of labour contract, the total number of workers working abroad in a given year, and the recent fertility rate.\footnote{1129}{Ibid, 3.} Using these categories, the Study estimates that, in 2002, there were around 1 million children who were left behind by their parents in Indonesia. However, this figure does not include children left behind by irregular migrants.\footnote{1130}{Ibid.} Furthermore, the tendency of Indonesian migrant workers to take their children with them also plays a detrimental role in producing a reliable estimate. For instance, Indonesian migrant workers are more inclined to take their children to work in Malaysia compared to taking them to the Middle East.\footnote{1131}{Ibid.} As has been confirmed by data provided by BNP2TKI above, the 2005 UNICEF study is of the opinion that, overall, children left behind by regular migrants are more likely live without their mothers.\footnote{1132}{Ibid.}

To this Study’s opinion, literature on the effect of migration on migrant workers’ children left behind Indonesia are next to non existent and this fact makes it hard for the Study to determine problems that are prevalent at present. There is, however, a report on children of migrant workers who are left in Indonesia under the care of older family relatives experiencing serious cases of malnutrition in West Nusa Tenggara Province.\footnote{1133}{Fitri, For Children of Migrant Workers, Malnutrition Threat, The Jakarta Globe, 9 January 2011. <www.thejakartaglobe.com>, accessed on 20 April 2012.} West Nusa Tenggara’s health agency discovered in early 2011 that there are 756 cases of children suffering from malnutrition and most of those children come from the families of migrant workers.\footnote{1134}{Ibid.} According to the health agency’s record, the primary cause of malnutrition is “inadequate or total lack of feeding by grandmothers or elderly aunts, who have been left to care for the children by parents who are working abroad.”\footnote{1135}{Ibid.} The Study cannot confirm whether this problem is also prevalent among other Indonesian migrant workers’ children in other areas of Indonesia. However, considering the fact that at least 7.6 million Indonesian children under the age of five suffered stunted growth as a primary manifestation of malnutrition,\footnote{1136}{Ibid.} the Study is of the opinion that further studies on the relation between children of migrant workers who are left behind in Indonesia and malnutrition should constitute a national priority.

### iii. Irregular Migration

Irregular migration from Indonesia is prevalent. The UN Special Rapporteur on Human Rights of Migrants notes that the largest outflow of Indonesian irregular migrants is to Malaysia followed by migration to Saudi Arabia, Singapore, Taiwan, and Republic of Korea.\footnote{1137}{Jorge Bustamante, 2007 HRM Report, para. 5.} Again, there is no official data on the number of irregular Indonesian migrant workers abroad. The Director General of BNP2TKI estimated that in 2005 there were more than one million illegal Indonesian migrant workers where 80% from that number is equally concentrated in Malaysia and Saudi Arabia.\footnote{1138}{Graeme Hugo, Indonesia’s Labour Looks Abroad, Migration Policy Institute, 2007, <www.migrationinformation.org>, accessed on 22 April 2012.}

Concerning the specific case of irregular migration from Indonesia to Malaysia, IOM indicated an increase of irregular migration from Indonesia to Malaysia due to conflicting policies of the GoI and the Malaysian Government.\footnote{1139}{IOM, Labour Migration from Indonesia,. 46.} In June 2009, the GoI issued a moratorium on the placement of Indonesian migrant workers in Malaysia as a reaction against increasing numbers of cases of abuse suffered by Indonesian women migrant workers in Malaysia. The Malaysian Government, however, continued to issue permits for Indonesian foreign domestic workers.\footnote{1140}{Ibid.} These conflicting policies had caused tension between the two countries and an increase of irregular migrants to Malaysia.\footnote{1141}{Ibid.}
Many of these irregular migrants departed from Indonesia through Batam and Nunukan ports to enter Malaysia by using falsified documents.\textsuperscript{1142} Little was known to them that irregular immigration to Malaysia is considered as a crime under Malaysian law and those who got caught were treated as criminals.\textsuperscript{1143} To better describe the prevalence of irregular migration from Indonesia to Malaysia, IOM stated that the number of irregular migration from Indonesia to Malaysia is only surpassed by the number of irregular migration from Mexico to the United States.\textsuperscript{1144}

**Smuggling of Migrants**

The prevalence of irregular migration cannot be separated from the booming business of Smuggling of Migrant (SOM). Regrettably, none of the reports made by the GoI refer to this SOM phenomenon. However, news coverage and UNODC Country Programme for Indonesia (2012 – 2015) indicate that SOM is indeed prevalent in Indonesia and it is contributing to the rise of irregular migration from Indonesia to its neighbouring countries.\textsuperscript{1145} According to some reports, Indonesia is a major zone for SOM mostly to Australia.\textsuperscript{1146} Indonesia serves as a transit country especially for irregular migrants coming from the Middle East, Pakistan, and Sri Lanka with Australia as the final destination.\textsuperscript{1147} Most of them are refugees fleeing from war-torn territories and asylum seekers.\textsuperscript{1148} UNODC dubbed Indonesia as the key transit country for SOM to Australia via sea.\textsuperscript{1149}

Most of SOM operations departed from West Java (Sukabumi Regency), East Java, and Nusa Tenggara Timur (Kupang Municipality) to the nearest entry points in Australia such as Darwin.\textsuperscript{1150} Individual reports from regional police documentation in some regions stated that, in 2009 – May 2011, there were nine cases involving 341 illegal migrants in Sukabumi\textsuperscript{1151} and 200 migrants were discovered as their effort to cross to Australia failed due to sea accident in December 2011.\textsuperscript{1152} Recently, 67 asylum seekers are missing after their departure from Indonesia to Australia in July 2012 and, earlier in June 2012, 90 people are believed to have drowned when two smuggling boats were reported missing in the rough sea passage between Indonesia and Australia.\textsuperscript{1153} The Study has not managed to get the latest number of people being smuggled to Australia from Indonesia or gender disaggregates data on the number of women being smuggled, let alone the number of children. However, this does not mean that women and children are completely excluded from the SOM phenomenon.

These migrants usually used the service of smugglers, who sometimes act as parts of an international organised criminal group.\textsuperscript{1154} Around 500 Indonesians were captured and detained by Australian authorities in 2011 for smuggling these migrants. Most of these people chose to cross to Australia by using rickety boats as their mode of transportation; safety is most likely out of the question since often times these boats sailed with overcapacity.\textsuperscript{1155} Many of these migrants become victims of sea accidents during the passage to Australia due to the usage of ships that were not sea worthy.\textsuperscript{1156}

**Trafficking in Persons**

The crime of trafficking in persons especially in women and children cannot be separated from migration.

\textsuperscript{1142} Ibid.

\textsuperscript{1143} Ibid.

\textsuperscript{1144} Ibid, 17, see also Frances Barnes, Indonesia Country Report, 60.


\textsuperscript{1148} Seputar Indonesia, Jalur Sutra Imigran Gelap Menuju Australia (Irregular Immigrants’ Silk Road to Australia), 19 December 2011, <www.seputar-indonesia.com>, accessed on 27 April 2012; and Khasan Ashari, Why We Need a Law on People Smuggling.

\textsuperscript{1149} Ibid.

\textsuperscript{1150} Seputar Indonesia, Irregular Immigrants’ Silk Road to Australia.

\textsuperscript{1151} Ibid.

\textsuperscript{1152} Khasan Ashari, Why We Need a Law on People Smuggling.


\textsuperscript{1155} Al Jazeera, Asylum Seekers Feared Dead Off Australia.

\textsuperscript{1156} Khasan Ashar, Why We Need a Law on People Smuggling; Seputar Indonesia, Irregular Immigrants’ Silk Road to Australia.
phenomenon. IOM considered trafficking in persons as a part of the irregular migration phenomenon and as the worst form of exploitation in migration.\textsuperscript{1157} The Study has discussed and described the prevalence of trafficking in women and children as well as exploitation entailing from migration in Section C.1.a above.

b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices

i. Definition of Abuse and Discrimination in the Context of Migration

A definition of abuse and discrimination specifically in the context of migration does not exist under Indonesian legislations and regulations. All definitions related to violence and exploitation as described in the previous two sections of this Study under Indonesian legal system should also apply to Indonesian nationals in the context of migration as Indonesian laws does not make any special requirements on the application of the said definitions for any specific contexts or situations.

ii. Root Causes

In its report, IOM said that women migrant workers are vulnerable to abuse and discrimination in receiving countries because many of them work as domestic workers and caregivers and these occupations are often not covered or protected under the law of many destination countries.\textsuperscript{1158} Furthermore, the private nature of the location where these workers perform their duties, in the confinement of private households, exacerbate the vulnerability of the workers for it will be extremely challenging for the authorities to monitor and for the workers to seek assistance.\textsuperscript{1159}

Komnas Perempuan concluded that Indonesian women migrant workers face exploitation and abuse systematically in all stages, including during pre-departure and placement processes.\textsuperscript{1160} These systematic threats are caused by both the GoI and the destination countries’ biased policies toward migrant workers, as well as bad drafting of bilateral agreements guaranteeing the protection migrant workers.\textsuperscript{1161} CARAM Asia added that, generally, there is no standard contract for migrant workers, especially domestic migrant workers, this proves to be a bad practice since most of the time the terms in the contract do not benefit migrant workers and curtail their freedom of movement.\textsuperscript{1162}

IOM also noted that there are several root causes that make Indonesian irregular migrants prone to abuses and discrimination: 1) high number of brokers and unregistered recruitment agencies in rural areas; 2) lack of knowledge among migrant workers on the procedures for migration and their basic human rights; 3) weak government involvement in disseminating crucial information and protection for migrant workers and weak enforcement capacity; and 4) failure to prosecute perpetrators of illicit or unscrupulous recruitment practice.\textsuperscript{1163}

On the specific issue of children of Indonesian migrant workers born in Malaysia, the Study concludes that the root cause of abuse and discrimination, including exploitation, is the denial of access to get birth certificate.\textsuperscript{1164} Without access for Indonesian migrant workers to register their children who are born in Malaysia, the children will be denied access to public services including education and, more gravely, legal status that can grant them national protection against violence and exploitation.

iii. Aggravating Factors

Prejudice toward foreigners and their culture by the society in the destination countries as well as their sense of superiority over low-skilled foreign workers can aggravate the possibilities of Indonesian migrant workers for being abused. This is reflected in cases of abuses suffered by Indonesian migrant workers especially in Malaysia and in the Middle East where most of cases of abuse against Indonesian women migrant workers took

\begin{itemize}
\item \textsuperscript{1157} IOM, Labour Migration from Indonesia, 18.
\item \textsuperscript{1158} Ibid, 9.
\item \textsuperscript{1159} Ibid.
\item \textsuperscript{1160} Komnas Perempuan, Buruh Migran Indonesia: Penyiksaan Sistimatis di Dalam dan Luar Negeri (Indonesian Migrant Workers: Internal and External Systematic Abuse) – Laporan Indonesia kepada Pelapor Khusus PBB untuk Hak Asasi Migran (Indonesian Report to the UN Special Rapporteur for the Rights of Migrants), Jakarta: December 2003, 33.
\item \textsuperscript{1161} Ibid.
\item \textsuperscript{1162} CARAM Asia, Reality Check!, 18 – 19.
\item \textsuperscript{1163} IOM, Labour Migration from Indonesia, 17.
\item \textsuperscript{1164} Erwida Maulia, RI Workers, Children ‘Enslaved’ in Malaysia; SCVC, Stateless Children Live an Uncertain Life; and Anthea Mulakala, Sabah’s Stateless Children.
\end{itemize}
place.\textsuperscript{1165}

The supply and demand sides of migration might constitute as the aggravating factors that push irregular migrations and eventually abuse and discrimination of Indonesian migrant workers in receiving countries. IOM’s report shows that Indonesian workers are more inclined to opt to migrate and find jobs outside of Indonesia due to poverty, lack of education, and lack of employment opportunities in Indonesia as well as the difference of wage standards between Indonesia and the destinations countries.\textsuperscript{1166} Additionally, Indonesia constitutes one of the countries in the world with a large supply of workers.\textsuperscript{1167} Most of them sought their way abroad through irregular means because of the high demand for low-skilled labour and the limited or expensive legal channels for regular migration.\textsuperscript{1168} These factors combined will create lucrative opportunities for illegal recruitment practices to facilitate irregular migration from Indonesia and further put the migrant workers in disadvantageous situations.\textsuperscript{1169}

Adding to the aggravating factors that push irregular migrations, IOM’s report revealed that Indonesia’s current policies on migration management, recruitment, and protection of migrants are costly and weak (in terms of protection and placement of migrant workers).\textsuperscript{1170} Most disconcerting is that the law regulating Indonesian migrant workers devolves much power and responsibility to PPTKIS and its supervision mechanism is weak; this inevitably opens further prospects of abuse.\textsuperscript{1171} This condition prompts Indonesian migrant workers to opt for migration through irregular means and render them more vulnerable to abuse.

As in the case of exploitation of women and children, the imbedded culture of corruption of the Indonesian authorities has aggravated the abuse of women migrant workers especially during the pre-departure and return stages.\textsuperscript{1172} Unfortunately, corrupt practice also stained the performance of some staff in Indonesian Embassies in some receiving countries, eventually subjecting Indonesian migrant workers to further abuse and exploitation.\textsuperscript{1173}

Lastly, Indonesia’s geographical position and condition (see the map of Indonesia above) constitutes an aggravating factor that contribute in facilitating human traffickers and smugglers to conduct their operation fairly undetected.\textsuperscript{1174} Indonesia’s thousands of islands and the lack of human resource as well as appropriate security means make it hard for the Indonesian authorities to monitor their borders. The vast land border, between Indonesia and Malaysia for instance, also poses another problem since there are so many “mouse paths” that traffickers and smugglers can use to export their commodities across the Indonesian land border.

\textbf{c. Impact of Abuse and Discrimination in Migration}

GoI report to the CEDAW Committee in 2005 indicated that women migrant workers who had been sexually exploited at their workplace found that they have lost their social status when they returned home; they might even be socially excluded.\textsuperscript{1175} Most of these women became emotionally and physiologically disturbed.\textsuperscript{1176} There are cases where women migrant workers who were already married when they went abroad discovered that their husbands have remarried and spent the hard-earned money they sent home.\textsuperscript{1177} GoI report in 2011 highlights the rising number of domestic problems and divorce experienced by families of migrant workers due to the absence of spouses who work abroad.\textsuperscript{1178}

Those women migrant workers who experienced rape at their workplace, and especially those that worked

\begin{center}
\begin{tabular}{l}
\textsuperscript{1165} IOM, Labour Migration from Indonesia, 46 – 47, 66 – 68, and 75. \\
\textsuperscript{1166} \textit{Ibid}, 9; see also GoI, 2011 IPR-CEDAW, para. 38. \\
\textsuperscript{1167} IOM, Labour Migration from Indonesia, 18. \\
\textsuperscript{1168} \textit{Ibid}. \\
\textsuperscript{1169} \textit{Ibid}. \\
\textsuperscript{1170} \textit{Ibid}, 17. \\
\textsuperscript{1171} \textit{Ibid}, IOM; see also Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment., 34; and CARAM ASIA, Reality Check!, 17. \\
\textsuperscript{1172} \textit{Ibid}, 20 and 35. \\
\textsuperscript{1173} \textit{Ibid}, 49 – 50. \\
\textsuperscript{1174} HRRC’s Expert Consultative Meeting on the Baseline Study, Jakarta, 23 June 2012. \\
\textsuperscript{1175} GoI, 2005 IPR-CEDAW, para. 18; GoI, 2011 IPR CEDAW, para. 38. \\
\textsuperscript{1176} GoI, 2005 IPR-CEDAW. \\
\textsuperscript{1177} \textit{Ibid}, para. 18. \\
\textsuperscript{1178} GoI, 2011 IPR-CEDAW, para. 119. \\
\end{tabular}
\end{center}
in domestic setting or were being sexually exploited, face high risk of experiencing disturbances of their reproduction health and are exposed to the possibilities of contacting sexually transmitted diseases and/or HIV/AIDS. Another impact of abuses suffered by Indonesian women migrant workers is unwanted pregnancy as a result of rape that they suffered in the hands of their employers or sexual exploitation. Further impact of unwanted pregnancies affects the fate of the children born afterwards; most of these children were abandoned by their mothers when they returned to Indonesia, yet contributing to the prevalence of neglected children especially in Jakarta.

Due to the unavailability of birth certificates for children of Indonesian migrant workers that were born in Malaysia, these children cannot enjoy basic education and other public services. Furthermore, many of these children ended up exploited as plantation workers since they do not enjoy any legal protection under Malaysian law. Child neglect is another impact that might occur on children of migrant workers who are left behind in Indonesia; however; further studies are needed to verify this consequence of migration.

2. De Jure State Responses

   a. Bases of State Responsibility

This section will consist of a list of international and regional instruments, as well as bilateral arrangements relating to Indonesia’s international responsibilities in providing protection in the context of migration, particularly in relation to women and children. This list will mainly include UN Conventions, ILO Conventions, and ASEAN instruments relating to labour standards, migration and immigration policies, protection of migrant workers, and instruments granting protection against violence and exploitation in the context of migration. For the sake of clarity, the list of international and regional instruments in this section will also include some instruments that are already listed in the previous section of this Study (Section on Exploitation, Table 19 above).

Aside from the list, this section will also include recommendations made by the HRC and UN Treaty Bodies relating to Indonesia’s international obligation. Additionally, the Study will also include relevant recommendations made by other supervisory or relevant bodies to Indonesia. However, the Study will not repeat recommendations that have been mentioned in the previous Section on Exploitation. To avoid confusion, the Study will make sure to indicate the recommendations that have been made in Section C.2.a above that are relevant to the discussion in this Section.

1181 Mark Schleibs, Rape and the Plight of the Female Migrant Worker.
1182 Erwida Maulia, RI Workers, Children ‘Enslaved’ in Malaysia; SOS Children’s Villages Canada (SCVC), Stateless Children Live an Uncertain Life; and Anthea Mulakala, Sabah’s Stateless Children.
1183 Ibid.
1184 Fitri, For Children of Migrant Workers, Malnutrition Threat; Mark Schleibs, Rape and the Plight of the Female Migrant Worker.
<table>
<thead>
<tr>
<th>No</th>
<th>International, Regional, and Bilateral Instruments/Arrangements</th>
<th>Date of Signature, Ratification, Accession, or Adoption</th>
<th>Instrument of Ratification</th>
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<tbody>
<tr>
<td>5</td>
<td>1951 Convention relating to the Status of Refugees</td>
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<td>6</td>
<td>1967 Protocol relating to the Status of Refugees</td>
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<tr>
<td>7</td>
<td>1954 Convention relating to the Status of Stateless Persons</td>
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<td></td>
<td><strong>ILO Conventions</strong></td>
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<tr>
<td>1</td>
<td>1925 ILO Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen’s Compensation for Accidents</td>
<td>12 June 1950 (R)</td>
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<td>2</td>
<td>1929 ILO Convention concerning the Marking of the Weight on Heavy Packages Transported by Vessels</td>
<td>12 June 1950 (R)</td>
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<td>3</td>
<td>1930 ILO Convention No. 29 concerning Forced Labour</td>
<td>12 June 1950 (R)</td>
<td></td>
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<td>4</td>
<td>1935 ILO Convention No. 45 concerning the Employment of Women on Underground Works in Mines of all Kinds</td>
<td>12 June 1950 (R)</td>
<td></td>
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<td>7</td>
<td>1948 ILO Convention No. 88 concerning the Organisation of the Employment Service</td>
<td>8 August 2002 (R)</td>
<td>Presidential Decree No. 36 of 2002</td>
</tr>
<tr>
<td>8</td>
<td>1949 ILO Convention No. 98 concerning the Right to Organise and Collective Bargaining</td>
<td>15 July 1957 (R)</td>
<td>Law No. 18 of 1956</td>
</tr>
<tr>
<td>9</td>
<td>1950 ILO Convention No. 100 concerning Equal Remuneration</td>
<td>11 August 1958 (R)</td>
<td>Law No. 80 of 1957</td>
</tr>
<tr>
<td>10</td>
<td>1957 ILO Convention No. 105 concerning the Abolition of Forced Labour</td>
<td>07 June 1999 (R)</td>
<td>Law No. 19 of 1999</td>
</tr>
<tr>
<td>11</td>
<td>1959 ILO Convention No. 106 concerning Weekly Rest in Commerce and Offices</td>
<td>23 August 1972 (R)</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>1958 ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation</td>
<td>7 June 1999 (R)</td>
<td>Law No. 21 of 1999</td>
</tr>
<tr>
<td>13</td>
<td>1973 ILO Convention No. 138 concerning Minimum Age for Admission to Employment</td>
<td>7 June 1999 (R)</td>
<td>Law No. 20 of 1999</td>
</tr>
<tr>
<td>14</td>
<td>1976 ILO Convention No. 144 concerning Tripartite Consultation to promote the Implementation of International Labour Standards</td>
<td>18 June 1990 (R)</td>
<td>Presidential Decree No. 26 of 1990</td>
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<tr>
<td>15</td>
<td>1999 ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour</td>
<td>8 March 2000 (R)</td>
<td>Law No. 1 of 2000</td>
</tr>
<tr>
<td>No</td>
<td>International, Regional, and Bilateral Instruments/Arrangements</td>
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| **ASEAN and ASEAN+ Instruments**

1. 1997 ASEAN Vision 2020  
   Date of Signature: 15 December 1997 (adpt.)  
   **Ratification is not required**

2. 1998 Ha Noi Plan of Action  
   Date of Signature: 16 December 1998 (adpt.)  
   **Ratification is not required**

3. 1999 Bangkok Declaration on Irregular Migration (ASEAN +)  
   Date of Signature: 23 April 1999 (adpt.)  
   **Ratification is not required**

4. 2003 Declaration of ASEAN Concord II (Bali Concord II)  
   Date of Signature: 7 October 2003 (adpt.)  
   **Ratification is not Required**

5. 2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children  
   Date of Signature: 29 November 2004 (adpt.)  
   **Ratification is not required**

6. 2004 Vientiane Action Programme  
   Date of Signature: 29 November 2004 (adpt.)  
   **Ratification is not required**

7. 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers  
   Date of Signature: 13 January 2007 (adpt.)  
   **Ratification is not required**

8. 2007 Statement of the Establishment of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers  
   Date of Signature: 30 July 2007 (adpt.)  
   **Ratification is not required**

9. 2008 Work Plan of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW Work Plan)  
   Date of Signature: 2008  
   **Ratification is not required**

| **Bilateral Arrangements**

   Date of Signature: 2 May 2001 (S)  
   **Ratification is not required**

2. Memorandum of Understanding Between the Department of Manpower and Transmigration of the Republic of Indonesia and the Department of Labour and Employment of the Republic of the Philippines Concerning Migrant Workers  
   Date of Signature: 18 January 2003 (S)  
   Indonesian has not ratified

3. Memorandum of Understanding Between the Department of Manpower and Transmigration of the Republic of Indonesia and the Ministry of Labour of the Republic of Korea on the Sending of Indonesian Workers to the Republic of Korea.  
   Date of Signature: 13 July 2004 (S)  
   **Ratification is not required**

4. Agreement for the Extension of the Validity of the Memorandum of Understanding Between the Department of Manpower and Transmigration of the Republic of Indonesia and the Ministry of Labour of the Republic of Korea on the Sending of the Workers to the Republic of Korea on 13 July 2004  
   Date of Signature: 12 July 2006 (S)  
   **Ratification is not required**

5. Memorandum of Understanding Between the Department of Manpower and Transmigration of the Republic of Indonesia and the Ministry of Labour of the Republic of Korea on the Sending of Workers to the Republic of Korea Under the Employment Permit System.  
   Date of Signature: 9 October 2006 (S)  
   **Ratification is not required**

6. Agreement on Supply of Workers between the Republic of Indonesia and Malaysia  
   Date of Signature: 12 May 1984 (S)  
   **Ratification is not required**
Table 27 – Indonesia’s International, Regional, and Bilateral Commitments/Arrangements relating to the Protection of People in the Context of Migration

<table>
<thead>
<tr>
<th>No</th>
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<tbody>
<tr>
<td>7.</td>
<td>Memorandum of Agreement on Recruitment of Indonesian Workers between the Government of the Republic of Indonesia and the Government of the Kingdom of Malaysia.</td>
<td>15 December 1993 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>8.</td>
<td>Memorandum of Understanding on the Recruitment of Indonesian Workers between the Government of the Republic of Indonesia and the Government of Malaysia</td>
<td>10 May 2004 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>9.</td>
<td>Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers</td>
<td>13 May 2006 (S)</td>
<td>Ratification is not required</td>
</tr>
<tr>
<td>10.</td>
<td>Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of the Kingdom of Qatar on Indonesia’s Labour Regulations in Qatar</td>
<td>20 January 2008 (S)</td>
<td>Indonesia has not ratified</td>
</tr>
</tbody>
</table>

Apart from the MoUs listed above, the GoI has also signed MoUs on the sending and placement of migrant workers with Taiwan, Japan, Kuwait, United Arab Emirates, Syria, Libya, and Qatar. However, these MoUs are not reflected in the Indonesian Ministry of Foreign Affairs bilateral agreements database.

Indonesia made reservations to UNTOC and its Protocols. No reservation is made by Indonesia to all ILO Conventions that it has ratified. The reason for Indonesia’s non-reservation to all ILO Conventions had been discussed in the previous Section (See Section C.2.a above).

HRC, UN Treaty Bodies, UN Special Procedures and other relevant bodies, including ILO’s CEACR had delivered their recommendation to the GoI with regard to the implementation of some of the international instruments listed above as well as on the issue of protection of women and children against violence, discrimination, and exploitation in the context of migration. Unfortunately, some recent GoI reports such as GoI reports to CEDAW Committee (2011) and to the HRC (2012) are not yet conclusive, meaning that the HRC and the Treaty Body have not yet to make their concluding comments. In that case, the Study will refer to the last concluding comments that these bodies had made on the issue, i.e., the 2008 Concluding Comments on Indonesian UPR and the 2007 Concluding Comments on Indonesia’s Periodic Report to CEDAW Committee. Below are some recommendations given responding to GoI’s report to the various bodies:

1185 ASEAN instruments relating to the protection of women and children against exploitation cover binding and non-binding instruments. This entails that not all instruments required signature, ratification/accession by ASEAN Member States. The instruments listed in the table are mainly dealt with the issue of trafficking in women and children. Full version of these instruments can be accessed on the ASEAN website <www.asean.org> or can be found in the ASEAN database of the Centre for International Law <www.cil.nus.edu.sg>.

1186 Apart from Indonesia – Malaysia relation on migrant workers, the Study finds it difficult to get hold of information relation to Indonesia’s cooperation with other countries relating to migrant workers. The list included in Table 26 is based on the information gathered from various tables of bilateral instruments that Indonesia has with various countries gathered by the Ministry of Foreign Affairs <www.kemlu.go.id>. The Study cannot guarantee if the list created based on the information provided by Indonesia’s Ministry of Foreign Affairs is exhaustive.

1187 A moratorium is placed by the GoI on this MoU in 2009 due to the high number of abuse suffered by Indonesian migrant workers in the hands of their Malaysian employers.

1188 CARAM ASIA, Reality Check!, 19.

<table>
<thead>
<tr>
<th>Recommending Body</th>
<th>Recommendations</th>
</tr>
</thead>
</table>
| **CEDAW Committee**\(^{1190}\) | a. To engage into bilateral agreements and Memorandum of Understandings with destination countries to which Indonesian workers migrate in search of work. Indonesia has to make sure that such agreements should be in compliance with human rights and CEDAW. Furthermore, there is also a need to establish a mechanism in the country of destination to handle violation of the rights of women migrant workers.  
  
b. To develop policies and measures to protect women migrant workers who migrate through regular and irregular channels from all forms of violations of their rights, including firmer monitoring on recruitment agencies and expanding the services provided for the workers abroad.  
  
c. To reduce the fees and administrative burdens imposed on migrant workers at pre-departure stage and when they return back to Indonesia.  
  
d. To address the root causes of women’s migration coherently and comprehensively through, among others, addressing the problem of women unemployment in Indonesia.  
  
e. To provide assistance to women migrant workers who seek redress.  
  
f. To strengthen the assessment of recruitment agencies and training centres; impose substantial penalties to companies that violate the rights of workers that they recruited; and to prosecute and punish anyone who is involved in illegal recruitment of migrant workers, including perpetrators of trafficking of women migrant workers for forced labour and sexual exploitation. |
| **CAT Committee**\(^{1191}\) | a. To develop “a comprehensive and effective policy framework and implementation mechanism for safe migration”. Additionally, the United Nations Country Team (UNCT) recommended the GoI to provide better protection services to migrant workers both when they are in destination countries and when they return home.  
  
b. Indonesia should adopt appropriate legislations in accordance with Article 3 of CAT. Recommend the GoI to protect the rights of asylum seekers and increase coordination in handling asylum matters. |
| **IOM**\(^{1192}\) | a. To revise relevant legislations to include more provisions on the rights and protections of migrant workers and the inclusion of gender perspective. Recommend that MOWE should play a key role in the revision process.  
  
b. To establish a monitoring authority responsible for the supervision of the implementation of recruitment, placement, and protection of migrant workers. Through the improvement of monitoring mechanism, it is hoped that it can eliminate illegal recruitments.  
  
c. To increase the role of regional governments in the implementation and enforcement of legislations relating to the rights and protection of migrant workers.  
  
d. To clarify the recruitment process and certify the departure of migrant workers through a professional agency.  
  
e. To enhance the quality of documents issued by the Directorate General of Immigration and the National Police to migrant workers in order to reduce the possibilities of falsified documents (e.g., by issuing ID card with microchips).  
  
f. To shorten recruitment process and ensure recruitments are done locally to dispense migrant workers from expensive costs. Local governments need to be more involved to establish a more efficient placement service through a “one-roof” service centre at local level.  
  
g. To ensure information on recruitment process is accessible by prospective migrant workers. A hotline aiming at disseminating such information might be useful to establish.  
  
h. To develop and implement a standardised education system for Indonesian migrant workers.  
  
i. To ensure all departing migrant workers hold valid employment contracts signed before departure, stipulating clear conditions of employment. The contracts shall be drafted in languages that the prospective workers can easily understand.  
  
j. To reduce fees and levies of migration for workers. To this end, the GoI should establish clear guidelines on the fees that can be charged to workers by private employment agencies.  
  
k. To establish MoUs or agreements with destination countries and set out mutually agreed costs for migrant workers to avoid practices of debt bondage.  
  
l. To improve data collection on migrant workers by the GoI. |

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1190 CEDAW Committee, 2012 CO-CEDAW, para 43 – 44; CEDAW Committee, 2007 CC-CEDAW, para. 33 and 44.  
1192 IOM, Migration from Indonesia, 81 – 84.
m. To strengthen the role of labour attaches at Indonesian Embassies in destination countries in conducting monitoring on recruitment agencies, job placements, site visits, etc. to provide better protection for migrant workers. This also includes capacity building of labour attaches; ensuring that the attaches hold diplomatic status; increase the number of labour attaches; and strengthening internal relation among GoI and Indonesian Embassies and consulates in destination countries.

n. To provide economic assistance, protection, training opportunities, and reintegration program for returning migrant workers.

o. To provide legal services for migrant workers who are involved in legal cases.

p. To shift the responsibility of placement of migrant workers, especially women, from recruitment agency to the GoI control.

q. To ratify the Migrant Workers Convention.

Table 28 – List of Recommendations given by UN Treaty Bodies/Special Procedures and Other Bodies related to Implementation of Indonesia’s International Obligations Pertaining to Protection of Migrant Workers

<table>
<thead>
<tr>
<th>No.</th>
<th>Implementing Legislation and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Government Regulation No. 92 of 2000 on Types of Valid Non-Tax State Revenues in the Ministry of Labour and Transmigration*1197</td>
</tr>
<tr>
<td>2.</td>
<td>Government Regulation No. 38 of 2007 on the Distribution of Power among Central, Provincial, and Regency/Municipal Government;*1198</td>
</tr>
<tr>
<td>3.</td>
<td>Presidential Decree No. 106 of 2004 on the Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia (Presidential Decree on TK-PTKIB)*1199</td>
</tr>
<tr>
<td>4.</td>
<td>Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad*1200</td>
</tr>
<tr>
<td>5.</td>
<td>Presidential Instruction No. 6 of 2006 on Reforming the System of Placement and Protection of Indonesian Migrant Workers</td>
</tr>
<tr>
<td>6.</td>
<td>Presidential Regulation No. 81 of 2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers (Presidential Decree on BNP2TKI)*1201</td>
</tr>
<tr>
<td>7.</td>
<td>Ministry of Labour and Transmigration Decree No. KEP-14/MEN/1/2005 on the Prevention of Non-procedural Departures of Indonesian Labour Migrants and Repatriation Services for Indonesian Labour Migrants</td>
</tr>
<tr>
<td>8.</td>
<td>Ministry of Labour and Transmigration Regulations No. PER-04/MEN/III/2005 on Implementation of the Pre-departure Briefing of Indonesian Migrant Workers Abroad</td>
</tr>
<tr>
<td>10.</td>
<td>Ministry of Labour and Transmigration Decree No. PER-07/MEN/IV/2005 on Accommodation Standards for Prospective Migrant Workers</td>
</tr>
</tbody>
</table>

b. National Policies against Abuse and Discrimination in Migration

Indonesian national policies against abuse and discrimination against women and children described in Sections B.2.b and C.2.b above also apply to women and children in the context of migration. However, there are critiques stating that Indonesian legal framework on giving protection to its migrant workers is generally weak.*1194 In this section, the Study will only summarise general protection given specifically to Indonesian migrant workers under Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (Migrant Workers Law)*1195 and Law No. 6 of 2011 on Immigration (Immigration Law)*1196. In addition to that, the Study has listed relevant legislation and regulations related to the implementation of the protection set out in the Migrant Workers Law.

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1194 IOM, Labour Migration from Indonesia, 17; see also Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 34.


Table 29 – List of Legislations and Regulations relevant to the Implementation of Migrant Workers Protection under the Migrant Workers Law

<table>
<thead>
<tr>
<th>No.</th>
<th>Implementing Legislation and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.</td>
<td>Ministry of Labour and Transmigration Decree No. PER-19/MEN/V/2006 on Managing the Placement and Protection of Indonesian Overseas Workers</td>
</tr>
<tr>
<td>12.</td>
<td>Ministry of Labour and Transmigration Regulation No. PER-23/MEN/V/2006 on Insurance for Indonesian Migrant Workers</td>
</tr>
</tbody>
</table>

Table 30 – Preventive Measures Provided under the Migrant Workers Law

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legislation</strong></td>
<td><strong>Relevant Provisions</strong></td>
</tr>
<tr>
<td>Migrant Workers Law</td>
<td>d. Any person who abuses PPTKIS’ Migrant Worker Placement License will be punished by imprisonment and/or fine (Article 102).</td>
</tr>
<tr>
<td></td>
<td>e. Any person who:</td>
</tr>
<tr>
<td></td>
<td>· Places a migrant worker without going through a partner agency in the destination country;</td>
</tr>
<tr>
<td></td>
<td>· Places a migrant worker abroad without appropriate license;</td>
</tr>
<tr>
<td></td>
<td>· Employs a migrant worker in training;</td>
</tr>
<tr>
<td></td>
<td>· Places a migrant worker abroad who does not have the obligatory Migrant Worker ID; or</td>
</tr>
<tr>
<td></td>
<td>· Does not despatch a qualified migrant worker who has fulfilled all necessary requirements</td>
</tr>
<tr>
<td></td>
<td>· will be punished by imprisonment and/or fine (Article 104).</td>
</tr>
<tr>
<td>Immigration Law</td>
<td>a. The Minister of Law and Human Rights or authorised immigration official is responsible to conduct preventive measures in the following forms (Article 89):</td>
</tr>
<tr>
<td></td>
<td>· Exchange of information with other countries and other relevant institutions within Indonesia on the <em>modus operandi</em> and the supervision on the validity and originality of travel documents; and</td>
</tr>
<tr>
<td></td>
<td>· Commence immigration investigation toward suspected traffickers and smugglers;</td>
</tr>
<tr>
<td></td>
<td>· Impose immigration administrative sanction to the perpetrators;</td>
</tr>
<tr>
<td></td>
<td>· Cooperation with other law enforcement institutions in conducting the investigation.</td>
</tr>
<tr>
<td></td>
<td>b. Any person who is found guilty of the crime of smuggling of migrants or attempted to commit smuggling of migrants shall be punished by imprisonment (5 – 15 years) and fine (IDR 500 million – IDR 1.5 billion) (Article 120).</td>
</tr>
</tbody>
</table>


1199 Presidential Decree No. 106 of 2004 on the Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia, 18 October 2004.

1200 Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad, 7 July 2011.

1201 Presidential Regulation No. 81 of 2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers, 8 September 2006.

### b. Protective Measures

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>The placement and protection of migrant workers is implemented based on, among others, anti-discrimination, gender justice, equality, social justice, and anti-trafficking in persons (Article 2).</td>
</tr>
<tr>
<td>b.</td>
<td>The protection to migrant workers starts from pre-departure, in the destination countries, until they return to Indonesia (Article 3).</td>
</tr>
<tr>
<td>c.</td>
<td>The GoI is responsible for the protection of migrant workers, including protection in the destination countries (Articles 5 – 6).</td>
</tr>
</tbody>
</table>
| d.          | Rights of migrant workers guaranteed by the State (Article 8):  
                · Rights to work abroad  
                · Right to information related to work opportunities and placement procedures  
                · Right to receive equal treatment and services during their placement abroad  
                · Freedom of religion and to practice their beliefs  
                · Right to receive equal remuneration in accordance with the standard applies in the destination country  
                · Right to receive equal treatment in the destination country  
                · Right to receive legal protection in the destination country  
                · Right to receive protection for their safety and security upon their return  
                · Right to receive the original copy of their work contract |
| e.          | The Ministry of Labour and Transmigration to revoke the permit of PPTKIS that violates the rights of migrant workers protected under this legislation (Article 18). |
| f.          | The placement of Indonesian migrant worker can only be done in a country which government has established an agreement with the GoI (Article 27). |
| g.          | Any person is prohibited from placing a migrant worker in a works condition, which violates human rights and propriety as well as the Law applicable in Indonesia and in the destination country (Article 30). |
| h.          | The minimum age for migrant worker is 18 years. Except for individual employer, the minimum age of a migrant worker is 21 years. Especially for women, they are not eligible to be migrant workers if they are conceiving (Article 35). |
| i.          | Prospective migrant workers are entitled to receive trainings and preparation in accordance with their future profession abroad, including information on condition, culture, religion and the risks that they might face in the country of destination (Article 42). |
| j.          | Physical and psychological check up for migrant workers before their departure (Articles 48 – 50). |
| k.          | Migrant worker's placement contract is made and signed by the concerned migrant worker and PPTKIS. The contract should include, among other, the rights and obligations of each party; guarantee on migrant worker's placement in case the prospective employer does not fulfil his/her contract obligation (Article 52). |
| l.          | Migrant worker's work contract is signed by the migrant worker containing provisions on, among other, particulars of the migrant worker and employer; and work condition including working hours, remuneration, paid leave, social security, etc. (Article 55). |
| m.          | The GoI to provide migrant workers' sufficient services points in ports of departure and ports of return (Article 66). |
| n.          | PPTKIS are obliged to instruct migrant workers to join insurance programs (Article 68) and to inform the workers on the law of the destinations countries and the content of their work contract (Article 69). |
| o.          | PPTKIS are allowed to house migrant worker prior to departure in their premises and shall treat the workers humanely (Article 70). |
| p.          | PPTKIS are obliged to report the arrival of migrant workers who use their services (Article 71). |
| q.          | PPTKIS are not allowed to place a migrant worker in profession that is not described in his/her work contract (Article 72). |
| r.          | PPTKIS are responsible for the return of migrant workers until they are safely returned to their place of origin (Articles 74 – 75). |
| s.          | Migrant workers are entitled for legal protections during pre-departure, placement, and post-return periods (Article 77). |
| t.          | Indonesia's representatives abroad shall render protection to migrant workers in destination countries in accordance with Indonesia's domestic legislations and international law. Protection of migrant workers will be carried out by labour attaches at every Indonesian Embassy (Article 78). The protection rendered by Indonesian Embassies includes legal assistance and defending the rights of migrant workers as stipulated in the work contract (Article 80). |
| u.          | Indonesian Embassies are responsible to supervise the conduct of placement agencies' representatives in destination countries (Article 79). |
| v.          | The GoI can place a moratorium on the sending and placing of Indonesian migrant workers or prohibit the placement of migrant workers for certain professions in order to protect the rights of Indonesian migrant workers (Article 81). |
b. Protective Measures

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Relevant Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>w.</td>
<td>Supervision on the placement and protection of migrant abroad is carried out by government institutions responsible for labour issues at the central, provincial, and regency/municipal levels (Articles 92 – 93).</td>
</tr>
<tr>
<td>x.</td>
<td>BNP2TKI is established to coordinate the placement and protection of Indonesian migrant workers. Service Centre on the Placement and Protection of Indonesian Migrant Workers (Balai Pelayanan, Penempatan, dan Perlindungan Tenaga Kerja Indonesia, BP3TKI) is established in every province to assist in the processing of all necessary documents to facilitate the placement of migrant workers (Article 94 – 99).</td>
</tr>
<tr>
<td>y.</td>
<td>Any migrant worker who works abroad without using the service of a PPTKIS is entitled to protection provided by the GoI (Article 106).</td>
</tr>
</tbody>
</table>

Immigration Law

| 1 | TK-PTKIB was established to assist in coordinating policies and programs on repatriation of Indonesian irregular migrant workers and their families from Malaysia (Article 3). |
| 2 | Some of the protection measures provided by TK-PTKIB include (Article 4): |
| 1205 | Migrant Workers Law, art. 35(c). |

Table 31 – Protective Measures for Indonesian Migrant Workers

c. Curative Measures

The Migrant Workers Law does not have any provisions on curative measures for women and children victims of violence and discrimination in the context of migration. However, general curative measures provided for women and children victims of violence and exploitation as discussed in Sections B2.b and C.2.b above also apply in the context of migration.

c. Assessment of State Policies

The Migrant Workers Law is the only Parliamentary Act that deals with the protection of Indonesian workers in the context of migration. There are some lower legislative provisions and regulations put in place for the implementation of placement and protection of migrant workers as listed in Table 30 above. Nothing in the present Law grants specific protection on the rights of children and women migrant workers. Reports have criticised the Migrant Workers Law as focusing heavily on the subject of placement of migrant workers instead of on the protection of their rights. As a reflection of this, of 109 Articles stipulated in the Migrant Workers law only eight Articles are specifically dedicated to the protection the rights of migrant workers.

Regarding the issue of whether the Law prohibits sex-specific bans, the Migrant Workers Law prohibits the recruitment and placement of pregnant women migrant workers. The Law also requires women migrant workers, to be eligible for a placement abroad, to

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1203 Labour Migration from Indonesia, 17; see also Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 34; and CARAM ASIA, Reality Check!, 17.

1204 Chapter VI (Articles 77 – 84) of the Migrant Workers Law is the only Section dedicated to the protection of the rights of migrant workers.

1205 Migrant Workers Law, art. 35(c).
present to the placement agencies a letter expressing the permission of their husband, or parents, or guardian, as well as a marriage certificate for those who are married.\textsuperscript{1206} The requirement for a woman migrant worker to secure a written permission from her husband, or parents, or guardian is further reinforced by MUI (Indonesian Council of Ulama) in one of their \textit{fatwas} issued in 2000, stating that it is considered as \textit{haram} under Islamic law if a married woman went abroad to work without her husband’s consent.\textsuperscript{1207}

The Law does not expressly define the term “irregular recruitment”, however violations of the terms of recruitment and placement of migrant workers stipulated in the Law are considered as crimes or felonies punishable by imprisonment and/or fine.\textsuperscript{1208} Crimes or felonies punishable under the Migrant Workers Law apply to an individual who conducts illegal recruitment or abuse of GoI license or violates the terms set out under the Law in relation to the placement of migrant workers.\textsuperscript{1209} Indonesia also imposes administrative sanctions on private recruitment and placement agencies that violate the terms and conditions of placement of migrant workers set out under the Law. These penalties include: 1) written warning; 2) suspension of their license to recruit and place migrant workers; 3) revocation of license; 4) cancellation of migrant workers’ departure; and 5) repatriation of migrant workers.\textsuperscript{1210}

The GoI guarantees the right of regular migrant workers to return to Indonesia in general.\textsuperscript{1211} There is no specific provision indicating special treatment for women and children in this regard. To the knowledge of this Study, there is also no clear provision to secure the right of irregular migrant workers to return to Indonesia. According to practice, the issue of repatriation of irregular migrant workers is handled on a case-by-case basis. So far, Indonesia has established one task force to specifically deal with the repatriation of Indonesian irregular migrant workers and their families from Malaysia where this issue has become a major political problem for the GoI.\textsuperscript{1212}

Nothing in the Migrant Workers Law condones the restriction of migrant workers’ freedom of movement. However, national laws of some destination countries, such as Malaysia, have enacted provisions enabling the retention of migrant workers’ travel documents during the duration of their employment.\textsuperscript{1213} In the past, it was completely an acceptable practice in Kuwait for the employer to keep migrant workers’ travel documents, but recent developments show that the practice is no longer maintained. Instead, the right to retain migrant workers’ passports now lies in the hands of Kuwait Home Helper Operating Company.\textsuperscript{1214} The domestic law of the destination countries which legalise the withholding of migrant workers’ travel documents and set out the requirement for the sponsorship system has severely curtailed migrant workers’ freedom of movement and makes them vulnerable to abuse and exploitation.\textsuperscript{1215}

In relation to protection of migrant workers in destination countries, the Migrant Workers Law acknowledges the rights of migrant workers to: 1) receive equal remuneration in accordance with the standard applicable in the destination country; 2) receive rights, opportunities, and treatment equivalent to those received by migrant workers coming from other countries in accordance with the legislation of the destination country; and 3) receive legal protection against violations of their human rights and dignity in accordance with the legislation in the destination country.\textsuperscript{1216} One significant gap in these protections, however, arises from the fact that most of Indonesian women migrant workers are domestic workers or caregivers in destination countries and, as in the case in Indonesia, these professions are not acknowledged and protected under the law of many destination countries.\textsuperscript{1217} Therefore, in many destination countries, migrant domestic workers do not receive equal protection compared to workers who are nationals of the destination countries.

\textsuperscript{1206} Ibid, art. 51.
\textsuperscript{1207} Martha Thertina, TKW Haram Bekerja Jika… (Women Migrant Workers are Haram to Work if…), Tempo, 1 July 2011. <www.tempo.co>, accessed on 1 May 2012.
\textsuperscript{1208} Migrant Workers Law, art. 102 – 104.
\textsuperscript{1209} Ibid.
\textsuperscript{1210} Ibid, art. 100.
\textsuperscript{1211} Ibid, art. 8(h).
\textsuperscript{1212} See the summary of Presidential Decree on TK-PTKIB in Table 31 above.
\textsuperscript{1213} IOM, Migration from Indonesia, 42 and 45; see also CARAM Asia, Reality Check, 18.
\textsuperscript{1214} Ibid, 69.
\textsuperscript{1215} Ibid.
\textsuperscript{1216} Migrant Workers Law, art. 8 (e – g).
\textsuperscript{1217} IOM, Migration from Indonesia, 18.
It is very unfortunate the under Indonesian legislation, to the knowledge of this Study, there is no mentioning of protection of the rights of children in the context of migration, including child migrant workers and children left behind by their migrant workers parents. Even though, for example, reports and news coverage have brought up the problem of Indonesian migrant workers’ children in Malaysia who are stateless and have no access to basic protection, the GoI has not taken up any measures to ensure their protection abroad.

3. Implementation, Monitoring and Enforcement

Apart from the Government’s institutions that will be discussed in the following paragraphs, Government institutions that are involved in the monitoring, complaint, protection, rehabilitation, and prevention mechanisms and processes as discussed in the Sections on Violence (Section B.3 and Exploitation (Section C.3) above are also relevant to the protection of women and children against abuse and discrimination in the context of migration, especially upon their return to Indonesia. Particularly on the issue of irregular migration, SOM, and TIP, the GoI indicates that both Indonesia and Australia have been engaging in cooperation aiming at building closer cooperation to address the said issues.

a. Monitoring Mechanisms

According to Migrant Workers Law, the Labour and Transmigration Minister is responsible for matters concerning migrant workers. The GoI instituted BNP2TKI with the coordinating function as one of its main responsibilities. The members of BNP2TKI are constituted by representatives of various government institutions, including the Ministry of Foreign Affairs. At the local level, BNP2TKI’s subsidiary, the BP3TKI, operates in 19 migrant source provinces. BP3TKI is acting as BNP2TKI’s representative at the provincial level.

b. Complaints Process

In the countries of destination, Indonesian Embassies are equipped with Labour Attaches and Citizens’ Advisory Services that are responsible for rendering assistance to Indonesian migrant workers who experience abuse, discrimination, or exploitation during their placement. In the 2008 UPR, GoI reported that there were six Citizens’ Advisory Services in operation at Indonesian Embassies in Amman, Bandar Seri Begawan, Damascus, Doha, Seoul, and Singapore. In its latest report, the GoI indicated that it has established 24 such

1218 SCVC, Stateless Children Live an Uncertain Life; see also Anthea Mulakal, Sabah’s Stateless Children; and The Star, Society’s Learning Centres Teaching Stateless Children for Past 20 Years.
1219 UN HRC, 2012 RWG UPR, para. 75.
1220 Migrant Workers Law, art. 1(17).
1222 Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 1.
1223 Ibid.
1225 Ibid.
1226 Komnas Perempuan, 2011 Note, 34.
1227 Ibid.
1228 Ibid.
1229 Ibid; see also GoI, 2011 UPR-CEDAW, para. 106.
Upon their return to Indonesia, migrant workers who experienced problems during their placement in destination countries can bring complaints to the Directorate of Protection of Indonesian Citizens and Legal Bodies of Ministry of Foreign Affairs in Jakarta. The services provided by the Directorate include legal aid, assistance to repatriate Indonesian migrant workers who are experiencing problems in destination countries, and assisting with the retrieval of bodies of migrant workers who passed away in destination countries. The GoI also established a special terminal at Sukarno-Hatta International Airport for migrant workers with a special desk (Worker's Lounge) to receive complaints and document reports about work-related issues including abuses such as unpaid wages, violations of work contracts, and physical and sexual abuse.

### c. Protection and Rehabilitation

Apart from its main role as a coordinating body for issues involving Indonesian migrant workers, BNP2TKI is also responsible for providing adequate protection for Indonesian migrant workers. The protection provided by BNP2TKI includes the application of wage standards, and the suspension and revocation of licenses of problematic PPTKIS. The Worker’s Lounge established in several international airports in Indonesia also deals with the initiation of compensation process upon receiving reports on abuses during the workers’ placement in destination countries.

In response to the massive deportation of Indonesian irregular migrants from Malaysia, the GoI established the Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia (TK-PTKIB) in 2004 to handle cases of regular or incidental deportation of Indonesia migrant workers from Malaysia. The TK-PTKIB has units operating in 12 regions, which comprised of Medan, Tanjung Pinang, Batam, Tanjung Balai Karimun, Dumai, Entikong, Nunukan, Pare-Pare, Tanjung Priok, Tanjung Perak, Tanjung Emas, and Mataram. Also in response to deportation of Indonesian migrants from Malaysia, the Ministry of Social Affairs created a special directorate, the Directorate of Social Assistance for Victims of Violence and Migrant Workers. This Directorate is responsible for providing psychological rehabilitation programs and overseeing the reintegration of migrant workers back into their community.

In the case of stateless children of Indonesian migrant workers, the Ministry of National Education is the responsible Ministry for providing education services for these children. The GoI stated that the Ministry of Education is assisted by other relevant ministries to carry out this task.

### d. Prevention Measures

None of the reports assessed any prevention measures, education and awareness programs, or the Government institutions responsible for conducting prevention measures. To the knowledge of the Study, there has also been no consideration of public awareness campaigns on the risks of migration and the procedures for the recruitment and placement of migrant workers. In relation to migrant workers, however, the reports did indicate that, according to the Migrant Workers Law, it is the PPTKIS (private-owned recruitment and placement agencies) that are tasked to facilitate the training of migrant workers, inform them of their rights, report the arrival and return of migrant workers to and from destination countries, and to act as a mediator in case a dispute arises between an employer and a migrant worker, etc.
4. Role of Non-State Actors

Indonesian reports for UPR and to UN Treaty Bodies have hardly mentioned the role of non-state actors in the context of migration. The sole exception is the role of PPTKIS in the protection of Indonesian migrant workers during all stages of placement, which include rendering assistance to victims, involve in prevention efforts, and participating in monitoring and cooperation strategies.\(^{1244}\) The role of PPTKIS in the context of protection of Indonesian migrant workers is rather unique since this role is imposed by the GoI based on the Migrant Workers Law.\(^{1245}\) This fact has been criticised as creating opportunities of abuse by PPTKIS against migrant workers.\(^{1246}\) Based on its observation, the Study believes that many of the non-state organisations discussed in the previous Sections also play relevant roles in the protection of women and children against violence and discrimination in the context of migration (especially those non-state actors identified in Section C.4 above). The sub-sections below describe a number of non-state actors relevant in rendering protection to women and children in the context of migration.

a. Assistance to Victims

In recent years, the GoI has seen the rise of new NGOs focusing on advocating and defending migrant workers’ rights as well as rendering assistance to migrant workers.\(^{1247}\) Among those NGOs, the GoI has recognised the role of KOPBUMI in encouraging the creation of legislation pertaining to the issue of protection of Indonesian migrant workers and their families.\(^{1248}\) In destination countries, there are also NGOs concentrating on assisting with the fulfilment of Indonesian migrant workers’ rights, such as the Union of Indonesian Migrant Workers (Saudi Arabia) and the Association of Indonesian Migrant Workers (Hong Kong).\(^{1249}\)

In the province of Riau Islands, the Commission for Migrants (Komisi Migran dan Perantau, Karya Migran) participates in the protection of migrant workers by providing shelter, counselling, and repatriation.\(^{1250}\) Solidaritas Perempuan is an NGO with representation in eight provinces, equally divided among Indonesia’s biggest islands.\(^{1251}\) This NGO provides legal assistance to migrant workers who have become victims of trafficking in persons.\(^{1252}\)

The IOM, in collaboration with other actors, continues to provide health services to Indonesians in the context of migration.\(^{1253}\) Some of the services covered by IOM include migration health assessments for migrants and refugees and health and psychological services for irregular migrants and victims of trafficking.\(^{1254}\)

b. Prevention Programs

From the GoI reports to UN human rights mechanisms, little is mentioned on the role of non-state actors in the prevention of violence and discrimination against women and children in the context of migration. So far, the Study has not come across any reports that discuss the role of non-state actors in prevention programs on a national scale. However, in 2011 a report on a series of joint projects funded by the USAID on the development of Indonesia’s anti-trafficking strategies revealed the role of several non-state actors in the prevention of violence and discrimination against women migrant workers in specific areas where the projects were carried out.\(^{1255}\)

The report on this program focuses on efforts conducted in areas where trafficking in persons is rampant, such as the Riau Islands.\(^{1256}\) The Service Centre for Female Overseas Migrants in Batam (Pusat Pelayanan Tenagar Kerja Wanita di Batam, PP Nakerwan) carries out awareness raising campaigns aiming to improve migrant

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1244 See Table 31 above.
1245 Labour Migration from Indonesia, 17; see also Table 31 above; Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 34; and CARAM ASIA, Reality Check!, 17.
1246 Ibid.
1247 GoI, 2011 IPR-CEDAW, para. 111.
1248 Ibid.
1249 Ibid.
1250 Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism, 4.
1251 CWGI, 2007 CWGI-CEDAW, 74.
1252 Solidaritas Perempuan, Program Migrasi dan Trafficking/HIV/AIDS.
1254 Ibid.
1255 Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism, 1.
1256 Ibid.
workers’ conditions during training period, when they have to stay at PPTKIS shelters/holding centres, and to prevent trafficking-like practices.\textsuperscript{1257} Solidaritas Perempuan is also one of the local NGOs engaging in prevention programs.\textsuperscript{1258} For instance, Solidaritas Perempuan has produced a documentary movie on the experience of migrant workers arriving at the workers’ special terminal at Sukarno-Hatta as a part of their campaign to raise public awareness.\textsuperscript{1259}

c. Monitoring and Cooperation

In 2007 – 2009, the IOM has assisted the GoI in capacity building for the Indonesia Directorate General of Immigration to care and manage irregular immigrants in Indonesia, enhancement of management capabilities for returnees, and renovation of two detention facilities.\textsuperscript{1260} This collaboration was conducted through the Management and Care of Irregular Immigrants Project (MCIIP).\textsuperscript{1261} Apart from that, IOM also worked closely with the GoI and the Australian government to regulate the movement of irregular migrants to Australia through Indonesia.\textsuperscript{1262} The cooperation also engaged the active role of UNHCR.\textsuperscript{1263}

At the local level, for instance, Yayasan Sirih Besar is a local NGO that managed to cooperate with local governments and IOM to improve the conditions of irregular migrant workers that were deported to Tanjung Pinang.\textsuperscript{1264} Meanwhile, at the national level, Solidaritas Perempuan has been very active in advocating policies in favour of migrant workers’ rights, especially in urging the GoI to ratify the 1990 Migrant Workers Convention.\textsuperscript{1265}

5. Progress Indicators and Challenges

a. Progress Indicators

i. Progress Indicators related to Women Migrant Workers Protection in Destination Countries

Since 2007, GoI has established 24 Citizen Service Units, hotline services, and associations of Indonesians living abroad that can be empowered to assist Indonesian migrant workers who are facing problems or abuse.\textsuperscript{1266} They also provide shelters for migrant workers including access to education, health services, and assisting with the return process of migrant workers.\textsuperscript{1267} Under the instruction stipulated in Presidential Instruction No. 6 of 2006, the Ministry of Foreign Affairs has set up a Mandatory Consular Notification Agreement in relation to criminal cases which involve Indonesian citizens, including the execution of an Indonesian in destination countries.\textsuperscript{1268} So far, the Ministry has concluded such Agreements with the Governments of Abu Dhabi, Qatar, and Kuwait.\textsuperscript{1269}

In relation to the moratorium that Indonesia imposed on the sending of migrant workers from Indonesia to Malaysia, in 2009, the new draft of an Indonesia-Malaysia MoU on the sending and placement of migrant workers has included new provisions in favour of migrant workers’ rights.\textsuperscript{1270} The new draft allows Indonesian workers to keep their passports and sets out standards on salary, working hours, and leave.\textsuperscript{1271} The GoI intends to make the provisions pertaining to migrant workers’ rights as standard clauses to be applied to other MoUs with other destination countries.\textsuperscript{1272}

National Legal Framework

The GoI in its 2012 report to the HRC stated that it is still pushing vigorously for the ratification of the 1990 Migrant Workers Convention by the Indonesian

\textsuperscript{1257} Ibid, 4.
\textsuperscript{1258} Ibid, 10.
\textsuperscript{1259} Solidaritas Perempuan, Program Migrasi dan Trafficking/HIV/AIDS.
\textsuperscript{1260} IOM, 2009 Annual Report, 64
\textsuperscript{1261} Ibid.
\textsuperscript{1262} Ibid, 66.
\textsuperscript{1263} Ibid.
\textsuperscript{1264} Michele Ford and Lenore Lyons, Counter-Trafficking and Migrant Labour Activism, 7.
\textsuperscript{1265} Solidaritas Perempuan, Program Migrasi dan Trafficking/HIV/AIDS.
\textsuperscript{1266} GoI, 2012 Indonesian UPR, para. 115; see also GoI, 2012 RIPR-CEDAW, para. 100.
\textsuperscript{1267} Ibid.
\textsuperscript{1268} GoI, 2011 IPR-CEDAW, para. 106.
\textsuperscript{1269} Ibid.
\textsuperscript{1270} Ibid, para. 106.
\textsuperscript{1271} Ibid.
\textsuperscript{1272} Ibid.

To realise its long-standing commitment to extend protection to migrant workers abroad, Indonesia at present is in the process of amending the Migrant Workers Law and it has enacted Presidential Instruction No. 1 of 2010 on the Acceleration of National Development Priority and establishment of Integrated Team for the Protection of Indonesian Migrant Workers Overseas. Meanwhile, in order to address the issue of Indonesian migrant workers facing death penalty in destination countries such as Saudi Arabia and Malaysia, the GoI enacted Presidential Decree No. 17 of 2011 on the Task Force for the Handling of Indonesian Citizen or Migrant Workers who Face Death Penalty Abroad to take inventory of all cases sentencing Indonesians abroad with death penalty, to monitor the legal process, and to make recommendations to the President on steps that Indonesia can take to handle such cases.

Lastly, The GoI is also conducting reviews of the existing legal frameworks on the protection of migrant workers in destination countries and improving MoUs between Indonesia and destination countries.

The GoI realises that it is very crucial to reform the management system of migrant workers. The GoI has taken a cross-department approach to conduct this reform, involving the Ministry of Labour and Transmigration, Ministry of Home Affairs, Ministry of Law and Human Rights, Ministry of Foreign Affairs, Ministry of Transportation, and Ministry of State Enterprise to simplify the bureaucracy of placement and protection of migrant workers. One of the strategies that the GoI aims to implement is decentralisation of permits for PPTKIS to regional governments so that potential workers need not go to other cities.

Dealing with the Impacts of Migration

Domestic problems followed by the rise of divorce rate in migrant workers’ families have been common issues affecting migrant workers. To overcome this problem, capacity building programs have been carried out in various Marriage Advisory Bodies (Badan Penasehat Perkawinan, Perselisihan, dan Perceraian, BP4) by the Ministry of Religious Affairs to empower them to counsel migrant workers and their families. Regional development programs have included programs to improve health services, controls on population movements in border regions, and empowering migrant workers in their places of origin.

Women’s empowerment programs have been carried out to empower women’s economic participation in rural areas. The GoI also gives women access to microcredit/venture capital to support the development of women’s economic participation. Furthermore, the Indonesian Ministry of Trade has included gender consideration in establishing “creative industry.” These are some of the efforts conducted to induce growth of employment opportunities in Indonesia, including self-employment.

ii. Progress Indicators related to Children in the Context of Migration

According to the latest report to the CEDAW Committee, the GoI stated its concern over the neglect of access to microcredit/venture capital to support the development of women’s economic participation. Furthermore, the Indonesian Ministry of Trade has included gender consideration in establishing “creative industry.” These are some of the efforts conducted to induce growth of employment opportunities in Indonesia, including self-employment.
to education for undocumented migrant workers. To rectify this situation, the Ministry of National Education has engaged the cooperation of various ministries to open services for undocumented children of Indonesian migrant workers who live in Malaysia and areas bordering Indonesia and Malaysia.

**b. Challenges**

**i. Regional Challenge**

Recently, the GoI urged ASEAN Member States to implement the 2007 Cebu Declaration concerning the protection of migrant workers in Southeast Asia. Both sending and destination countries in Southeast Asia have yet to uphold their commitment under the 2007 Cebu Declaration to take into account the fundamental rights of migrant workers and their families. This has caused a disharmonious relation between sending and destination countries in the region, as reflected in the banning of sending workers from Cambodia and Indonesia to Malaysia.

**ii. Protection of Women Migrant Workers**

The GoI has acknowledged that one of the biggest challenges in the protection of the rights of migrant workers, especially women migrant workers, is that many existing national legislative and policy frameworks are incapable of providing sufficient protection for migrant workers. Furthermore, the GoI has also claimed that Indonesia’s bargaining position with destination countries is weak, which resulted in ineffective policies to protect Indonesian migrant workers during transit, placement in destination countries, and upon return to Indonesia.

The UN Special Rapporteur on the Human Rights of Migrant noted in 2007 that limited information on movements to and from Indonesia, including the substantial flow of undocumented people in and out of Indonesia, have posed a big challenge in quantifying the scale of migration movements from and to Indonesia. Furthermore, Komnas Perempuan has argued that Indonesia needs to develop a comprehensive case-handling system to keep track of occurrences of violence and exploitation of migrant workers, especially migrant domestic workers.

CARAM Asia reports that many migrant workers are not well informed of their rights to get insurance coverage or that they can initiate obtaining it by submitting a report to the Worker’s Lounge at the special terminal for migrant workers in several international airports in Indonesia. Most of them do not possess the necessary documents to initiate the compensation process. CARAM Asia observed that this occurs due to PPTKIS’ negligence in not properly informing migrant workers to apply for insurance and not giving them original copies of all documentation related to their employment, including insurance policies.

In relation to Indonesia’s recent ratification of the 1990 Migrant Workers Convention, the Study notes that Indonesia stands to face another huge challenge as an impact of this ratification: the obligation to harmonise its migrant worker-related legislation to be in compliance with the provisions. The Study also considers another possible challenge with regard to the issue of effective implementation of the 1990 Migrant Workers Convention, which is the long-standing debate on the issue of direct implementation of international law in Indonesia’s domestic legal system. If the GoI does not address this challenge in a swift manner then, as in the case of many other international treaties that Indonesia has ratified or acceded to, effective internal implementation of the 1990 Migrant Workers Convention will be hard to realise.

The role of local governments is vital to the protection of migrant workers. There are only seven regional regulations out of 530 provinces and regencies/municipalities in Indonesia on the protection of migrant workers.
workers.\textsuperscript{1300} Komnas Perempuan stated that Regional Regulations on the protection of migrant workers are strongly needed to ensure that migrant workers have a legal umbrella on the protection of their rights, starting from their place of origin.\textsuperscript{1301} Additionally, according to BNP2TKI, 80% of the problems faced by migrant workers happened in their place of origin; yet the present central monitoring mechanism is at a disadvantage when it comes to monitoring at the local level.\textsuperscript{1302} Moreover, the role of regional governments remain largely undefined under the current legal framework.

\begin{romanlist}
i. Protection of Children in the Context of Migration

In Indonesia, children of migrants that are left behind currently receive little attention. Here, there may be reason to put children of labour migrants on to the agenda of governmental and non-governmental organizations. Any decision to do so should preferably be based on more information than is currently available.\textsuperscript{1303}

6. Gaps and Recommendations for Further Studies

a. Gaps in Indonesia’s Legal Framework and Policies

Despite GoI’s endeavours to tackle the issue of migration, existing literature on migration affecting Indonesian women and children shows that Indonesia’s national legal framework on migration focuses heavily on labour migration phenomenon. Being one of the biggest source countries for unskilled labour, this course of action is understandable; however, the existing legal framework is lacking in substance to provide comprehensive protection to Indonesian migrant workers in all stages of migration.

b. Gaps in the Literatures

The reports presented by the GoI to UN human rights mechanisms and other studies on migration are mostly concentrated on labour migration from Indonesia. Existing studies take into account issues such as abuse and discrimination against migrant workers in some destination countries, irregular migration, legal framework and the role of government’s institutions in providing protection to migrant workers, remittances, and the role of decentralisation.

Notwithstanding the growing body of literatures in the context of migration in Indonesia, some information is still lacking. Based on the literature surveyed by this Study, the Study identifies a number of points that are not yet known:

1. Studies related to abuse of migrant workers allocate considerable attention to the abuse of women migrant workers, however little is known on abuse of children in the context of migration. Furthermore, whilst data and estimates are available on women migrant workers, the data on children migrating for work or to follow their parents is scanty at best. Information is also scarce in relation to the treatment of migrant workers’ children who are born in destination countries (Malaysia might not be the only place where violations of the rights of children of migrant workers occurs);

2. Literature on irregular migration, policies and legal framework studies, and decentralisation generally lack a gender-disaggregate focus;

3. Especially on decentralisation, little is explained by existing studies on what would be the positive/negative effects of the role of local governments, specifically in the protection of women and children in the context of migration;

4. Information on the laws and policies of destination countries concerning the treatment and protection of migrant workers is scarce;

5. Little attention is given to the impact of migration on children left by their migrant parents. Information is also lacking with regard to women migrant workers’ children who were conceived because of rape. Most importantly, there is little information on whether children left by their parents suffered abuse and neglect during the absence of their parents or whether this phenomenon contributes to children living in the streets;

6. Many reports put forward estimates on the number of irregular migrants from Indonesia, but the methodologies that they used to arrive at such estimates are unknown;

7. The Study found it difficult to identify comprehensive information on the various roles of non-state actors in regard to the protection of women and children in

\begin{footnotes}
\item[1300] Palmira Permata Bachtiar, The Governance of Indonesian Overseas Employment, 45
\item[1301] Ibid.
\item[1302] Ibid, 34.
\item[1303] John Bryant, Children of International Migrants, 15.
\end{footnotes}
8. Apart from the focus on labour migration, little attention has been given to migration of women and children for other purposes. For example, there is little information available on women migrating for marriage (and not being victims of trafficking in persons) or children migrating for the purpose of adoption or following their parents;

9. Literature on SOM through Indonesia is scant and little is known from the Indonesian perspective about the journey of asylum seekers and refugees who flee through Malaysia and Indonesia to find refuge in Australia. Additionally, nowhere in the literature reviewed did the Study come across information of SOM from Indonesia to other countries nor information on whether or not the SOM through and from Indonesia involves the service of international organised groups of migrant smugglers;

10. The subjects of regional and bilateral cooperation are hardly discussed in the existing literature.

### c. Recommended Areas/Subjects for Further Studies

Mindful of the gaps in the literatures as identified above, the Study suggests stakeholders or other interested parties to undertake further studies in the following areas/subjects:

1. Reliable methodologies to ground reasonable estimates of the number of irregular migrants from Indonesia, focusing on women and children;
2. Information on Indonesian migrant women and children who are involved in legal cases in the destination countries and the treatment they received during the legal process, both from the authorities of the destination countries and from the Indonesian Embassies/Consulates;
3. Children migrating from Indonesia for the purpose of labour migration or children who migrate on their own;
4. Women and children migrants who migrate for purposes other than labour migration (e.g., Indonesian women migrating for the purpose of marrying foreigners, children migrating for the purpose of following their parents or to be united with their foreign parents or for the purpose of adoption);
5. Treatment of children of Indonesian migrants, especially Indonesian migrant workers, who were born abroad, both from Indonesian parents and mixed nationalities, and the prevalence of violence and discrimination against these children;
6. Treatment of children of women migrant workers who were conceived as a result of rape in all types of scenarios and the prevalence of violence and discrimination against these children;
7. Prevalence of violence, neglect, and discrimination against children of Indonesian migrant workers’ who are left behind and impacts of migration on the children of Indonesian migrant workers’ left in Indonesia;
8. Prevalence of violence and discrimination against asylum seekers and refugees smuggled to Australia and prevalence of SOM from Indonesia to other countries. Future studies can investigate, among other things, the Indonesian legal framework to prevent and protect victims of SOM, the prevalence of international organised groups of migrant smugglers, assessment of the implementation of Indonesian legislations and policies to tackle and prevent SOM, and assessment on international and regional collaboration to tackle and prevent SOM, etc.;
9. Review of the Indonesian legal framework and policies relating to migration, not only limited to the subject of labour migration, but also including updates on Indonesia’s endeavours in protecting women and children in the context of migration;
10. Review of the destination countries’ legal framework and policies in providing protection to migrants including guarantees to access to justice;
11. Review of regional and bilateral efforts on the protection of women and children in the context of migration;
12. Review of national legislations on regional autonomy/decentralisation and the role that regional governments can play in providing protection to migrant workers, especially women and children in the context of migration. This includes research on the importance of adopting provincial and Municipality/Regency regulations on the protection of migrant workers and the impacts of such regional regulations; and
13. Extensive mapping of the role of non-state actors in assistance to women and children victims of violence and discrimination in the context of migration, prevention of violence and discrimination against women and children in the context of migration, and monitoring and cooperation with the GoI on the protection of women and children in the context of migration.
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by

Delphia Lim
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
# TABLE OF CONTENTS

ACRONYMS 431  
ABBREVIATIONS 431  
LIST OF TABLES 432  
LIST OF FIGURES 432  
COUNTRY CHART 434  

A. OVERVIEW 437  
Country Context 437  
Research Sources and Key Findings 438  
Violence 438  
Exploitation, Abuse and Discrimination in Migration 440  
Recommended Research Areas 442  

B. LAO PDR AND THE CRC AND CEDAW 443  

C. VIOLENCE 445  
1. Description of the Problem 445  
   a. Prevalence of Violence 445  
      Domestic Violence 445  
      Other Issues 446  
   b. Root Causes and Aggravating Practices 448  
      General Factors 448  
      Factors Related to Domestic Violence 450  
   c. Impact of Violence 451  
2. De Jure State Responses 451  
   a. Bases of State Responsibility 451  
   b. National Policies Against Violence 452  
      Equality and Non-Discrimination Guarantees 452  
      Sexual Offences 453  
      Domestic Violence 453  
      Child Abuse 454  
      Discipline and Criminal Punishment 455  
   c. Assessment of State Policies 456  
      Equality and Non-Discrimination 456  
      Domestic Violence 457  
      Sexual Offences 457  
      Child Abuse 457  
3. Implementation and Monitoring 457  
   a. Implementing and Monitoring Mechanisms 457  
   b. Complaints Process 458  
      Domestic Violence 458  
      Complaints by Children 459  
   c. Protection and Rehabilitation 460  
   d. Prevention Strategy 461  
4. Role of Non-State Actors 461  
5. Progress Indicators and Challenges 462  

D. EXPLOITATION 462  
Labour Migration and Lao PDR: An Overview 462  
1. Description of the Problem 464  
   a. Prevalence of Exploitationm 464  
      Lao as a Source Country for Trafficking 464  
      Cross-border Migration to Thailand 465  
      Lao as a Transit and Destination Country 466  
      Profiling of Trafficked Victims 466  
   b. Root Causes and Aggravating Practices 467  
      Labour Migration 473  
      Trafficking 473  
      Cross-border Criminal Justice Collaboration 475  
2. De Jure State Responses 469  
   a. Bases of State Responsibility 469  
   b. State Policies Against Exploitation 471  
      Sexual Exploitation 471  
      Liability of Child Prostitutes 471  
      Commercial Sexual Exploitation of Children 471  
      Child Pornography and Obscene Acts 472  
      Child Sex Tourism 472  
      Labour Exploitation 472  
      Labour Migration 473  
      Trafficking 473  
      Cross-border Criminal Justice Collaboration 475  
   c. Assessment of State Policies Against Exploitation 476  
      Trafficking 476  
      Sexual Exploitation 476  
      Domestic Work 476  
3. Implementation and Monitoring 477  
   a. Implementing and Monitoring Mechanisms 477  
      National Plans of Action 478  
      Bilateral and Regional Implementing and Monitoring Mechanisms 478  
   b. Complaints Process 479  
      Victim Compensation 479  
      Legal Assistance 479  
      Barriers to Accessing Justice 479  
      Rights and Protections During Investigations and Judicial Proceedings 480  
      Access to Justice in Thailand 480  
   c. Protection and Rehabilitation 480  
      Investigation, Identification and Rescue 480  
      Labour Exploitation 480  
      Victims of Trafficking and Sexual Exploitation in Lao PDR 480  

Delphia Lim
Traffic victims in Thailand 480
Non-prosecution of Victims 481
Rehabilitation and Reintegration 482
d. Prevention Measures 484
Law Enforcement in Lao PDR 484
Combating Exploitation in the Destination Country 486
Deterring Illegal Migration 486
Promoting Safe Migration 486
Creation of Employment 487
Strengthening the Labour Regime 487
Public Awareness and Education 487
4. Role of Non-State Actors 488
a. Assistance to Victims 488
b. Prevention Programmes 489
c. Monitoring and Collaboration 490
5. Progress Indicators and Challenges 490

BIBLIOGRAPHY 492
Reports and Papers 492
Press Articles 495
Websites 496
Others 497
Online Research Portals 497
Related Sources 497
### ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>AFESIP</td>
<td><em>Agir pour les Femmes en Situation Precaire</em> (Acting for Women in Distressing Situations)</td>
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<tr>
<td>ARCPPT</td>
<td>Asia Regional Cooperation to Prevent People Trafficking</td>
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<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of Discrimination against Women</td>
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<td>COMMIT</td>
<td>Coordinated Mekong Ministerial Initiative against Trafficking</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>ESCAP</td>
<td>Economic and Social Commission for Asia and the Pacific</td>
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<td>GDG</td>
<td>Gender and Development Group, Lao PDR</td>
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<td>GRID</td>
<td>Gender Resource Information and Development Centre, Lao PDR</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>ILO-TICW</td>
<td>ILO Mekong Sub-regional Project to Combat Trafficking in Children and Women</td>
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<td>ILO-IPEC</td>
<td>ILO International Programme on the Elimination of Child Labour</td>
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<td>Lao Youth Union</td>
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<td>Ministry of Labour and Social Welfare, Lao PDR</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organisation</td>
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<tr>
<td>UN Women(formerly UNIFEM)</td>
<td>United Nations Entity for Gender Equality and the Empowerment of Women</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>UNFPA</td>
<td>United Nations Population Fund</td>
</tr>
<tr>
<td>UNIAP</td>
<td>United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children's Fund</td>
</tr>
<tr>
<td>UNICEF EAPRO</td>
<td>UNICEF East Asia and Pacific Regional Office</td>
</tr>
</tbody>
</table>

### ABBREVIATIONS

| CEDAW Committee | Committee on the Elimination of Violence against Women |
| CRC Committee   | Committee on the Rights of the Child |
| Lao PDR         | Lao People's Democratic Republic |
| Law on the Protection of Children | Law on the Protection of the Rights and Interests of Children |
| Law on the Protection of Women | Law on the Development and Protection of Women |
LIST OF TABLES

Table 1: Summary of Empirical Information Found on the Prevalence of Violence Against Women and Children (no earlier than 2002) 439
Table 2: Summary of Notable Empirical Research Sources on Lao PDR and Trafficking and Exploitation in Migration 441
Table 3: Lao PDR's Obligations Under the CEDAW and CRC 443
Table 4: Bodies Involved in the Implementation of CEDAW and CRC in Lao PDR 444
Table 5: Snapshot of the Known Extent of Domestic Violence in Lao PDR 445
Table 6: Perception of Acceptability of Violence 446
Table 7: Information on Other Significant Violence Issues in Lao PDR 447
Table 8: Factors Associated with Domestic Violence 450
Table 9: Binding Instruments: Bases of State Responsibility 451
Table 10: Declarations and Commitments Relevant to Women and Children's Rights in Lao PDR 451
Table 11: General Guarantees of Gender Equality and Non-Discrimination 452
Table 12: Statutory Offences: Sexual Offences 453
Table 13: Penalised Conduct: Child Abuse 454
Table 14: Concerns Relating to the Domestic Violence Complaints Mechanism 459
Table 15: List of Protection and Rehabilitation Shelters for Victims of Abuse 460
Table 16: Migration: Risks of Trafficking and Exploitation 463
Table 17: Lao PDR as a Source Country for Trafficking 464
Table 18: Lao PDR as a Transit and Destination Country for Human Trafficking 466
Table 19: Profile of Victims of Cross-Border Trafficking 467
Table 20: Binding Instruments: Bases of State Responsibility for Human Trafficking 469
Table 21: Non-binding Instruments: Bases of State Responsibility for Human Trafficking 470
Table 22: Cross-Border Collaboration Against Human Trafficking 470
Table 23: Lao PDR-Thailand Bilateral Memoranda of Understanding on Human Trafficking 470
Table 24: Statutory Offences: Prostitution 471
Table 25: Statutory Offences: Commercial Sexual Exploitation of Children 471
Table 26: Labour Law Against Labour Exploitation 472
Table 27: Labour Law Against Child Labour 473
Table 28: Statutory Offences: Trafficking in Persons 474
Table 29: Differences Between the Trafficking Provision in the Penal Law and that in the Law on the Protection of Women 475
Table 30: Implementing and Monitoring Mechanisms 477
Table 31: Bilateral and Regional Implementing and Monitoring Mechanisms 478
Table 32: Victim Compensation for Abuse, Exploitation and Human Trafficking 479
Table 33: Number of Trafficked Persons Repatriated from Thailand 481
Table 34: Comparison of Numbers of Identified Victims of Trafficking and the Total Numbers of Returnees 481
Table 35: List of Shelters in Lao PDR for Victims of Trafficking and Sexual Exploitation 483
Table 36: Numbers of Recent Trafficking Cases Investigated and Trafficking Convictions 485
Table 37: Examples of Law Enforcement Training Efforts 485
Table 38: Ongoing Efforts by Non-State Actors to Assist Victims of Exploitation and Trafficking 489
Table 39: Ongoing Efforts by Non-State Actors to Prevent Exploitation and Trafficking 490

LIST OF FIGURES

Figure 1: Human Trafficking in Thailand 465
Figure 2: Nature of Human Trafficking in Thailand 465
Figure 3: Abuses Suffered by Youth and Child Migrants from 30 villages in Savannakhet 466
Map 1: Lao PDR’s Provinces

Map 2: Distribution of ethnic groups in Lao PDR

Source: United Nations, Department of Peacekeeping Operations Cartographic Section

**Formal Name**: Lao People’s Democratic Republic  
**Capital City**: Vientiane

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
</table>
| Population¹                  | Male: 3,133,059  
Female: 3,123,138  
Both sexes: 6,256,197 (2010) |
| Life expectancy²             | Male: 65 years  
Female: 68 years  
Both sexes: 67 years |
| Age structure³               | 0-14 years: 36.7% (male 1,197,579/female 1,181,523)  
15-64 years: 59.6% (male 1,908,176/female 1,950,544)  
65-over: 3.7% (male 107,876/ female 131,513) |
| Sex ratio⁴                   | At birth: 1.04 male(s)/female  
Under 15: 1.01 male(s)/female  
15-64 years: 0.98 male(s)/female  
65-over: 0.82 male(s)/female  
Total: 0.98 male(s)/female |
| Religions⁵                   | Buddhist 67%, Christian 1.5%, others and unspecified 31.5% |
| Ethnic groups⁶               | 49 official ethnic groups: Lao-Thai - 66.7%; Mon-Khmer - 20.6%, Hmong-Mien 8.4%, Sino-Tibet - 3.3 % and others 1% (2008). |
| Functional literacy rate⁷    | Male: 91%  
Female: 96%  
Both sexes: 93.5% |
| Poverty headcount rate⁸      | At national poverty line: 33.5% (2002/3); 27.6% (2007/8)  
At $1.25/day: 44.4% (2002/3); 37.4% (2007/8) |
| Gross Domestic Product per capita (PPP)⁹ | $2,700 (2011 est.) |
| Net enrolment ratio in secondary schools¹⁰ | Male: 39%  
Female: 33%  
(2007-2010) |
| Migration rate¹¹             | -1.14 migrant(s)/1,000 population (2012 est.) |

---

⁴ Ibid.
⁵ Ibid.
<table>
<thead>
<tr>
<th>Number of citizens working overseas</th>
<th>At least 250,000 in Thailand(^\text{12})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of foreign workers in country(^\text{13})</td>
<td>110,000</td>
</tr>
<tr>
<td>Percentage of female-headed households(^\text{14})</td>
<td>8% (August 2009)</td>
</tr>
</tbody>
</table>
| Labour force participation rate\(^\text{15}\) | Male (% of male population ages 15+): 79  
Female (% of female population ages 15+): 78  
(2009) |
| Unemployment rate\(^\text{16}\) | 2.5% (2009 est.) |
| Vulnerable employment\(^\text{17, 18}\) | Total: 88.0 (2005) |
| Fertility rate\(^\text{19}\) | 2.8 children born/woman |
| Maternal mortality rate\(^\text{20}\) | 5.80 deaths/1,000 live births |
| Infant mortality rate\(^\text{21}\) | 42 deaths/1,000 live births |
| Legal definition of “child”\(^\text{22}\) | A child is any person below 18 years of age. |
| Marriageable age\(^\text{23}\) | 18 years of age |
| Age of consent\(^\text{24}\) | 15 years of age |
| Age of criminal responsibility\(^\text{25}\) | The Penal Law defines children as all those under 18 years of age, and further subdivides this group into two: those aged 1–15 and 16–18. In the case of the former group, the child is absolved of penal responsibility, which is assumed by the family concerned and in the latter case, special provisions are delineated. |
| Minimum age of employment\(^\text{26}\) | Article 37 of the Lao Labour Law provides for the employment of children less than 18 years of age. Employers may engage children under 18 but no less than 15 years of age, but the work hours shall not exceed 6 hours per day or 36 hours per week. It is forbidden to use child labour in sectors involving heavy work or health hazards such as mining, chemical and animal hide manufacturing, urban sanitation or funeral cremation, any work involving nuclear radiation, any work involving hazardous fumes or gases, any work involving handling dangerous materials, such as explosives, any work in boreholes, tunnels or under water, work with permanently vibrating machines. |
| Minimum age for military recruitment and participation\(^\text{27}\) | 18 years of age for compulsory military service, minimum of an 18-month service obligation. |


\(^{13}\) US State Department, 2010 Trafficking in Persons Report: Lao PDR.


\(^{17}\) “Vulnerable employment” is unpaid family workers and own-account workers as a percentage of total employment.


21 Ibid.

22 Ibid.


24 CEDAW, Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic reports, Lao People's Democratic Republic, (CEDAW/C/LAO/Q/6/Add.1), accessed 4 March 2012, http://www2.ohchr.org/english/bodies/cedaw/docs/AdvanceVersions/ CEDAW-C-LAO-Q6-Add1.pdf.

25 Article 129, Penal Code. Sexual Intercourse with a Child: Any person engaging in sexual intercourse with a girl or boy under fifteen years of age shall be punished by one to five years of imprisonment and shall be fined from 2,000,000 Kip to 5,000,000 Kip.


27 Ibid.
A. OVERVIEW

Country Context

Lao PDR's rapid economic development bears on many of the issues of violence and exploitation affecting women and children. Development projects reportedly increase pressures on families and communities through the breakdown of traditional cultures and belief systems, loss of community identity, economic strain due to loss of traditional livelihoods, and erosion of cultural and spiritual frameworks. Cases of violence against women are reportedly increasing due to development projects, and pressures exerted on individuals by Lao PDR's rapid development have been noted as a possible cause of gender-based violence.

Development and trafficking are also related. One 2004 study found a strong association between villages involved in development-related relocations and human trafficking. Improvements in transportation and communication networks in developing areas, such as the economic special zone in Savannakhet and the R3 road, have been linked to increases in migration and associated trafficking.

One 2009 ADB research project studying the association between trafficking and infrastructure projects suggested, based on its findings, that the problems and potentials of trafficking could not be separated from development programs and policies and from large infrastructure projects, such as the upgrading of Route 3A.

The prevalence of violence and exploitation against women and children is not homogeneous throughout the country; while such issues are faced by the ethnic majority, ethnic minorities are especially disadvantaged. Many ethnic minorities are found in Lao PDR's northern rural areas, which are poorer, less educated, and where gender disparities are particularly pronounced.

As the country is in the process of building up its institutions and technical capacity, effective law implementation and enforcement is still a work in progress. Assessments of laws relating to women and children in Lao PDR are generally (but not completely) positive. Law enforcement capacity-building through trainings, workshops and conferences, at least in relation to trafficking, has been substantial. The extent to which the relevant laws are in fact implemented is, however, unclear. The 2009 CEDAW Committee expressed concern over the lack of data on complaints filed with existing complaints mechanisms and their outcome. While the Lao Statistics Bureau keeps data on various key areas such as labour and employment, health and agriculture, there is no central crime database. There does not appear to be any monitoring mechanism for consolidating data on cases that go through village mediation units or village child protection units.

The monitoring of trends in violence and exploitation of women and children has been impeded by the lack of data. There are binding government directions for the collection of gender-disaggregated data. For instance, provision

40 CEDAW, Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic reports,

Delphia Lim
has been made for various agencies that counsel women to "summarise statistics and data" on their counsellees.\footnote{UNIFEM, Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries, 2nd ed., March 2010, 23.} However, the Center for Counseling and Protection for Women and Children has limited capacity.\footnote{UN C\textsuperscript{ountry} Team, Lao PDR, "Contribution By The United Nations Country Team In Lao People's Democratic Republic For The Universal Eight Session," 2010, para. 20.} According to the government, the LWU and LYU, which are legislatively appointed to collect data, have not done so regularly and systematically.\footnote{CRC, Concluding Observations: Lao People's Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 33.}

Non-State actors, such as UN agencies and international NGOs have been playing a pivotal role in addressing the challenges of violence and exploitation against women and children, including engaging in capacity-building efforts. However, they are tightly controlled by laws and government policies. All international organisations are required to work through government partners.\footnote{Roy Huijsmans, "Children, Childhood and Migration," Working Paper Series No. 427, Institute of Social Studies, June 2006, 35, footnote 34, citing LYU, MLSW, SCUK, "Migrant Children and Youth in Lao PDR," 2004, 12.} Studies undertaken in Lao PDR are usually conducted in conjunction with State actors and have to be approved by the government before being printed.\footnote{Emma Hansson, "Across the Borders. A Study of Counter-Trafficking Work in Lao PDR," (Master's Thesis in Peace and Development Studies, Växjö University), 2009, 7.}

The domestic NGO sector is nascent. The year 2009 marked the milestone entry into force of the Decree on Associations, which for the first time permitted the registration of national NGOs.\footnote{UN C\textsuperscript{ountry} Team, Lao PDR, "Contribution By The United Nations Country Team In Lao People's Democratic Republic For The Universal Eight Session," 2010, para. 43.} As at 2010, there were no domestic human rights NGOs.\footnote{U.S. State Department, 2010 Human Rights Report: Lao PDR, 13.} Nevertheless, other civil society organizations exist, including many community-based organizations and associations set up to address social welfare concerns, including parents’ associations, women’s groups, and local chapters of the Lao Red Cross.\footnote{ADB, Overview of Civil Society. Lao PDR, 2005.}

Lao PDR has undertaken two relevant national strategies, namely, the National Plan of Action on Commercial Sexual Exploitation of Children for the period 2007 to 2011, and the National Strategy for the Advancement of Women (2011 to 2015),\footnote{This was preceded by a National Plan of Action for the Advancement of Women for the period of 2006 to 2010.} which acts more broadly to address gender mainstreaming and gender equality. There is no national plan of action on children to address the rights of children in their entirety.\footnote{CRC, Concluding Observations: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 12.} According to the government, its approach is to instead focus efforts on social development.\footnote{CRC, Second Periodic Report of States Parties due in 1998. Lao People’s Democratic Republic, CRC/C/LAO/2, 22 April 2009, para. 36(a).}

Research Sources and Key Findings

Violence

The following summarises key empirical research sources found on the prevalence of violence against women and children.
Table 1: Summary of Empirical Information Found on the Prevalence of Violence Against Women and Children (no earlier than 2002).

<table>
<thead>
<tr>
<th>Issue</th>
<th>Details</th>
<th>Data Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Violence</td>
<td>400 registered cases of domestic violence from 2006 to 2009.</td>
<td>Government data&lt;sup&gt;53&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>45% of wives had experienced spousal violence</td>
<td>2004 GDG survey&lt;sup&gt;54&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>8% of respondents had experienced physical domestic violence, of which about 56% were women.</td>
<td>2011 GDG survey&lt;sup&gt;55&lt;/sup&gt;</td>
</tr>
<tr>
<td>Crimes</td>
<td>2005 to 2006: 382 cases of violence against women and children were brought to court; of these, 52 were of rape.</td>
<td>Government data&lt;sup&gt;56&lt;/sup&gt;</td>
</tr>
<tr>
<td>Violence against women and children in prisons</td>
<td>30% of detained children reported experiencing physical or mental punishment, including beating, crawling, sitting in the sun and withholding meals.</td>
<td>2003 UNICEF data&lt;sup&gt;57&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td>Risk factor: Male and female prisoners are held in the same prisons, though in different cells.&lt;sup&gt;58&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>Violence against street children</td>
<td>39 individual cases of violence and abuse against street children in the Vientiane capital identified from June 2004 to July 2006</td>
<td>UNICEF outreach team in Vientiane (estimated to reach approximately half of the capital’s street children)&lt;sup&gt;59&lt;/sup&gt;</td>
</tr>
<tr>
<td>Violence against female sex workers</td>
<td>12 of 16 female sex workers interviewed had experienced physical, sexual and emotional violence, including rape and gang rape, the use of harmful objects during sex, and abuse by police officers.</td>
<td>2006 thesis research study&lt;sup&gt;60&lt;/sup&gt;</td>
</tr>
<tr>
<td>Early or forced marriage</td>
<td>No empirical research specifically on this issue was found, although this issue has been repeatedly highlighted in reports.</td>
<td></td>
</tr>
<tr>
<td>Bullying of children</td>
<td>98% of girls and 100% of boys in a survey said they had witnessed bullying in schools and, while the precise nature or seriousness of the bullying was not clear, the victims were mainly girls or children from ethnic minorities.</td>
<td>Data found from secondary source.&lt;sup&gt;61&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

The GDG’s domestic violence household surveys are noteworthy for being relatively recent and the largest in scale. Profiling was carried out by these surveys, and information on perceptions of gender collected. Also notable is a 2007 qualitative study of gendered livelihoods in rural areas, which contained findings on spousal violence in rural villages, and explored associated factors such as existing patrilocal practices, ethnicity, and gendered livelihood roles.<sup>61</sup>

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<sup>54</sup> GDG, Domestic Violence. Research in 5 provinces, Lao PDR, November 2011.

<sup>55</sup> CEDAW, Combined sixth and seventh periodic report of State parties. Lao People's Democratic Republic, CEDAW/C/Lao/7, 30 May 2008, 19.

<sup>56</sup> Global Initiative to End All Corporal Punishment of Children, "Briefing For The Committee On The Elimination Of Discrimination Against Women Pre-Session Working Group, 42nd Session (October 2008): States to be examined in the 44th session’, at 4, citing Sandvik-Nylund (2003), Regional Assessment: Violence against children in East Asia and the Pacific region, Bangkok: UNICEF, which was cited in Nogami, N. (2005), Discipline and punishment of children: a rights-based review of laws. attitudes and practices in East Asia and the Pacific - Save the Children Sweden Southeast Asia and the Pacific, regional submission to the UN Secretary General's Global Study on Violence against Children, Stockholm, Save the Children Sweden.

<sup>57</sup> U.S. State Department, 2010 Human Rights Report: Lao PDR, 2.


<sup>60</sup> Paulo Sergio Pinheiro, World Report on Violence Against Children, 2006, 122. This author is an independent expert for the United Nations Secretary-General’s Study on Violence against Children. The source report appears to be a UNICEF Knowledge Attitude and Practice study on child rights in the Lao PDR: UNICEF EAPRO, Violence against Children in East Asia and the Pacific Region: A Regional Overview; 2005.

<sup>61</sup> Rita Gebert, Gesellschaft fur Technische Zusammenarbeit, Rural Livelihoods Improvement Programme, Rural Development
One of the most significant issues of concern in relation to domestic violence is whether victims of domestic violence are obtaining access to justice and adequate protection. Reports revealed that most reported cases of domestic violence are settled out of court, including through the village mediation units. In most cases, women were advised by village authorities to stay with their husbands.

In this regard, the governing legal framework emphasises mediation and conciliation rather than criminal prosecution. A distinction is drawn between “severe” and “minor” forms of domestic violence; the latter are not to be referred immediately to the authorities, but must first go through mediation. The various weaknesses of the existing complaints mechanism are dealt with further below.

**Exploitation, Abuse and Discrimination in Migration**

The existence in Lao PDR of trafficking in persons, commercial sexual exploitation of children, child sex tourism, child labour and forced labour, have all been documented by various NGO reports. While all are significant issues, this report has, in view of resource constraints, selected human rights violations relating to migration as its focus, for the following reasons: First, occurrence of such violations is arguably the largest in scale; various forms of exploitation and abuse commonly occur in the context of labour migration, and labour migration is intensifying due to economic development. Second, labour migration and trafficking appear to be covered more comprehensively than others in recent literature.

This report nevertheless canvasses the legal and policy framework in relation to all issues of exploitation. The bibliography to this report also contains references to sources not cited, but that are relevant to all issues of exploitation. With regard to child and forced labour, a report of note is an annotated bibliography of information up to 2006 relating to these 2 issues in Lao PDR.

While the other country reports address the issue of exploitation and the issue of abuse and discrimination in migration separately, they will be addressed together in this report, due to the selected focus on exploitation in migration, and because the line between “exploitation” and “abuse” is often difficult to draw.

Studies have shown that many Laotians start their journeys as voluntary labour migrants, only to be caught into trafficking situations. Thailand is the primary destination country for trafficking. According to one literature review, “the major problem is the exploitative practices of employers in Thailand rather than the depredations of transportation agents.” Victims are reportedly far more commonly deceived or threatened by their employers rather than their transporters.

The following table summarises notable empirical research sources found on Lao PDR and trafficking and exploitation in migration:

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### Table 2: Summary of Notable Empirical Research Sources on Lao PDR and Trafficking and Exploitation in Migration.

<table>
<thead>
<tr>
<th>Source</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>MLSW and ILO, <em>Labour Migration Survey in Khammouane, Savannakhet and Champasak</em>, 2003.</td>
<td>This is a large-scale migration survey of 36,398 persons in 3 provinces by the Lao-Thai border, namely, Khammouane, Savannakhet and Champasak provinces. Of the 80.8% of respondents that migrated internationally, 81.5% migrated to Thailand. The survey attempted to estimate the prevalence of trafficking using risk indicators, namely, cases where (a) no remittances were sent to family, (b) the person was uncontactable by family, and (c) no information on livelihood was sent to family. 1.4% of these overseas migrants were at “high risk” of trafficking.</td>
</tr>
<tr>
<td>UNICEF and MLSW, <em>Broken Promises Shattered Dreams. A Profile of Child Trafficking in the Lao PDR</em>, 2004.</td>
<td>This is the first nation-wide study on trafficking in Lao PDR. The study conducted semi-structured interviews with 253 victims and their families and local officials, and covered 48 districts across Lao PDR’s 17 provinces. According to the study, 60% of trafficked victims were females between 12 and 18 years of age.</td>
</tr>
<tr>
<td>UNIAP, UNICEF and MLSW, <em>Trafficking from Community to Exploitation. Lessons Learnt Through TRACE</em>, 2004.</td>
<td>This has been described as an “in-depth, multiple community, fieldwork based report on the circumstances of trafficking” that gathered data from 26 villages across Lao PDR.66</td>
</tr>
<tr>
<td>WorldVision Lao PDR, <em>Migration of Children and Youth from Savannakhet Province to Thailand: A Research Study</em>, 2006.</td>
<td>This is a survey involving 612 respondents from 30 out of 42 villages in Atsaphanthong and Xonnabuly districts of Savannakhet province, areas where migration rates are significantly high. The respondents comprised migrant children and youth, their parents, and non-migrant children and youth. Profiling of the participants was conducted. Also documented were their perceptions, whether direct or indirect, of the migration experience, the abuses suffered by the migrant children and youth, as well as perceptions of the negative consequences of migration.</td>
</tr>
<tr>
<td>IOM, <em>The Long Road Home: Analysis of Regional and National Processes for the Return and Reintegration of Victims of Trafficking in the Greater Mekong Sub-region</em>, 2007.</td>
<td>This study involved desktop research, country questionnaires and selected interviews. It aimed to present a system-wide analysis of the current process and legal and administrative structures for returning and reintegrating victims of trafficking in the Greater Mekong Sub-region. According to the report, 2 international organizations and 3 NGOs responded to the questionnaire on Lao PDR. They portrayed the system as generally well-functioning, and identified areas for improvement.</td>
</tr>
<tr>
<td>Tan, Danielle and Bertrand, Didier, “How illegal migration turns into trafficking for sexual and labour exploitation? Raising voices of girls and women from Lao PDR,” 2007.</td>
<td>Provides an analysis of the trafficking trajectories of 12 female returnees from Thailand, who were residents of the AFESIP shelter in Vientiane.</td>
</tr>
<tr>
<td>SERC, “A Comparative Picture of Migration in Lao PDR, Myanmar, Cambodia, Vietnam and Thailand: Summary,” 2008.</td>
<td>In this study, 700 Lao were interviewed, from Savannakhet province in Lao PDR and Mukdahan city in Thailand. Respondents were profiled, and their reasons for migrating surveyed. Also documented were their migration experiences. 60% of returnees said that they had no problem in Thailand, and over 40% said their employer treated them like family. The most common complaint among returnees was that they worked long hours without sufficient rest. Among other complaints were low or unpaid wages, and fraud on the part of brokers and employers.</td>
</tr>
<tr>
<td>ADB, <em>Broken Lives. Trafficking in Human Beings in the Lao People’s Democratic Republic</em>, 2009.</td>
<td>This is a qualitative study of districts in Bokeo and Louang Namtha Provinces in Lao PDR along Route 3A (part of the “North-South Economic Corridor” traversing Myanmar, Lao PDR, China and Thailand). One objective of the study was to “identify directions that will help in promoting safe migration, reducing risk, and preventing trafficking”. The study’s findings linked trafficking in women and children to poorly implemented development projects and the alleged practice of the government and foreign businesses of breaking agreements to pay compensation to villagers. Findings also showed that ethnicity is the primary determinant of responses to adverse impacts caused by development policies, with some ethnic groups significantly more prone than others to respond to development-related social upheavals with prostitution and outmigration.</td>
</tr>
</tbody>
</table>

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66 James Haughton, Situational Analysis of Human Trafficking in the Lao PDR. With an emphasis on Savannakhet, World Vision Lao PDR, 2006, 33. The actual report was not found by this study's desktop review.
At least 2 literature reviews have been conducted on trafficking, both in 2006. One has an emphasis on Savannakhet province, and the other, on children and migration. A recent significant report is a 2011 GDG research study on women in migration.

Protection and prevention efforts by non-State actors against trafficking in women and children are manifold. This report has, based solely on a desktop review, attempted to give an overall snapshot of recent anti-trafficking efforts.

Recommended Research Areas

Violence

There is a paucity of research substantiating the prevalence of many violence issues of concern such as violence in detention centres, violence affecting street children, bullying, and early and forced marriage.

With regard to domestic violence, investigation into the situation relating to complaints mechanisms and victims' access to justice is needed. Also, the potential link between development projects and violence against women and children should be further investigated.

Exploitation, Abuse and Discrimination in Migration

Research studies on trafficking and exploitation in Lao PDR are substantial. There are nevertheless research gaps, such as:

- internal trafficking;
- trafficking to countries other than Thailand;
- trafficking and migration in urban areas;
- the impact of development on trafficking (only one study has been done and only in relation to Bokeo and Louang Namtha Provinces);
- the ethnicity-trafficking nexus; and
- child labour, particularly victim and vulnerability profiling.

With the myriad efforts to combat exploitation and trafficking in Lao PDR taking place simultaneously and at national and regional levels, a database tracking the various projects and programmes, and their locations, would be useful to avoid duplication of efforts, and to identify areas with unmet needs.

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70 James Haughton, Situational Analysis of Human Trafficking in the Lao PDR. With an emphasis on Savannakhet, World Vision Lao PDR, 2006, 15.

71 Ibid, 7.

B. Lao PDR and the CRC and CEDAW

Lao PDR's Obligations under the CEDAW and CRC

<table>
<thead>
<tr>
<th>Date of Ratification</th>
<th>Instrument</th>
<th>Reservations / Declarations</th>
<th>Implementing Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceded 22 September 1997</td>
<td>Amendment to article 43 (2) of the Convention on the Rights of the Child</td>
<td>None</td>
<td>No specific implementing legislation.</td>
</tr>
</tbody>
</table>

Lao PDR has not signed the Amendment to Article 20(1) of the Convention on the Elimination of All Forms of Discrimination Against Women.

Both the CRC and CEDAW Committees have noted that the status of the respective Conventions vis-à-vis domestic legislation is unclear. The Committees have recommended that the State ensure that the provisions of the respective Conventions are directly applicable and prevail over conflicting legislation.

**CEDAW and CRC Implementing Mechanisms**

The following bodies are involved in the implementation of CEDAW and CRC in Lao PDR:


### Table 4: Bodies Involved in the Implementation of CEDAW and CRC in Lao PDR.

<table>
<thead>
<tr>
<th>Body</th>
<th>Composition and Functions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State Bodies</strong></td>
<td></td>
</tr>
</tbody>
</table>
| National Commission for the Advancement of Women (NCAW) | • National focal point for women’s advancement and gender equality; coordinates local authorities and international organisations concerned with the implementation of government policies\(^{78}\)
• Assists the government in formulating national policies and strategic plans of action\(^{77}\)
• Committees for the advancement of women set up in ministries, ministry-equivalent organizations, and provinces (of which there were about 45 in 2008) come under the NCAW umbrella, and report their plans of activities and implementation thereof to the NCAW\(^{78}\)
• Supported by a secretariat that undertakes studies and research\(^{79}\)
• Tasked with preparing the national report on the implementation of CEDAW\(^{80}\)                                                                 |
| National Commission for Mothers and Children (CNME) | • Encourages, monitors and coordinates the implementation of the rights of women and children
• Tasked with drafting the national report on the CRC’s implementation\(^{81}\)
• Supported by several Regional Commissions for Mothers and Children (CRME)\(^{82}\)                                                                 |
| **Mass Organizations (Established by the ruling Lao People’s Revolutionary Party)** |                                                                                                                                                                                                                          |
| Lao Women’s Union (LWU)                   | • A mass and social organisation of women in Lao PDR with a total membership of over 1 million women\(^{83}\)
• Mandated to protect the interests of women and children, and actively promote gender equality and the advancement of women\(^{84}\)
• Provides training courses for women, such as vocational and leadership training, and training on the law, gender equality, domestic violence and trafficking
• Provides counselling, and raises public awareness\(^{85}\)
• Supervises the Gender Resource Information and Development Center (GRID), which conducts trainings, research and analyses of data\(^{86}\)
• Implements the Law on the Protection of Women\(^{87}\)                                                                 |
| Lao Revolutionary Youth Union (LYU)        | • Plays “an important role in the education, training and overall development of children and young people”\(^{88}\)                                                                                                               |

There is no independent organization to protect the rights of the child specifically.\(^{88}\) The CRC Committee has expressed regret that there is no independent human rights institution to monitor the implementation of the CRC.\(^{89}\)

A coordination mechanism has been set up among the NCAW, the LWU and the Women Parliamentarian Group.\(^{90}\) However, the CEDAW Committee remains concerned at the respective groups’ unclear mandates and lack of coordination among their various organisations and entities.\(^{91}\)

A common concern relating to the NCAW, CNME and CRMEs are that they are under-staffed and under-resourced, and budget allocations from the State may be

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\(^{75}\) GDG, Domestic Violence. Research in 5 provinces, Lao PDR, November 2011, 22.

\(^{76}\) Ibid.

\(^{77}\) CEDAW, Combined sixth and seventh periodic report of State parties. Lao People’s Democratic Republic, CEDAW/C/Lao/7, 30 May 2008, 10.

\(^{78}\) Ibid, 11.

\(^{79}\) Ibid, 10.


\(^{81}\) Ibid.

\(^{82}\) GDG, Domestic Violence. Research in 5 provinces, Lao PDR, November 2011, 23.

\(^{83}\) CEDAW, Combined sixth and seventh periodic report of State parties. Lao People’s Democratic Republic, CEDAW/C/Lao/7, 30 May 2008, 11.

\(^{84}\) Ibid, 12, 16.

\(^{85}\) Ibid, 13.

\(^{86}\) Abbreviated.


\(^{88}\) Ibid.

\(^{89}\) CRC, Concluding Observations: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 14.

\(^{90}\) CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Lao PDR People’s Democratic Republic, CEDAW/C/Lao/CO/7, 7 August 2009, para. 17.

\(^{91}\) Ibid.
insufficient.92

C. VIOLENCE

1. Description of the Problem

   a. Prevalence of Violence

   Domestic Violence

<table>
<thead>
<tr>
<th>Data source</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004 Gender and Development Group (GDG) survey in Vientiane, Bokeo, Luang Prabang, Savannakhet and Salavan of 967 villagers from 35 communities93</td>
<td>• 45% of wives had experienced spousal violence</td>
</tr>
<tr>
<td></td>
<td>• 17% of the above had experienced physical violence and 35% had experienced mental violence</td>
</tr>
<tr>
<td></td>
<td>• 1.6% of victim wives had experienced sexual violence from their husbands, lending basis for concerns about the prevalence of marital rape, which is not criminalised</td>
</tr>
<tr>
<td>2005 to 2006 government statistics95</td>
<td>• 160 court cases involving spousal violence</td>
</tr>
<tr>
<td>2006 to 2009 government data96</td>
<td>• From 2006 to 2009, there were 400 registered cases of domestic violence, most of which were “not considered very serious” and involved “yelling or scolding.” 3 cases were of fathers raping their daughters.</td>
</tr>
<tr>
<td>2005 to 2006 UNICEF data97</td>
<td>• 71% of children aged 2 to 14 experienced physical punishment and/or psychological aggression in the home</td>
</tr>
<tr>
<td>2011 Gender and Development Group (GDG) survey in Vientiane, Bokeo, Luang Prabang, Savannakhet and Salavan of 1,144 women and men98</td>
<td>• 94 (8%) respondents lived with physical domestic violence in one form or other; 53 were women</td>
</tr>
<tr>
<td></td>
<td>• 12% of female victims and 10% of male victims were forced to have intercourse by and with their spouses</td>
</tr>
<tr>
<td></td>
<td>• Of the 53 women, 28 had been punched or hit by a weapon, and 18 had been beaten up</td>
</tr>
</tbody>
</table>

94 Ibid.
95 CEDAW, Combined sixth and seventh periodic report of State parties. Lao People’s Democratic Republic, CEDAW/C/Lao/7, 30 May 2008, 19.

The 2011 and 2004 prevalence figures from the GDG surveys are starkly different. The 2011 GDG survey noted that different definitions were used, presumably referring to the fact that mental and sexual violence were included in the 2004 survey, but not in the 2011 one, save in relation to forced sex.99 Also, the 2011 data may suffer from misinformation. The report noted that interviewers were volunteers not trained in research, turnover in the team was high. Interviews were taking place in the presence and within the hearing of others, and interviewers were receiving information about respondents from others and may not have verified the respondents’ concurrence with the information.100 The limitations of the 2004 survey were not stated.

99 Ibid, 74.
Cases of domestic violence are most likely very underreported. With the existence of social stigma, violence in the family is “an extremely delicate subject” and victims and neighbours tend to be too afraid to report it. Violence is reportedly “socially legitimised and accompanied by a culture of silence and impunity.”

Besides fear, perceptions of acceptability of violence may also lead to underreporting, as the following figures illustrate:

<table>
<thead>
<tr>
<th>Data source</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>UNICEF data</td>
<td>81% of girls and women aged 15 to 49 think that a husband is justified in hitting or beating his wife under certain circumstances.</td>
</tr>
<tr>
<td>1998 LYU, LWU and Save the Children UK survey of 53 young people</td>
<td>63% of girls and 45% of boys agreed that “it is all right for a man to hit his wife if she makes some mistakes”.</td>
</tr>
<tr>
<td>2011 Gender and Development Group (GDG) survey in Vientiane, Bokeo, Luang Prabang, Savannakhet and Salavan of 1,144 women and men</td>
<td>Female respondents believed that a man has a right to beat his wife if she disobeys him (42%) and if she has been unfaithful (67%).</td>
</tr>
<tr>
<td>Only 4% of male respondents and 7% of female respondents would tell others to intervene if their spouse beat them.</td>
<td></td>
</tr>
</tbody>
</table>

**Economic Violence**

Neither of the GDG surveys included economic violence in their scope. The prevalence of acts of economic violence is of concern. There exist indicators of the entrenchment of women’s financial dependence on men. For instance, land ownership documents tend to be registered in men’s names, and loans for the family are usually put in the husband’s name.

Whether or not wives are nevertheless required to give consent when properties are disposed of is unclear. Article 27 of the Family Law provides for equal rights of husband and wife over matrimonial property, regardless of who acquired the property. This appears to provide legal basis for requiring consent. However, cases may turn on whether the property constitutes matrimonial property, and also on whether the law is in fact enforced.

**Patrilocal Traditions**

It has been noted by experts on the situation of highland ethnic minorities that incidences of wife-beating appeared more prevalent among ethnic groups practising patrilocal marriage systems.

**Other Issues**

The table below sets out the information found on other significant violence issues in Lao PDR. Empirical information on these issues is scant.

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105 Ibid, 46-47.  
106 The definition of domestic violence includes acts causing “impacts on assets”, which is similar to the concept of economic violence.  
### Table 7: Information on Other Significant Violence Issues in Lao PDR.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Details</th>
</tr>
</thead>
</table>
| **Crimes** | - 2005 and 2006 government data (provided for the CEDAW review): 382 cases of violence against women and children were brought to court; of these, 52 were of rape.\(^{109}\)  
- *Statutory rape:* There have been reports of practices among certain ethnic groups of raping girls before puberty.\(^ {110}\)  
- Lao PDR does not have a central database of crime, nor does it make public statistics on crime.\(^ {111}\) |
| **Violence against women and children in prisons** | - A 2003 study found that 30% of detained children reported experiencing physical or mental punishment, including beating, crawling, sitting in the sun and withholding meals.\(^ {112}\)  
- Over 90% of children in detention centres were there for a first offence.\(^ {113}\)  
  **Risk factors**  
  - Male and female prisoners are held in the same prisons, though in different cells;\(^ {114}\) juveniles are reportedly held with adult prisoners, although there are "no official or reliable statistics available."\(^ {115}\)  
  - The government does not permit regular independent monitoring of prison conditions.\(^ {116}\) |
| **Violence against street children** | - UNICEF outreach team in Vientiane (estimated to reach approximately half of the capital's street children\(^ {117}\)):  
  - 39 individual cases of violence and abuse against street children  
  - Of the above: 3 girls raped, several detained by police without due reason, 7 young people released from prison suffering from malnutrition, and 6 migrant girls believed to be sexually exploited\(^ {118}\)  
  - According to UNICEF, street children and their families in the Vientiane capital were regularly put in prisons before international meetings and national events, as part of efforts to "clean the streets."\(^ {119}\)  
  - According to the government, there are "very few" cases of street violence\(^ {120}\) |
| **Violence against female sex workers** | - Engaging in prostitution is criminalised in Lao PDR.  
  - A 2006 thesis research study found that 12 of 16 female sex workers interviewed had experienced physical, sexual and emotional violence, including rape and gang rape, the use of harmful objects during sex, and abuse by police officers.\(^ {121}\) |

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113 Paulo Sergio Pinheiro, World Report on Violence Against Children, 2006. 194. This author is an independent expert for the United Nations Secretary-General’s Study on Violence against Children.


115 Ibid.

116 Ibid.


118 Ibid, 13-14. These cases appear to have been recorded from the period of July 2004 to June 2006: UNICEF Lao PDR, Review of UNICEF Support to Street Children Activities, December 2006, 10. Data on ethnicity was not collected.
<table>
<thead>
<tr>
<th>Issue</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Early or forced marriage</td>
<td>• Forced marriage of both children and persons who have reached majority still takes place in certain ethnic groups and families, despite being prohibited by the Family Act.122</td>
</tr>
<tr>
<td></td>
<td>• A “considerable percentage” of women are reported to marry before reaching the age of 18, often in cases of underage pregnancy.123</td>
</tr>
<tr>
<td></td>
<td>• 3 of 16 respondents in a 2006 survey of sex workers married at or before the age of 16.124</td>
</tr>
<tr>
<td></td>
<td>• Early marriage has been identified as a practice among certain ethnic groups.125</td>
</tr>
<tr>
<td>Bullying of children</td>
<td>• 98% of girls and 100% of boys in a survey said they had witnessed bullying in schools and, while the precise nature or seriousness of the bullying was not clear, the victims were mainly girls or children from ethnic minorities.126</td>
</tr>
</tbody>
</table>

b. Root Causes and Aggravating Practices

General Factors

Gendered and Customary Roles and Stereotypes

Violence against women is known to be perpetuated by traditional attitudes under which women are regarded as subordinate to men or as having stereotyped roles.127 Cultural and traditional attitudes and practices that keep women in a subordinate position to men are deep-rooted.128 It is widely accepted throughout the country that men are the “heads of the households”. For example, only men’s names appear on many administrative documents, such as household/family registration certificates and land ownership documents.129 Even among the matrilineal Lao-Tai, the ethnic majority group, the youngest daughter inherits the family land and/or home in order to fulfil her role of taking care of the parents.130 The roles of women are perceived to be those of keeping house and taking care of the children, and there is relatively little acceptance of women’s participation in the public sphere.131 Women in all ethnic groups also have traditionally deferred to men in community decision-making, in dealings with government officials, and in legal matters.132

122 CRC, Concluding Observations: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 95.
125 CRC, Concluding Observations: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 55.
126 Paulo Sergio Pinheiro, World Report on Violence Against Children, 2006, 122. This author is an independent expert for the United Nations Secretary-General’s Study on Violence against Children. The source report appears to be a UNICEF Knowledge Attitude and Practice study on child rights in the Lao PDR: UNICEF EAPRO, Violence against Children in East Asia and the Pacific Region: A Regional Overview, 2005.
127 CEDAW General Recommendation No. 19.
Gender and Education

Boys are favoured over girls for education, as girls are perceived as “better capable than boys of looking after younger siblings and of household work.”

Women need vocational training in order to access business opportunities and be financially independent. However, “[f]ar more” men than women reportedly attend trainings conducted in rural villages, because, among other things, only “heads of households” were called to attend, and illiterate women felt discouraged from attending.

Ethnic Minorities

While discriminatory gender perceptions exist across all ethnic groups, they are particularly pronounced among ethnic minorities. Many ethnic minority groups practise patrilocalism, i.e. the family name and property is transferred from father to son, a bride price is required for marriage, the wife must leave her home to live in her husband’s house, and women generally do not inherit any land from their parents.

Patrilocal practices perpetuate the perception that a woman is bought for the man’s family to provide her own labour and the next generation of labour, she has little other value. One report gives an account of authorities in a rural ethnic minority community expressing the view that “women’s level…[was] too low” to hold public office.

Harmful customs of ethnic minorities have also been noted, e.g. early and forced marriage, infanticide and rape of minors.

Marriage, residence, inheritance, and other practices can vary widely within ethnic groups, and ethnic minority societies are dynamic and constantly changing. Updated empirical research and disaggregated data in respect of different ethnic minorities would be helpful. In this regard, the CEDAW Committee has encouraged the State to carry out studies on existing negative stereotypes, attitudes and practices, including among ethnic groups.

Rural Communities

Gendered livelihood roles exist not only in ethnic minority groups, but in rural communities generally; even within the majority ethnic Lao group, differences in gender norms and roles have been found. Across rural areas, many of women’s traditional “light” tasks, such as weeding of upland rice fields, hand milling of rice, and gathering of fuel wood and water, are more tedious and time consuming than men’s traditional “heavy” tasks. The greater workload faced by women and girls potentially limits their access to education and training.

133 Approximately 35% of the population do not speak the Lao language, and some ethnic minorities have no written language: CRC, Second Periodic Report of States Parties due in 1998. Lao People’s Democratic Republic, CRC/C/LAO/2, 22 April 2009, para. 29 (c).
137 Ibid, 8.
139 Ibid, iii.
140 Ibid, 12.
143 CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Lao People’s Democratic Republic, CEDAW/C/Lao/CO/7, 7 August 2009, para. 22.
145 Ibid, 7.
Economic Development

It is believed that there are increasing cases of violence against women due to development projects, but no supporting evidence was cited and the relationship is vague. Pressures exerted on individuals by Lao PDR’s rapid development have been noted as a possible cause of gender-based violence.

Ethnic Discrimination

The rooted nature of harmful gender stereotypes and practices among ethnic minorities make education and poverty alleviation particularly pressing for them. Yet, there are continuing inequalities in the treatment of certain ethnic groups in terms of access to basic services, financial and other resources, decision-making and capacity development opportunities. The existence of discriminatory perceptions against ethnic minorities was acknowledged in Lao PDR’s 2009 Periodic Report to the CRC Committee. Ethnic discrimination would reinforce the vulnerability of ethnic minority women and girls.

Factors Related to Domestic Violence

The following table sets out the identified factors associated with domestic violence:

<table>
<thead>
<tr>
<th>Factor</th>
<th>Details</th>
</tr>
</thead>
</table>
| Gender inequality in earning power and education | • Violence was more likely to occur in cases where the woman earns less money than the man, and less-educated women were more likely to experience violence than women who have some or higher education: 2004 GDG domestic violence survey
• 80% of respondents had no education, or only primary level education: 2011 GDG domestic violence survey
• Victims of domestic violence reportedly return to their abusers out of economic necessity. |
| Alcohol and/or drug abuse | • 31% of women victims of domestic violence suffered at the hands of drunk husbands: 2004 GDG domestic violence survey
• 26% of wives suffered domestic violence because the husband was drunk: 2011 GDG domestic violence survey
• Availability of alcohol in villages with alcohol-distillation activities has been noted as having a strong correlation to spousal violence |
| Money and work-related problems | • Money and work-related problems were common reasons for domestic violence: 2004 GDG domestic violence survey
• 28% of wives stated that they suffered domestic violence as a result of difficulties at work: 2011 GDG domestic violence survey |

146 GDG, “Lao People’s Democratic Republic: Implementation of the CEDAW Convention,” 20 October 2008, 3. No explanation or details were given.
147 Association for Women’s Rights in Development, “Concept Note: Legislative Review Towards A Comprehensive Anti-GBV Legislation in Lao PDR”, undated, 4. No evidence was provided.
149 CRC, Second Periodic Report of States Parties due in 1998. Lao People’s Democratic Republic, CRC/C/LAO/2, 22 April 2009, para. 31 (“In the course of its history, the Lao PDR was for a long time a foreign colony, and colonialists did all they could to divide the social classes and ethnic groups in order to rule. Those actions have left traces which persist in the minds of certain groups of individuals.”)
150 CUSO-VSO and GDG, Rural Domestic Violence and Gender Research: Lao PDR, undated, 2.
153 CUSO-VSO and GDG, Rural Domestic Violence and Gender Research: Lao PDR, undated, 2.
Factor | Details
--- | ---
Patrilocal practices | • Wife-beating was reported to be more prevalent among ethnic groups with patrilocal practices; at one such village, men distinguished between “light” and “heavy” violence against women, and perceived only the latter to be unacceptable.\(^{158}\)

c. Impact of Violence

**Domestic Violence**

The 2004 GDG domestic violence survey found that 25% of women victims received physical injuries, with 14 of 57 cases requiring medical treatment and 6 beaten to unconsciousness. The survey also reported considerable impact on the mental health of women, including anxiety, fear, and lowered self-esteem. Some contemplated suicide but did not carry it out due to concerns over their children.\(^{159}\)

The 2011 GDG domestic violence survey found that 51% of women victims suffered physical injuries, mostly scratches, abrasions and bruises; only female respondents sustained more serious injuries such as dislocations, broken bones and teeth. Fifty per cent (50%) of women believed that the violence had a considerable impact on their physical and mental health.\(^{160}\)

### 2. De Jure State Responses

#### a. Bases of State Responsibility

**Binding Instruments**

<table>
<thead>
<tr>
<th>Date</th>
<th>Instrument</th>
<th>Reservations / Declarations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceded 22 February 2004</td>
<td>International Convention on the Elimination of All Forms of Discrimination</td>
<td>None</td>
</tr>
<tr>
<td>Acceded 20 September 2006</td>
<td>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict</td>
<td>None</td>
</tr>
<tr>
<td>25 September 2009</td>
<td>Convention on the Rights of Persons with Disabilities</td>
<td>None</td>
</tr>
<tr>
<td>25 September 2009</td>
<td>International Convention on Civil and Political Rights</td>
<td>None</td>
</tr>
<tr>
<td>Signed 21 September 2010</td>
<td>Convention against Torture and Other Cruel, Inhuman and Degrading Treatment</td>
<td>None</td>
</tr>
</tbody>
</table>

**Declarations and Commitments**

<table>
<thead>
<tr>
<th>Date</th>
<th>Instrument</th>
<th>Reservations / Declarations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>Cairo Programme of Action</td>
<td></td>
</tr>
<tr>
<td>1995</td>
<td>Beijing Declaration and Platform for Action</td>
<td></td>
</tr>
<tr>
<td>2004</td>
<td>Declaration on the Elimination of Violence against Women in the ASEAN region</td>
<td></td>
</tr>
<tr>
<td>2008</td>
<td>Joint Statement of the ASEAN High-Level Meeting on good practices in CEDAW reporting and follow-up</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>Cha-Am Hua Hin Declaration on Strengthening Cooperation on Education to Achieve an ASEAN Caring and Sharing Community</td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td>Joint Declaration on the Attainment of the Millennium Development Goals in ASEAN</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>Asean Leaders' Statement on Human Resources and Skills Development for Economic Recovery and Sustainable Growth</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women And Children</td>
<td></td>
</tr>
</tbody>
</table>

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156 CUSO-VSO and GDG, Rural Domestic Violence and Gender Research: Lao PDR, undated, 2.


159 CUSO-VSO and GDG, Rural Domestic Violence and Gender Research: Lao PDR, undated, 2.

b. National Policies Against Violence

Equality and Non-Discrimination Guarantees

The following table sets out the general guarantees of gender equality and non-discrimination. Whether these protections protect non-citizens is unclear.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Protected Person</th>
<th>Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender Equality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 22 of the Constitution</td>
<td>Lao citizens</td>
<td>Equality before the law, irrespective of sex[^61]</td>
</tr>
<tr>
<td>Article 24 of the Constitution</td>
<td></td>
<td>Both sexes enjoy equal rights in political, economic, cultural, social and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>family affairs.[^62]</td>
</tr>
<tr>
<td>Article 13 of the 2004 Law on the</td>
<td>Not expressly stated</td>
<td>Women and men shall have the same value and opportunities in politics,</td>
</tr>
<tr>
<td>Protection of Women</td>
<td></td>
<td>economy, socio-culture, families, national defence and security and foreign</td>
</tr>
<tr>
<td></td>
<td></td>
<td>affairs as stipulated in the constitution and laws.</td>
</tr>
<tr>
<td>Article 12 of the 2006 Implementation</td>
<td></td>
<td>Men and women shall have equality in political, economic, social, cultural</td>
</tr>
<tr>
<td>Decree[^63]</td>
<td></td>
<td>and family spheres.</td>
</tr>
<tr>
<td>Prohibition on gender discrimination</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Article 2 of the Implementation Decree may perhaps be read together with Article 177 of the Penal Law)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 2 of the Implementation Decree</td>
<td>Not expressly stated</td>
<td>Discrimination is defined as &quot;all forms of distinction, exclusion or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>restriction on women made on the basis of sex which has the effect of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>nullifying the recognition by society of the equality of men and women</td>
</tr>
<tr>
<td></td>
<td></td>
<td>in the enjoyment of human rights and freedoms in the political, economical,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>cultural and social or any other fields.&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Does not expressly prohibit such discrimination[^64]</td>
</tr>
<tr>
<td>Article 177 of the Penal Law</td>
<td></td>
<td>Criminalises discrimination against any woman</td>
</tr>
</tbody>
</table>

[^62]: Ibid.  
[^63]: Abbreviated.  
Sexual Offences

Table 12: Statutory Offences: Sexual Offences.

<table>
<thead>
<tr>
<th>Offence</th>
<th>Provision</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape: Using force, armed threats, drugs or other substances, or other means to place a woman in a state of helplessness in order to have sexual intercourse with the woman against her will, or attempts to do so</td>
<td>Article 128 of the Penal Law</td>
<td>Imprisonment for 3 to 5 years and fine of 1 million to 5 million Kip</td>
</tr>
<tr>
<td>Children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape (as defined in Article 128) of a woman between 15 and 18, or attempts to do so</td>
<td>Article 128 of the Penal Law</td>
<td>Imprisonment for 5 to 10 years and fine of 2 million to 10 million Kip</td>
</tr>
<tr>
<td>Rape of girls under 15, or attempts to do so</td>
<td>Article 128 of the Penal Law</td>
<td>Imprisonment for 15 to 20 years and fine of 10 million to 20 million Kip</td>
</tr>
<tr>
<td>Statutory rape: having sexual relations with a girl or boy under 12</td>
<td>Article 89 of the Law on the Protection of Children165</td>
<td>Imprisonment for 7 to 15 years and a fine of 7 million to 15 million Kip</td>
</tr>
<tr>
<td>Statutory rape: engaging in sexual intercourse with a girl or boy under 15</td>
<td>Article 129 of the Penal Law</td>
<td>Imprisonment for 1 to 5 years and fine of 2 million to 5 million Kip</td>
</tr>
<tr>
<td>Outrage of decency: engaging in any act that causes embarrassment of a sexual nature to another person against such other person's will</td>
<td>Article 137 of the Penal Law</td>
<td>Imprisonment for 6 months to 3 years, or re-education without deprivation of liberty, and fine of 100,000 to 500,000 Kip</td>
</tr>
</tbody>
</table>

Domestic Violence

Definition of Domestic Violence

Article 29 of the Law on the Protection of Women defines domestic violence as "an act or omission committed by someone in the family which causes physical or mental impact on, or which impacts on the assets of, women and children in the family." “Impact on assets” refers to violence caused through depriving women of their assets and adversely affecting their livelihood, and bears some similarities to the concept of economic violence.166 The familial relationships covered are not defined.

Article 29 of the Implementation Decree distinguishes between “minor” domestic violence (i.e. gossip, scorn, insults, defamation, preventing persons from participating in social activities, not sharing parenting) and “severe” domestic violence (i.e. beating, detention, tying, oppression, rape, adultery, illegal divorce, rudeness, burning, destruction of premises and possession, wasting family assets, not taking responsibility for family or protecting wife from harassment).167

Obligations to Prevent

Administrative authorities, agencies and mass organisations have the duty to prevent domestic violence through education, creating conditions favouring the development and protection of the rights and interests of women and children, and taking part in the implementation of various policies, laws, and mechanisms relevant to combating domestic violence against women and children.168 Article 42 of the Implementation Decree provides that “[w]omen shall prevent and combat the use of domestic violence.”169

Penalties

Domestic violence is not in itself an offence.170 Perpetrators
of domestic violence shall be re-educated and receive an official warning, unless the act constitutes an offence, in which case the offender shall be punished according to the Penal Law.\textsuperscript{171} Offenders may be liable to pay civil compensation for damages, including costs of medical treatment and mental rehabilitation and loss of income.\textsuperscript{172}

**Protective Measures**

Family members, relatives and witnesses are obliged to intervene to stop the violence, and mediate and educate the parties.\textsuperscript{173} Witnesses to domestic violence are entitled to arrest offenders and bring them to the police.\textsuperscript{174} Article 44 of the Implementation Decree provides for the security and protection of informers, who may inform the village administration, village units on counselling and protection of women and children, organisations that the victim belongs to, and the police.\textsuperscript{175}

**Curial Measures**

Victims of domestic violence have legal rights to assistance, including counselling, legal advice, food and accommodation, short-term vocational training and repatriation.\textsuperscript{176}

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\textsuperscript{171} Article 50 of the Law on the Protection of Women.

\textsuperscript{172} Article 52 of the Law on the Protection of Women: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

\textsuperscript{173} Article 40 of the Implementation Decree: unofficial translation.

\textsuperscript{174} Article 43 of the Implementation Decree: unofficial translation.

\textsuperscript{175} Article 45 of the Implementation Decree: unofficial translation.

\textsuperscript{176} Articles 47 and 49 of the Implementation Decree, unofficial translation. Article 28 of the Law on the Protection of Women provides for obligations on police officers and Lao officials to render assistance in certain situations. Article 34 of the Law on the Protection of Women obliges family members, ”persons nearby”, individuals and organizations who are aware of or are asked to render assistance in certain situations to provide assistance. Article 27 of the Implementation Decree provide for obligations on “every citizen” to render assistance to victims of trafficking and domestic violence.

\textsuperscript{177} Article 2(1) of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

\textsuperscript{178} The abovementioned conduct penalised by Articles 83 and 84 of the Law on the Protection of Children are acts that Article 49 of...
Reporting

Reporting of situations “regarding any child at risk of needing special protection or any child in need of special protection” 179 is required by Article 38 of the Law on the Protection of Children. Failure to report may constitute a violation of the said law, which attracts sanctions. 180

Protective Measures

Children in need of special protection may, depending on their individual circumstances, be returned to their parents or guardians or be sent to a shelter by the Committee for the Protection and Assistance of Children. 181 The Committee may also monitor and pay regular home visits to inspect the quality of care being provided by the child's parents or guardians. 182

One of the protection measures for children in need of special protection is the removal of children from the same prohibits parents, guardians, or “other persons” from committing. No mention is made of parents or guardians in Articles 83 and 84, suggesting that “other persons” is not restricted to persons related or who have care of the child.

179 These children are defined as “those who are half- orphaned, orphaned, abandoned, neglected or without parental care; children who are victims of physical abuse, sexual abuse, prostitution, human trafficking; children who work in hazardous conditions seriously affecting their life or health; exploited and displaced children; drug-addicted children; children affected by HIV/AIDS; and children adversely affected by legal proceeding”: Article 2 of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

180 Article 82 of the Law on the Protection of Children provides that “Individuals or organisations that violate this law will be subject to various sanctions, such as: re-educational, administrative or penal measures, based on the nature of the violation, including compensation of civil damages.”

181 Article 41 of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

182 Article 23 of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

183 Article 40 of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

184 Ibid.

Children to determine. Residential care institutions are to be used as a last resort. 185

Discipline and Criminal Punishment

The minimum age of criminal responsibility is 15 years of age. 186 Children under the age of 18 cannot be sentenced to capital punishment, 187 life imprisonment or house arrest. 188 The fact that the offender is less than 18 years of age is expressly stated to be one of the “circumstances conducive to reduction of penal liability,” 189 and the court may prescribe penalties lesser than those defined by law. 190

Under Article 72 of the Law on the Protection of Children, “[t]he penalty of imprisonment imposed on children shall only be as a measure of last resort, except for a crime.” 191 It is unclear what the last qualifier, “except for a crime” means. 192 Children who are sentenced to imprisonment are sent to vocational training centres, which aim to assist the child to “become a good person and to reintegrate into society” through, among other things, education and

185 Article 42 of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

186 Article 7 of the Penal Law: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

187 Even though the use of the death penalty against offenders under the age of 18 at the time of the offence is expressly prohibited by Article 32 of the Penal Law, the Committee on the Rights of the Child in 2011 curiously expressed concern that the death penalty was not explicitly prohibited for children: CRC, Concluding Observations: Lao People's Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 71.

188 Articles 31, 32 and 36 of the Penal Law: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR. Under Article 36, house arrest forbids the sentenced offender from leaving a place of residence or from entering other territories as assigned or forbidden by a decision of the court.

189 Article 40 of the Penal Law: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

190 Article 44 of the Penal Law: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

191 Article 72 of the Law on the Protection of Children reads “The penalty of imprisonment imposed on children shall only be as a measure of last resort, except for a crime.”

192 In this regard, the Committee on the Rights of the Child has expressed regret that the deprivation of liberty is not used only as a last resort for children between the ages of 15 and 18 years: CRC, Concluding Observations: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 71. However, it is unclear whether this refers to the state of the law, or only the implementation of the law.
Other measures for young offenders are provided for in Article 53 of the Penal Law, including requiring the child to request for pardon, and/or be sent for re-education. Execution of punishment may be stayed while child offenders are sent for re-education, and the penalty may be lifted if the offender does not re-offend.194

Children under the age of 18 who are alleged to have committed criminal offences may be tried in the Juvenile Courts.195

Corporal Punishment

Corporal punishment against any person is reportedly prohibited as a penal punishment and a disciplinary measure in penal institutions.196 However, there is no express prohibition. In this regard, “physical violence and torture” against suspects and prisoners is prohibited.197 Further, it is expressly stated that “[p]unishment does not aim to generate physical suffering,”198 and corporal punishment is not included among the categories of punishment provided for.199 With regard to child offenders detained in institutions, “[a]ll forms of violence” against child offenders in detention, such as threats and foul or defaming language are prohibited.200

Corporal punishment is lawful in the home,201 but is considered unlawful in schools under Article 27 of the Law on the Protection of Children.202 There is uncertainty over whether Article 27 prohibits corporal punishment in all educational institutions.203

c. Assessment of State Policies

The section below highlights notable points regarding existing State policies. UN Women (formerly UNIFEM) has conducted comprehensive assessments of Lao PDR's domestic violence and gender equality legislation.204 Comprehensive assessments of Lao PDR's legislation relating to the protection of children would also be useful.

Equality and Non-Discrimination

The Implementation Decree’s definition of discrimination has been described as “comprehensive”, and closely follows the definition in CEDAW, but there are concerns that discrimination as so defined is not explicitly prohibited, as there is no such provision in the Implementation Decree.205 In this regard, the definition of discrimination

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193 Article 74 of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR. Monitoring and inspection of vocational training centres is to be carried out by the Public Prosecutor, in collaboration with other relevant agencies: Article 77 of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

194 Article 72 of the Law on the Protection of Children read with Article 47 of the Penal Law: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

195 Articles 68 and 69 of the Law on the Protection of Children establish Juvenile Courts in in “each province and city as approved by the National Assembly Standing Committee”: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR. However, it seems that such courts have not in fact been established in practice: CRC, Concluding Observations: Lao People's Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 71.


197 Article 171 of the Penal Law: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

198 Article 27 of the Penal Law: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

199 Article 28 of the Penal Law: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

200 Article 62 of the Law on the Protection of Children: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR. While Article 77 of the Law on the Protection of Children provides for the rights of child offenders in vocational training centres (where child offenders are to be detained when sentenced to imprisonment), such as the right to food, clothing and health services, corporal punishment is not explicitly prohibited.


202 Article 27 of the Law on the Protection of Children provides for the State's policy to provide “child-friendly” schools for children.


Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

in the Implementation Decree may be read together with Article 177 of the Penal Law, which expressly criminalises discrimination against women. Information on judicial practice relating to these provisions would help clarify.

The various existing equality provisions do not expressly refer to “substantive equality.” It has been recommended that these provisions be strengthened by a clear and express guarantee of substantive equality.206

Domestic Violence

The location of provisions on domestic violence within broader equality legislation, i.e. the Law on the Protection of Women (which is based on the stated objective of gender equality), has been commended on the basis that this allows judges to rely on the objective of equality in cases of domestic violence.207 The gender-specificity of Lao’s domestic violence law, has been cited as a good practice example, particularly its prohibition of acts having an impact on the assets of women, such as causing women to lose their inheritance, as this recognizes that women generally hold an unequal position within the family and society.208

However, the distinction drawn between minor and severe forms of domestic violence is problematic. Minor acts of domestic violence are generally to be settled by mediation rather than criminal proceedings. This may reinforce the social legitimisation of such “minor” acts.209

Sexual Offences

The definition of rape has been described as narrow, ostensibly as it does not include marital rape. The State has been urged to widen the definition to include any sexual relations without the woman’s consent, and to remove the exception of marital rape.210

Child Abuse

Legislation to specifically address physical and emotional violence that may be used as a form of discipline against girls in their homes and alternative care settings is absent.211 Concerns have also been expressed over the absence of explicit prohibition of corporal punishment in the home and alternative care settings.212

3. Implementation, Monitoring and Prevention
   a. Implementing and Monitoring Mechanisms

Legal Obligations Relating to Implementation

The Law on the Protection of Women obliges a range of Lao agencies, Ministries and private organisations to assist in the protection of domestic violence victims including temporary shelters, training and advice.213 The State also has implementing duties, such as to conduct research into women’s de facto situation in respect of trafficking and domestic violence, and monitor public authorities in their implementation of the laws.214

Relevant organizations

The LWU and LYU have been charged with “coordinating the supervision and monitoring of matters connected with violence against women and children.”215 The LWU is assigned to implement the Law on the Protection of Women.216 The LWU action plan for 2006-2010 included

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206 Ibid, 3.
212 CRC, Concluding Observation: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 38.
215 CRC, Concluding Observation: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 86(e).
216 Article 53 of the Law on the Protection of Women.
improving knowledge and capacity of women in relation to domestic violence against women and the promotion of gender equality.217

Challenges

The legal implementing obligations have been criticised as vague and lacking concrete details.218 Coordination of relevant organisations, ministries, agencies and private actors is unclear. The Committee on the Rights of the Child has noted that effective measures do not yet exist for detecting, reporting, referring, investigating, treating and overseeing cases of child abuse.219 The State has stated that it is not in a position to allocate a specific budget for the protection of the best interests of the child, but will instead improve social development, in particular, education and public health.220 However, it has been noted that budget allocations to both health and education remain insufficient.221

b. Complaints Process

The CEDAW Committee has expressed concern that Lao PDR does not have a comprehensive and effective system of receiving complaints, especially from women of ethnic minorities.222 The absence of a clear complaints procedure for complaints made under the Law on the Protection of Women and the Implementation Decree has likewise been highlighted.223

The bodies who are appointed to receive complaints are the LWU, the Centre,224 the Provincial Office, the District Office and the Village Unit, for the Counselling and Protection of Women.225 The LWU is not given the power to provide remedies other than 'giving advice' and 'resolving unlawful acts'.226 While the matter can be referred to the police or 'higher authorities', there is no obligation on either to provide remedies.227 The other bodies for Counselling and Protection of Women may simply hear complaints, 'monitor' the settlement of appeals and inform victims of results,228 but do not have the power to award remedies. Overall, the detail required for an effective complaints procedure is said to be absent.229

Domestic Violence

Victims of domestic violence have the right to report to village administrations, and, only in certain cases, to report the matter to the police.230

Responses to domestic violence are family and community-based, and emphasise mediation and conciliation rather than the filing of criminal charges. In cases of severe domestic violence, both the village administration and the police are to be informed.231 If the violence is minor, the matter is dealt with by family, neighbours, village mediation units and village counselling and protection units, who are to mediate and educate.232 Only when the efforts of the village mediation unit fail may the matter be referred to the police.233 Hence, cases of minor violence are not to be referred immediately to the authorities.

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220 Ibid, para. 36(a).
221 CRC, Concluding Observation: Lao People's Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 16 (“The Committee notes, in particular, that budget allocations to the education sector are among the lowest in the world.”)
224 It appears that thus far, only one Centre for Counselling and Protection of Women has been established, and this is in the Vientiane capital: CEDAW, Combined sixth and seventh periodic report of States parties. Lao People's Democratic Republic, CEDAW/C/Lao/7, 30 May 2008, 12.
226 Ibid.
227 Ibid.
228 Ibid.
229 Ibid.
230 Article 33 of the Law on the Protection of Women: UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.
231 Article 46 of the Implementation Decree.
232 Articles 40 and 41 of the Implementation Decree.
When the matter has reached the police, the police’s mandate is to “try to settle the matter while keeping in mind the need for unity, harmony and happiness in the family.” Where violence is not serious, the police’s task is to conciliate and educate with a view to reaching “reconciliation and mutual trust in the family.” Police are to send the case to the prosecutors only where the violence is serious, or conciliation in cases of minor violence fails.

Concerns

Table 14: Concerns Relating to the Domestic Violence Complaints Mechanism

<table>
<thead>
<tr>
<th>Concerns relating to the domestic violence complaints mechanism</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Diversion from court procedures and emphasis instead on mediation, settlement and reconciliation risks compromising the interests and agency of women.</td>
</tr>
<tr>
<td>• The lengthy complaints procedure may limit access to immediate support and protection.</td>
</tr>
<tr>
<td>• Specific guidelines on what constitutes “serious” forms of domestic violence are absent. There is hence scope for patriarchal attitudes among mediators to influence the determination of what constitutes a serious offence.</td>
</tr>
<tr>
<td>• The expertise of the village mediation units may be inadequate.</td>
</tr>
<tr>
<td>• Article 42 of the Implementation Decree refers to service fees for mediation payable by the mediating parties. This may discourage women from reporting or pursuing recourse altogether.</td>
</tr>
<tr>
<td>• Save for “education” of perpetrators by family, neighbours and the village mediation unit, measures to ensure that the violence is not repeated during and following mediation are not provided for.</td>
</tr>
</tbody>
</table>

There is a danger that the complaints mechanism for violence may not be achieving redress. Most reported cases are settled out of court, including through the village mediation units. In most cases, women were advised by village authorities to stay with their husbands.

Compounding matters is a recent State policy to promote “case-free villages”, i.e. villages with no record of cases being referred beyond the mediation unit for resolution. This motivates village officials to resolve serious offences or crimes out of court, even though they may be more appropriately dealt with judicially. Also, legal awareness remains very low.

In view of the above, empirical studies on complaints mechanisms for domestic violence must be conducted. Such studies would help determine whether the statutory complaints mechanism is being followed in practice. They would also help identify and verify the various impediments faced by victims in gaining access to justice.

Complaints by Children

Children reportedly do not have the right to bring a complaint and seek reparations without parental consent.

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234 Article 36 of the Law on the Protection of Women.
235 Article 36 of the Law on the Protection of Women.
236 Article 36 of the Law on the Protection of Women.
239 Ibid., 24.
240 CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Lao People’s Democratic Republic, CEDAW/C/Lao/CO/7, 7 August 2009, para. 24. It is noted that each village mediation unit should have one member of the LWU, who would presumably be female: CEDAW, Combined sixth and seventh periodic report of States parties. Lao People’s Democratic Republic, CEDAW/C/Lao/7, 30 May 2008, 24.
241 Article 42 of the Implementation Decree. Service fees are 50,000 kips.
245 Ibid., para. 35.
246 The Government is reportedly implementing an access to justice survey and a customary law survey with support from the UNDP and other partners: UN Country Team, Lao PDR, “Contribution By The United Nations Country Team In Lao People’s Democratic Republic For The Universal Eight Session,” 2010, para. 38.
247 CRC, Concluding Observation: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 30. It should be noted that this is inconsistent with a UN Women report, stating that the laws of Lao PDR include special provisions for bringing complaints on behalf of children: UN Women, Domestic Violence Legislation and its Implementation: An Analysis for Southeast Asian Countries Based On International Standards and Good Practices, 2nd ed., 2011, 23. However, the provision cited, namely, Article 28 of the Law on the Protection of Children, does not appear to support the report’s position.

Delphia Lim
The Law on the Protection of Children provides for Juvenile Courts to hear not only cases involving crimes committed by children, but also cases involving child labour, civil cases relating to children, and "other cases relating to children."248 Proceedings in the Juvenile Courts are not open to the public.249 The law expressly provides for the child's right to participate in proceedings before the Juvenile Courts and to legal assistance.250

However, Juvenile Courts have reportedly not been established.251 Instead, the State appears to be focusing on training and policy development within existing infrastructure.252 A Children's Chamber was set up in 2003.253 There is also the Central Coordinating Committee on juvenile justice, comprising the Public Prosecutor's Office, the Supreme People's Court, the Ministry of Security and the Ministry of Justice, which coordinates the study and proposal of policies and rules relating to juvenile justice.254

Child-friendly juvenile justice procedures have been established in some provinces, districts and villages, and efforts are on-going to expand their reach.255 Guidelines for mediating cases involving children have been approved by the Ministry of Justice for dissemination.256

Assessments of these procedures both on paper and in practice should be conducted. Assessments of proceedings in practice would be particularly useful, including the determination of whether existing legal safeguards are implemented, whether trainings have been effective, and generally, what the weak areas for improvement are.

c. Protection and Rehabilitation

Information on the availability of shelters and health and social services for victims is very limited.257 Rehabilitation and reintegration measures for child victims of abuse are lacking, and there are human and financial resource constraints.258

LWU centers and the MLSW in cooperation with NGOs have been assisting victims of domestic violence.259 There are 124 child protection networks in Oudomxay, Vientiane, Savannakhet and Champasak to monitor children vulnerable to a range of hazards, including trafficking.260

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Shelter</th>
<th>Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Village Focus International (supervised by the Ministry of Education)</td>
<td>1 shelter</td>
<td>Receives domestic violence and trafficking victims.262</td>
</tr>
<tr>
<td>Lao Women's Union</td>
<td>2 Counseling and Protection Centers for Women and Children</td>
<td>Receives women and children who are victims of domestic violence, exploitation and trafficking.263</td>
</tr>
</tbody>
</table>

Lao PDR has a number of residential placement centres, namely, SOS Villages, boarding establishments for students from ethnic groups, and a National Centre for the Rehabilitation of Persons with a Disability.264 Under certain

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248 Articles 68 and 69 of the Law on the Protection of Children.
249 Article 70 of the Law on the Protection of Children.
250 Ibid.
251 The CRC Committee has noted that the project to establish juvenile courts is still not in place: CRC, Concluding Observation: Lao People's Democratic Republic, CRC/C/Lao/CO/7, 7 August 2009, para. 71.
253 Ibid., para. 36(e).
254 Ibid., para. 134.
256 Ibid.
258 CRC, Concluding Observation: Lao People's Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 47.
circumstances, children may be entrusted to a pagoda.265

Crucially, mechanisms to monitor decisions on placement of children in alternative care are absent.266 Mechanisms to monitor alternative care facilities and to ensure that the child’s rights, including his/her right to be heard and to maintain contact with his/her family, are respected are absent.

d. Prevention Strategy

Gender Mainstreaming Efforts

A National Plan of Action for the Advancement of Women was adopted for the period of 2006 to 2010.267 A National Strategy for the Advancement of Women has been adopted for the period of 2011 to 2015. It aims to increase equality between men and women, balance power relationships, increase the number of women in decision-making positions and improve women and girls access to many services and income-earning opportunities.268

The LWU conducted several programs to strengthen the role of women, including vocational training, which were reportedly most effective in urban areas.269

Gender-mainstreaming in education has been undertaken. After an assessment of primary education textbooks revealed gender bias, the Ministry of Education developed a new educational curriculum that incorporates the teaching of gender roles and gender equality.270 However, the government has been criticised for not taking sustained and systematic action to modify or eliminate stereotypes and negative traditional values and practices.271

Education

The LWU’s programmes include activities to inform women on anti-trafficking and domestic violence, and the dissemination of information on women’s legal rights and CEDAW and the CRC.272

Children

There is no national plan of action on children to address the rights of children in their entirety.273 The Government has stated that its approach is to focus efforts on social development.274 In this regard, the Ministry of Education, supported by UNICEF, is developing a National Policy on Inclusive Education, with special focus on girls, women, ethnic groups, people with disabilities and people with socio-economic difficulties.275

4. Role of Non-State Actors

NGO efforts relating to child protection are considerable. NGOs such as UNICEF have been funding and providing training for efforts by government ministries to provide assistance to victims, such as child protection networks. UNICEF has engaged in direct outreach to street children. Child protection units were set up by Village Focus International in 30 villages in Lao Ngam District, Salavan Province.276

NGO efforts relating to domestic violence appear scarcer. International organisations such as UN Women and Oxfam, have assisted in research efforts to document domestic violence.

265 CRC, Concluding Observation: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 43.
266 Ibid.
267 CEDAW, Combined sixth and seventh periodic report of States parties. Lao People’s Democratic Republic, CEDAW/C/Lao/7, 30 May 2008, 10.
272 LWU, Promotion and Protection of Lao Women’s Rights, 29 October 2009.
273 CRC, Concluding Observation: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 12.
5. Progress Indicators and Challenges

The absence of consolidated statistical data and information make tracking progress difficult. Unlike with the issue of trafficking, no household surveys have been conducted in relation to violence against women. The private and hidden nature of domestic violence poses a significant challenge to fact-finding. Research faces human resource constraints, in terms of numbers and skills, as evidenced by the experience with the 2011 GDG domestic violence survey.

Monitoring and evaluation of the effectiveness of government institutions, regulation and other measures have apparently not been conducted, such as the impact of the village mediation on violence against women and children, the child-friendly complaints process, and the child protection networks.

D. EXPLOITATION

Labour Migration and Lao PDR: An Overview

Many Laotians start their journeys as voluntary labour migrants, only to be caught into trafficking situations. A 2006 literature review of case studies corroborates this, noting that there were no cases of the selling or kidnapping of children in the pre-departure stage; rather, the movement is initiated independently. In fact, young Lao migrants in Thailand often move voluntarily from one job to the other, return to their village in Lao PDR, and re-migrate to Thailand again some time later, in some cases despite having experienced exploitation and abuse in their earlier migration experience.

According to one literature review, “the major problem is the exploitative practices of employers in Thailand rather than the depredations of transportation agents.” The review concludes from case studies that victims are far more commonly deceived or threatened by their employers rather than their transporters. The Country Report on Thailand is therefore most pertinent.

Even if the majority of violations in labour migration take the form of exploitation and abuse at the destination, trafficking remains highly relevant. First, many cases fall within the definition of “trafficking”, due to the concept of “statutory trafficking” in the Trafficking Protocol, where children under 18 are deemed to be trafficked even where deception, coercion or force are not used. This is because the majority of migrants and identified trafficked victims are under 18 (see Table 19 below). Second, there are still cases of the use of deceptive or coercive means by recruitment agents to lure women and children into exploitation situations.

277 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 33.
The following figures make it clear that trafficking and exploitation in migration may be occurring on a considerable scale, due to large-scale migration and the prevalence of risk factors.

<table>
<thead>
<tr>
<th>Migration Indicators</th>
<th>Risk Indicators</th>
</tr>
</thead>
<tbody>
<tr>
<td>In 2008, at least 250,000 Lao migrant workers were employed in Thailand.</td>
<td>An estimated 80,000 Lao migrant workers remained unregistered in Thailand.</td>
</tr>
<tr>
<td>Demand for Lao migrants as of September 2007: 62,094</td>
<td>Number of Lao migrants placed through formal channels: 4,448</td>
</tr>
<tr>
<td>80.8% of Lao PDR migrants within a sample of 39,000 persons migrated overseas. Figures are taken from a 2003 ILO household survey.</td>
<td>It is thought that unmet demand would be filled primarily by migrant workers recruited via informal or illegal channels.</td>
</tr>
</tbody>
</table>

The available studies on trafficking are only able to give estimates of the prevalence of trafficking, and debate continues on how large a problem trafficking in fact is for the country. Interviews with NGO project officers reveal different perceptions of the scale of trafficking. Some officers working on regional-level projects in the GMS have described the prevalence of trafficking relating to Lao PDR as low, arguing that numbers from Myanmar and Cambodia are much higher, and that Laotians are better able to assimilate into Thai culture and avoid falling prey to exploitation. Others perceived trafficking as a big problem for the country, viewing similarities between Laotians and Thais as allowing Laotians to travel further out of the city, where violations are more difficult to detect.

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281 US State Department, 2010 Trafficking in Persons Report: Lao PDR.

282 Ibid.


289 Ibid.

1. Description of the Problem

a. Prevalence of Exploitation

Lao as a Source Country for Trafficking

Table 17: Lao PDR as a Source Country for Trafficking

<table>
<thead>
<tr>
<th>Destinations</th>
<th>Exploitation Sectors</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross-border trafficking</td>
<td>Thailand is the primary destination. 291 A 2003 ILO labour migration survey found that 81.5% of overseas migrants migrated to Thailand. 292</td>
<td>Females: Domestic services, garment and other factories, construction, entertainment, and agriculture. Boys: Construction, factories, agriculture, domestic services and fisheries. 293</td>
</tr>
<tr>
<td>Malaysia has also been named as a primary destination. 297</td>
<td>No details given.</td>
<td></td>
</tr>
<tr>
<td>China and Myanmar 298</td>
<td>Women and girls sold as brides. 299</td>
<td>This reportedly affects the Akha minority in particular. 300</td>
</tr>
<tr>
<td>Internal trafficking</td>
<td>Internal trafficking usually takes the form of rural to urban transfer 301 The Vientiane capital is one of the main destinations for internal migrants 302 and trafficking. 303</td>
<td>The entertainment sector, prostitution, garment factories, with a small number in rubber plantations (men and boys). 304 Prostitution appears to be a wide-scale problem but there are no actual numbers. 305</td>
</tr>
</tbody>
</table>

296 Inthasone Phetsiriseng, Gender Concerns in Migration in Lao PDR. Migration Mapping Study: A Review of Trends, Policy and Programme Initiatives, UNIFEM, Lao PDR, February 2007, 11, citing information from MLSW.
302 42.5% of internal migrants reflected in a household survey had migrated to Vientiane: MLSW and ILO, Labour Migration Survey in Khammouan, Savannakhet and Champasack, 2003.
307 Ibid.
**Cross-border Migration to Thailand**

Laotians make up the significant majority of trafficked victims in Thailand, as shown in the figure below:

*Figure 1: Human Trafficking in Thailand.*

Source: UNODC Global Report on TIP 2010

Source: Most cross-border trafficking victims in Thailand reportedly come from the provinces along the Lao-Thailand border, especially, Savannakhet, Champasak and Saravan. 76% of trafficked returnees from Thailand from 2001 to 2006 were from these 3 southern provinces. Of returnees from 2001 to 2007, 44% were from the province of Savannakhet.308

Means of movement: A significant number of minors who became victims of exploitative labour and hence trafficking had made their own way to Thailand, and far more had been accompanied or enabled to migrate by a family member or known person than a stranger.309 Young, poorly educated, and female Lao migrants opted more frequently to travel with a broker.310

Labour sectors: While some reports state that victims of cross-border trafficking are primarily found in garment factories and the sex industry, there are other key sectors that warrant attention, such as domestic labour. While domestic work features less in the figure below, this is not the case with the figures given in Table 17 above.

*Figure 2: Nature of Human Trafficking in Thailand.*

Source: UNODC Global Report on TIP 2010

Other studies have found a strong sex-segregation among occupations, with girls much more likely to work in restaurants, bars, domestic work and the sex industry than

---


boys, who would work in construction, agriculture and factories.311

Circumstances at destination: Lao children or youth illegal migrants tend to get work that often involves long hours, poor or late payments and that run the risk of being mistreated by employers and Thai police.312 Women and girls in particular tend to get involved in sex work, garment industry and domestic work, “female” occupations that are “dangerous, difficult and dirty,” characterised by low wages, poor working conditions, and lacking employment benefits.313 Sex work by minors is considered one of the worst forms of child labour, and studies have found the most extreme cases of abuse among girls who worked as domestic labourers.314

However, only a “small minority” of migrants find themselves seriously tricked, cheated, abused or exploited in the migration process.315 In one 2008 study, 60% of returnees said that they had no problem in Thailand, and 75% of them said that they were happy in Thailand. The most common complaint among returnees was that they worked long hours without sufficient rest. Among their other complaints were low or unpaid wages, or fraud on the part of broker and employers.316

The following figure sets out abuses suffered by youth and child migrants from 30 villages in Savannakhet:

![Figure 3: Abuses Suffered by Youth and Child Migrants from 30 villages in Savannakhet](image)

<table>
<thead>
<tr>
<th>Abuse suffered by youth migrants</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was forced</td>
<td>8</td>
<td>5.2%</td>
<td>11.9%</td>
</tr>
<tr>
<td>Was beaten</td>
<td>1</td>
<td>0.7%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Was threatened</td>
<td>5</td>
<td>3.3%</td>
<td>0.0%</td>
</tr>
<tr>
<td>Sex against will</td>
<td>2</td>
<td>1.3%</td>
<td>1.9%</td>
</tr>
<tr>
<td>Sick without treatment</td>
<td>57</td>
<td>37.3%</td>
<td>14.26%</td>
</tr>
<tr>
<td>Was locked up</td>
<td>4</td>
<td>2.6%</td>
<td>1.9%</td>
</tr>
<tr>
<td>Didn’t receive wages</td>
<td>12</td>
<td>7.8%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Not able to communicate with parents</td>
<td>12</td>
<td>7.8%</td>
<td>6.11%</td>
</tr>
</tbody>
</table>


**Lao as a Transit and Destination Country**

<table>
<thead>
<tr>
<th>Source Country</th>
<th>Transit Country</th>
<th>Destination</th>
<th>Exploitation Sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>-</td>
<td>Lao PDR</td>
<td>Prostitution</td>
</tr>
<tr>
<td></td>
<td>Lao PDR</td>
<td>Thailand</td>
<td>Prostitution and forced labour</td>
</tr>
<tr>
<td>Vietnam</td>
<td>-</td>
<td>Lao PDR</td>
<td>Prostitution</td>
</tr>
<tr>
<td></td>
<td>Lao PDR</td>
<td>Thailand</td>
<td>Prostitution and forced labour</td>
</tr>
<tr>
<td>Myanmar</td>
<td>Lao PDR</td>
<td>Thailand</td>
<td>Prostitution and forced labour</td>
</tr>
</tbody>
</table>

**Profiling of Trafficked Victims**

Studies are unanimous that young girls are the primary victims of cross-border trafficking.

312 Ibid, 18.
315 Ibid, 18.


Table 19: Profile of Victims of Cross-Border Trafficking

<table>
<thead>
<tr>
<th>Migration largely occurs within the lower age cohorts</th>
<th>Trafficking occurs largely within the lower age cohorts</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Migrants surveyed were largely between the ages of 12 and 29, with the largest number around the age of 15: 2006 World Vision study.\textsuperscript{116}</td>
<td>• 85% of trafficked persons returned from Thailand from 2001 to 2007 through official channels were under 18 years of age.\textsuperscript{250}</td>
</tr>
<tr>
<td>• Majority of migrants surveyed were between 18 and 25 years, and 21.4% were children under 18: 2003 ILO survey.\textsuperscript{119}</td>
<td>• 63% of trafficking victims surveyed were aged between 12 and 18 years of age, and 33% were aged between 19 and 30 years of age: 2004 MLSW and UNICEF study.\textsuperscript{321}</td>
</tr>
</tbody>
</table>

Majority of cross-border migrants are female

<table>
<thead>
<tr>
<th>Majority of victims of cross-border trafficking are female, and most are young girls</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 70% of 48,000 irregular Laotian migrant workers in Thailand who have undergone nationality verification and obtained temporary passports are women.\textsuperscript{322}</td>
</tr>
<tr>
<td>• 55.4% of cross-border and internal migrants were female. (However there were more male than female internal migrants): 2003 ILO survey.\textsuperscript{323}</td>
</tr>
<tr>
<td>• Of the approximately 145 Lao trafficking victims repatriated from Thailand in 2010, “almost all” were underage girls.\textsuperscript{324}</td>
</tr>
<tr>
<td>• Of the 155 trafficked returnees from Thailand received by the Ministry of Labour and Social Welfare in 2009, 144 were underage and 148 were girls.\textsuperscript{325}</td>
</tr>
<tr>
<td>• 95% of trafficked victims returned from Thailand to Lao PDR from 2001 to 2007 were female and 85% were under 18 years of age.\textsuperscript{326}</td>
</tr>
<tr>
<td>• 60% of trafficking victims surveyed were females between 12 and 18 years of age: 2004 MLSW and UNICEF study.\textsuperscript{327}</td>
</tr>
</tbody>
</table>

Importantly, the over-representation of children in official statistics may be because of the Trafficking Protocol’s concept of “statutory trafficking”, i.e. children under 18 are considered victims of trafficking as long as any of the means stated in the Trafficking Protocol’s definition are used, notwithstanding their consent. Also, there may be a bias in the high numbers of women, as the majority of Thai police raids target brothels.\textsuperscript{328}

Literature reviews of studies and surveys conducted have also made the following findings:

- Migrating children, including trafficked victims, are generally not the poorest nor the least educated.\textsuperscript{329}
- No clear trend emerges with regard to ethnicity of victims.\textsuperscript{330}
- There appears to be a strong link between age and gender; the younger the migrant, the greater the likelihood of being a female migrant.\textsuperscript{331}

b. Root Causes and Aggravating Practices

Trafficking in Lao PDR takes place within a context where there exists both a strong desire, especially among the young, to obtain better employment for a better lifestyle, as well as a lack of employment opportunities and poverty.\textsuperscript{332} Youth are also particularly influenced by the wide appeal of Thai pop culture.\textsuperscript{333} Some of those who return from Thailand and migrate again do so because their villages appear too small and backward to them.\textsuperscript{334} Moreover, remittances have been found to play important roles in improving livelihoods and positively changing their identities in families and communities.\textsuperscript{335} These ‘push’


\textsuperscript{320}UNIAP, “SIREN Human Trafficking Datasheet,” March 2008, citing figures from MLSW.

\textsuperscript{321}MLSW and UNICEF, Broken Promises, Shattered Dreams, 2004, 19.

\textsuperscript{322}UNIFEM (now UN Women), Gender Concerns in Migration in Lao PDR, “Across the Borders. A Study of Counter-Trafficking Work in Lao PDR,” (Master’s Thesis in Peace and Development Studies, Växjö University), 2009, 33.


\textsuperscript{324}Ibid, 20. Over-representation of ethnic minorities was found in one study but not others.


\textsuperscript{328} MLWSW and UNICEF, Broken Promises, Shattered Dreams, 2004, 53.

\textsuperscript{329} N. Southiseng and J. Walsh, “Remittances and the Changing Roles Delphia Lim
factors for migration are well-documented.\textsuperscript{336}

Gendered responsibilities may create additional incentives for females to migrate. A powerful incentive for females to migrate is the responsibility to repay their parents, especially their mothers, commonly by remitting money home. Also, the lower age of marriage for women may result in lower ages of migration for females in order to migrate before taking on responsibilities of marriage and children.\textsuperscript{337}

Factors that make persons vulnerable to trafficking and exploitation include:

\begin{itemize}
  \item low social status; these migrants are easy prey for recruitment agents who know that their families have no power to make complaints, rescue them, or take other action;\textsuperscript{338}
  \item lack of information and knowledge (seen as more prevalent in rural areas);\textsuperscript{339}
  \item dysfunctional families, e.g. abusive male step-parents, siblings with drug problems, divorce or death of parents;\textsuperscript{340} and
  \item related to the above, lack of well-established cross-border networks of relatives and friends.\textsuperscript{341}
\end{itemize}

Weaknesses in existing law enforcement and the labour regulatory framework have been cited as aggravating factors.\textsuperscript{342} Legal channels for labour migration are costly and time consuming, leading to illegal migration and exposure to exploitative work situations and trafficking due to migrants' undocumented status.\textsuperscript{343} According to the US State Department, there is evidence of corruption on both sides of the border: local officials are aware of trafficking activities, and some may even have profited from them; border officials permit human smuggling, and evidence also implicates Thai officers.\textsuperscript{344}

Significantly, reports indicate that a nexus exists between trafficking and Lao PDR's development. Improvements in transportation and communication networks in developing areas, such as the economic special zone in Savannakhet and the R3 road, have been linked to increases in migration and associated trafficking.\textsuperscript{345} An ADB study published in 2009 identifies a link between poorly implemented development policies and trafficking.\textsuperscript{346} Besides poorly thought out relocations and consolidation of villages, negative impacts are most strongly felt in the breaking of agreements for compensation for damages to fields and villages by the government and foreign businesses. Villagers whose livelihoods are negatively impacted and who are left with no land after development-related relocation may experience severe traumas that result in dependence on wage labour usually but not always favoring the males, alcoholism, drug addiction, prostitution, and outmigration. Land shortages and labour surplus caused by the consolidation of villages provide the rationale for travelling to Thailand. The study found that Lao in traditional villages not adversely affected by relocations or consolidations did not migrate, while those affected by relocation were most prone to migrate.

One particularly interesting finding was that ethnicity is the primary determinant of responses to adverse impacts caused by development policies, with some groups significantly more prone than others to respond to development-related social upheavals with prostitution and outmigration.

Another study documents accounts of recruitment brokers moving on from areas where awareness has increased, usually the border areas, to villages that have just been relocated and that have just gained road access, where

\begin{footnotesize}
\textsuperscript{341} Ibid, 7.
\textsuperscript{344} US Department of State, 2008 Human Rights Report: Lao PDR; US State Department, 2009 Trafficking in Persons Report: Lao PDR.
\textsuperscript{345} UNIAP, Mekong Region Country Datasheets. Human Trafficking. 2010, 14.
\textsuperscript{346} ADB, Broken Lives. Trafficking in Human Beings in the Lao People’s Democratic Republic, 2009.
\end{footnotesize}
villagers are presumably less aware of the risks of trafficking in migration.347

c. Impact of Exploitation

Studies on the impact of exploitation and trafficking on victims are few. In a 2006 World Vision study, returnees reported having unspecified psychological problems (45%), problems with authority, probably connected with the imposition of excessive fines (27%), problems with their families (9%), and problems with the community (23%), suggesting stigmatisation. Increased harassment by officials was also reported.348

Bad experiences with exploitation in migration nevertheless do not appear to deter persons from re-migrating.349

2. De Jure State Responses

a. Bases of State Responsibility

Binding Instruments

<table>
<thead>
<tr>
<th>Date of Ratification</th>
<th>Instrument</th>
<th>Reservations / Declarations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceded 14 April 1978</td>
<td>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others</td>
<td>Article 22</td>
</tr>
<tr>
<td>Acceded 9 September 1957</td>
<td>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery</td>
<td>None</td>
</tr>
<tr>
<td>23 January 1964</td>
<td>International Labour Organisation Convention concerning Forced or Compulsory Labour (ILO 29)</td>
<td>None</td>
</tr>
<tr>
<td>26 September 2003</td>
<td>UN Convention against Transnational Organised Crime</td>
<td>Article 35(2)</td>
</tr>
<tr>
<td>26 September 2003</td>
<td>UN Protocol Against the Smuggling of Migrants by Land, Sea and Air</td>
<td>Article 20(3)</td>
</tr>
<tr>
<td>13 June 2005</td>
<td>International Labour Organisation Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO 182)</td>
<td>None</td>
</tr>
<tr>
<td>13 June 2005</td>
<td>ILO Minimum Age Convention (ILO 138)</td>
<td>None</td>
</tr>
<tr>
<td>25 September 2009</td>
<td>UN Convention against Corruption</td>
<td>Declaration: Lao PDR does not consider UNCAC to be a legal basis for extradition.350</td>
</tr>
</tbody>
</table>


Non-binding Instruments

Table 21: Non-binding instruments: Bases of State Responsibility for Human Trafficking

<table>
<thead>
<tr>
<th>Date of Signing</th>
<th>Declaration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>Stockholm Declaration and Agenda for Action</td>
</tr>
<tr>
<td>1999</td>
<td>UN World Tourism Organisation Global Code of Ethics for Tourism (adopted as a member of the UN WTO)</td>
</tr>
<tr>
<td>2001</td>
<td>Yokohoma Global Commitment against the sexual exploitation of children</td>
</tr>
<tr>
<td>28 November 2004</td>
<td>ASEAN Joint Declaration against the Trafficking of Persons, Particularly Women and Children</td>
</tr>
<tr>
<td>8 June 2006</td>
<td>Framework for Cooperation between the Association of Southeast Asian Nations (ASEAN) and the United Nations Development Fund for Women (UNIFEM)</td>
</tr>
<tr>
<td>13 January 2007</td>
<td>ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers</td>
</tr>
</tbody>
</table>

Cross-Border Collaboration

Table 22: Cross-Border Collaboration Against Human Trafficking

<table>
<thead>
<tr>
<th>Date</th>
<th>Parties</th>
<th>Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 October 2002</td>
<td>Lao PDR and Thailand</td>
<td>MOU on Employment Cooperation</td>
</tr>
<tr>
<td>29 October 2004</td>
<td>Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam</td>
<td>MOU on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-region, affirming their commitment to the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT)</td>
</tr>
<tr>
<td>13 July 2005</td>
<td>Lao PDR and Thailand</td>
<td>MOU on Cooperation to Combat Trafficking in Persons, Especially Women and Children</td>
</tr>
<tr>
<td>20 June 2007</td>
<td>Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Vietnam, Lao PDR</td>
<td>ASEAN Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries</td>
</tr>
<tr>
<td>3 November 2010</td>
<td>Lao PDR and Vietnam</td>
<td>MOU on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking</td>
</tr>
</tbody>
</table>

Lao PDR also has bilateral extradition treaties with Cambodia, Thailand and China, and a mutual legal assistance treaty with Vietnam, which contains provisions on extradition.352

Lao PDR’s Obligations vis-à-vis Thailand

Since Laotians make up the majority of known trafficked victims in Thailand, Lao PDR and Thailand’s bilateral efforts to combat trafficking are particularly relevant. The key obligations under their bilateral memoranda of understanding are set out below:

Table 23: Lao PDR-Thailand Bilateral Memoranda of Understanding on Human Trafficking

<table>
<thead>
<tr>
<th>MOU</th>
<th>Key obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevention</td>
<td>• Preventive measures include creating employment opportunities for women and children through vocational training and education and improving social services for women and children.</td>
</tr>
<tr>
<td>Protection</td>
<td>• Victims awaiting repatriation shall be afforded justice, legal assistance, legal protection and temporary housing.</td>
</tr>
<tr>
<td>Criminal Justice</td>
<td>• The countries’ respective law enforcement agencies are to cooperate closely, including in compiling and exchanging information and evidence.</td>
</tr>
<tr>
<td></td>
<td>• The countries shall provide each other with the widest mutual legal assistance in trafficking prosecutions.</td>
</tr>
<tr>
<td></td>
<td>• The countries shall individually or jointly provide training programmes for their law enforcement agencies.</td>
</tr>
<tr>
<td>Repatriation</td>
<td>MOU on Cooperation to Combat Trafficking in Persons, Especially Women and Children</td>
</tr>
<tr>
<td></td>
<td>• The MOU sets out a procedure for repatriation, including verification of the residence of victims in the accepting country.</td>
</tr>
<tr>
<td></td>
<td>• Each country is to appoint an agency responsible for executing the return of trafficked victims.</td>
</tr>
<tr>
<td>Reintegration</td>
<td>MOU on Cooperation in Preparing and Combating Trafficking in Persons and Protection of Victims of Trafficking</td>
</tr>
<tr>
<td>Join Action</td>
<td>Both parties are to undertake measures for victim reintegration, such as vocational training programmes and training of officials concerned with victim reintegration.</td>
</tr>
</tbody>
</table>

351 For more on the specific obligations under the ASEAN MLAT, see UNODC, ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases, August 2010.

Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

Lao PDR

<table>
<thead>
<tr>
<th>MOU</th>
<th>Key obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOU on Employment Cooperation</td>
<td>The MOU establishes an official employment channel between the 2 countries. It provides that all cross-border employment must take place via this channel. Records will be kept of all workers employed. The return of workers upon expiry or termination of their employment must also take place through this official channel. The domestic work sector has not been recognised and approved officially as a work sector for recruitment and sending under the MOU, despite this being a sector of work for a significant number of Lao migrants.353</td>
</tr>
</tbody>
</table>

b. State Policies Against Exploitation

Sexual Exploitation

Prostitution and the exploitation of prostitution are criminalised under the Penal Law.

Table 24: Statutory Offences: Prostitution

<table>
<thead>
<tr>
<th>Offence</th>
<th>Provision</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engaging in prostitution</td>
<td>Article 131 of the Penal Law</td>
<td>Imprisonment for 3 months to 1 year, or re-education without deprivation of liberty, and a fine of 50,000 to 500,000 Kip</td>
</tr>
<tr>
<td>Assisting or facilitating prostitution</td>
<td>Article 132 of the Penal Law</td>
<td>Imprisonment for 3 months to 1 year, or re-education without deprivation of liberty, and a fine of 300,000 to 1 million Kip</td>
</tr>
<tr>
<td>Generating income through procuring prostitution in any manner</td>
<td>Article 133 of the Penal Law</td>
<td>Imprisonment for 6 months to 3 years and a fine of 5 to 10 million Kip, Imprisonment for 3 to 5 years and a fine of 10 million to 50 million Kip, where procuring occurs as a regular profession, involves the prostitution of female minors, or of a female person under the offender’s guardianship</td>
</tr>
<tr>
<td>Forcing another into prostitution</td>
<td>Article 133 of the Penal Law</td>
<td>Imprisonment for 5 to 10 years, and a fine of 10 million to 20 million Kip, Imprisonment for 10 to 20 years, and a fine of 20 million to 50 million Kip, where the person is under 18</td>
</tr>
</tbody>
</table>

Liability of Child Prostitutes

Child prostitutes are not expressly excluded from liability under Article 131 of the Penal Law. However, children under 15 years of age at the time of commission of an offence will not be considered an offender.354

For children from 15 to under 18 years of age, their age is a circumstance conducive to the reduction of penal responsibilities.355 In this regard, the Law on the Protection of Children provides that the matter, being an offence punishable by less than 3 years’ imprisonment, need not be referred to court, but can instead be solved by softer forms of punishment, such as warnings, re-education and/or community service work.356 It is not known what the common practice is on this issue.

Commercial Sexual Exploitation of Children

Table 25: Statutory Offences: Commercial Sexual Exploitation of Children

<table>
<thead>
<tr>
<th>Offence</th>
<th>Provision</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Having sexual relations with a child (defined as any person under 18 years of age357) by paying or giving any type of benefit</td>
<td>Article 89 of the Law on the Protection of Children</td>
<td>Imprisonment for 3 months to 1 year, or re-education without deprivation of liberty, and a fine of 1 million to 2 million Kip, where the child is 15 to 18 years of age</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Imprisonment of 1 to 5 years and a fine of 2 million to 5 million Kip, where the child is 12 to 15 years</td>
</tr>
</tbody>
</table>

Lao PDR had an operational National Plan of Action on Commercial Sexual Exploitation of Children for the period 2007 to 2011, which was approved in 2008.


354 Article 7 of the Penal Code and Article 50 of the Law on the Protection of Children.

355 Article 40(1) of the Penal Code.

356 Articles 52 to 54 of the Law on the Protection of Children.

357 Article 2 of the Law on the Protection of Children.
Various acts relating to child pornography are criminalised by the Law on the Protection of Children\(^{358}\) and the Penal Law.\(^{359}\)

### Child Sex Tourism

The Tourism Law imposes duties on tourists and tourism enterprises to comply with national laws,\(^{360}\) and prohibits persons from conducting their tourism business in contravention of national laws.\(^{361}\) Persons or organisations that violate the Tourism Law’s provisions shall be re-educated, fined, warned, or punished according to the laws, as determined on a case by case basis.\(^{362}\) There are no laws specifically criminalising child sex tourism abroad.

### Labour Exploitation

Forced labour is prohibited.\(^{363}\) Forced labour is defined as “the use of labour where the employee does not voluntarily accept the work assigned, which is inconsistent with the employment contract.”\(^{364}\)

The following are some safeguards in the Labour Law against labour exploitation:

<table>
<thead>
<tr>
<th>Safeguard</th>
<th>Provision in Labour Law</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Every employee shall have a 6 day work week. Hours of work “should not” exceed 8 hours per day or 48 hours per week.</td>
<td>Article 16</td>
<td>Persons who violate provisions of the Labour Law shall be re-educated, warned, fined, subject to temporary suspension of business, withdrawal of business licence, or brought to court based on the nature of the offence.(^{365})</td>
</tr>
<tr>
<td>There are mandatory maximum hours of work (6 hours per day or 36 hours per week) for persons working in certain hazardous conditions, such as work involving exposure to radiation or communicable diseases, dangerous chemicals, in pits, underground tunnels, in abnormally hot or cold places, etc.</td>
<td>Article 49</td>
<td></td>
</tr>
<tr>
<td>Every employee shall have one day off weekly.</td>
<td>Article 19</td>
<td></td>
</tr>
<tr>
<td>Salary or wages must be paid at least once a month at a fixed time.</td>
<td>Article 65</td>
<td></td>
</tr>
<tr>
<td>Salary or wages for work paid on a per unit of product basis, or hourly work, shall be paid at least twice a month.</td>
<td>Article 66</td>
<td></td>
</tr>
</tbody>
</table>

\(^{358}\) Under Article 86 of the Law on the Protection of Children, it is a crime to produce, distribute, disseminate, import, export, display or sell magazines, photographs, films, videos, VCDs, DVDs and other items of child pornography. Offenders are subject to imprisonment for 1 to 3 years and a fine of 2 to 6 million Kip.

\(^{359}\) Under Article 136 of the Penal Code, it is a crime to engage in sexual intercourse or expose one’s sexual organs in the presence of members of the public or in any public place. Offenders are subject to imprisonment for 3 months to 1 year, or re-education without deprivation of liberty, and a fine from 50,000 to 200,000 Kip. Under Article 138 of the Penal Code, it is a crime to engage in the widespread production, distribution, or dissemination of pornographic items, magazines, pictures, video cassettes and other materials “contrary to fine traditions.” Offenders are subject to imprisonment for 3 months to 1 year and a fine of 200,000 to 5 million Kip.

\(^{360}\) Articles 47 and 65 of the Tourism Law.

\(^{361}\) Article 66 of the Tourism Law.

\(^{362}\) Article 77 of the Tourism Law.

\(^{363}\) Article 3 of the Labour Law.

\(^{364}\) Article 2 of the Labour Law.

\(^{365}\) Article 75 of the Labour Law.

\(^{366}\) Article 6 of the Labour Law.

\(^{367}\) Article 6 of the Labour Law.
Minimum Wage

The minimum monthly wage was increased with effect from 1 January 2012 from 348,000 Kip (around US$43) to 626,000 Kip (around US$78). Employers are not entitled to set the level of wages or salary of employees lower than the level set by the State. New workers may be placed on probation for up to 30 days (work using physical labour) or 60 days (work involving specialised skills), during which they are entitled to at least 90% of the minimum wage.

Debt Bondage

There do not appear to be any safeguards in the Labour Law against debt bondage, such as provisions prohibiting certain types of deductions from wages or salaries.

Child Labour

<table>
<thead>
<tr>
<th>Safeguard</th>
<th>Statutory Provision</th>
<th>Penalty for breach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employing children below 14 years of age is prohibited.</td>
<td>Article 83 of the Law on the Protection of Children</td>
<td>First-time offenders will be subject to re-education, and repeat offenders to fines or disciplinary sanctions: Articles 83 and 84 of the Law on the Protection of Children.</td>
</tr>
<tr>
<td>Children who are 14 to 18 years of age may be employed, provided that they do not work more than 8 hours per day, and are not employed in sectors involving the performance of heavy work or that are dangerous to their health, including mining, work at places serving alcohol, gambling places, overtime work and night shifts.</td>
<td>Article 41 of the Penal Law</td>
<td>Persons in breach will be fined or subject to disciplinary sanctions: Article 84 of the Law on the Protection of Children. Repeat offenders who employ children in hazardous sectors are subject to imprisonment for 3 months to 1 year and a fine of 1 million to 2 million Kip: Article 87 of the Law on the Protection of Children. If such use of child labour causes death or disability to the child, offenders are subject to imprisonment for 3 to 7 years and a fine of 3 million to 7 million Kip: Article 87 of the Law on the Protection of Children.</td>
</tr>
</tbody>
</table>

Labour Migration

Key requirements imposed by Prime Minister Decrees and Guidelines on the export of Lao workers abroad are:

- labour migrants may not work as (1) unskilled workers such as cleaners, domestic workers and porters, (2) vocations that are inappropriate and incompatible with the Lao tradition, culture and law, such as work in the sex sector, with narcotics or illegal political activities; and (3) dangerous occupations such as open sea fishing, exposure to radioactive radiation etc; and

- for labour migration to Thailand, there must be 3 contracts in place, namely (1) a contract between the Laotian worker and the recruitment agency, (2) a contract between the Thai employer and the Lao recruitment agency, and (3) a contract between the Laotian worker and the Thai employer.

Workers recruited must obtain permits from the Department of Skill Development and Employment Promotion. They must also undergo a health check and a 2-3 hour pre-departure orientation. The orientation covers, among other things, rules and regulations in Thailand, social welfare, healthcare, and channels for sending remittances. The regime regulating recruitment agencies is unclear.

 Trafficking

The following are the primary provisions criminalising trafficking in persons:

369 Article 46 of the Labour Law.
370 Article 27 of the Labour Law.
372 Ibid, 27.
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

### Table 28: Statutory Offences: Trafficking in Persons

<table>
<thead>
<tr>
<th>Offence</th>
<th>Provision</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>The recruitment, moving, transfer, harboring, or receipt of any person within or across national borders by means of deception, threats, use of force, debt bondage or any other means, and using such person in forced labour, prostitution, pornography, or anything that is against the fine traditions of the nation, or removing various body organs of such person, or for other unlawful purposes.</td>
<td>Article 134 of the Penal Law</td>
<td>Imprisonment for 5 to 15 years, and fine of 10 million to 100 million Kip.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Imprisonment for 15 to 20 years and fine of more than 100 million to 500 million Kip and confiscation of property where:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• trafficking is done as a regular profession or in an organised group</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the victims are children</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• where there are 2 or more victims</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• where any victim is a close relative of the offender, or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• where any victim suffers serious injury or becomes invalid or insane.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Life imprisonment and fine of more than 500 million to 1 trillion Kip and confiscation of property where the offence causes the victim to:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• become a lifetime invalid</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• be infected with HIV</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• die.</td>
</tr>
<tr>
<td>“Statutory trafficking”: Any of the above-mentioned acts committed against children under 18 years of age shall be considered as human trafficking even though there is no deception, threat, use of force, or debt bondage.</td>
<td>Article 24 (liability) read with Article 49 (penalty) of the Law on the Protection of Women</td>
<td>Imprisonment for 5 to 15 years, and a fine of 10 million to 100 million Kip</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Imprisonment for 15 to 20 years, and a fine of 100 million to 500 million Kip and confiscation of property, where:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the offenders are organised</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the victims are children (however, the Law on the Protection of Children provides for a lesser punishment for trafficking in children, namely imprisonment for 5 to 15 years and a fine of 10 million to 100 million Kip and confiscation of property that the offenders cause the victim to:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the victims are more than 2 persons</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the victims are close relatives of the offenders, or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• the victims suffer severe injury or mental insanity.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Life imprisonment and a fine of 500 million to 1 trillion Kip and confiscation of property, or capital punishment, where the offenders cause the victim to:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suffer lifetime incapacitation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• be infected with HIV/AIDS</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• die.</td>
</tr>
<tr>
<td>Attempts to do the above are expressly criminalised.</td>
<td></td>
<td>Imprisonment for 4 to 10 years, a fine of 5 million to 50 million Kip, and confiscation of property</td>
</tr>
<tr>
<td>There are general provisions that appear to criminalise preparation to commit offences, and complicity in offences.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complicity in trafficking: Cooperating with trafficking offenders whether by incitement, providing assets or vehicles to the offender, the provision of shelter, or the concealment or removal of traces of an infraction.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engaging in the trade and abduction of human beings for ransom, sale or other purposes</td>
<td>Article 100 of the Penal Law</td>
<td>Imprisonment for 5 to 15 years and fine of 5 million to 50 million Kip</td>
</tr>
</tbody>
</table>

373 Articles 13 and 17 of the Penal Code.
Article 134 of the Penal Law expressly provides that, where the trafficking offence in question involves women and children, the Law on the Protection of Women can be applied.

The following summarises the differences between the trafficking provision in the Penal Law and that in the Law on the Protection of Women:

<table>
<thead>
<tr>
<th>Article 134 of the Penal Law</th>
<th>Article 24 of the Law on the Protection of Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Includes the acts of recruitment, moving, transfer, harboring, or receipt of persons</td>
<td>Includes the additional acts of “hiding” and “transportation.”</td>
</tr>
<tr>
<td>Expressly includes the means of deception, threats, use of force, debt bondage &quot;or any other means&quot;</td>
<td>Expressly includes the additional means of the giving or receiving of bribes, the use of &quot;other means of coercion,&quot; and abduction</td>
</tr>
<tr>
<td>Includes victims who are men</td>
<td>Does not do the same</td>
</tr>
<tr>
<td>Applies to acts committed by Lao citizens overseas, or foreign residents where the case is covered by an international convention</td>
<td></td>
</tr>
</tbody>
</table>

Other provisions under the Penal Law that may be invoked in prosecuting trafficking offences include the offences of misleading people to illegally depart from or enter Lao PDR, exercising duress against a person to the person’s detriment, unlawful arrest and detention, and document fraud.

National Plan of Action against Human Trafficking

A draft National Plan of Action (NPA) against trafficking in persons to be implemented from 2007 to 2012 was formulated and approved by the National Assembly. The areas of intervention targeted by the NPA against trafficking in persons were (a) policy and cooperation, (b) prevention, (c) law enforcement, (d) protection, and (e) monitoring and evaluation. To date, however, it has yet to be approved by the Prime Minister’s Office.

Cross-border Criminal Justice Collaboration

Cross-border law enforcement and collaboration for that purpose is necessary to combat offences commonly of a cross-border nature, such as child sex tourism and trafficking. The following are national laws that would enhance the achievement of cross-border criminal justice.

Extraterritoriality of Offences

The Penal Law provisions have extraterritorial effect over Lao citizens who commit Penal Law offences outside the country. Foreigners residing in Lao PDR may also be liable under the Penal Law should the case be covered by international conventions. The Law on the Protection of Women and the Law on the Protection of Children do not, however, provide for extraterritorial application.

Mutual Legal Assistance and Extradition

Lao PDR has no specific law on mutual legal assistance or extradition. Relevant provisions are found in Part XI of the Law on Criminal Procedure. In summary:

- International cooperation and judicial assistance shall be conducted in compliance with applicable treaties, and in accordance with national laws.
- Where there is no applicable treaty, international cooperation and judicial assistance shall be conducted on the basis of mutual cooperation, and shall not conflict with national laws.
- Judicial assistance may have the objective of extradition, exchange of prisoners, seizure or sequestration of assets of an accused person or defendant, enforcement of judgment, or cooperation in combating of cross-border crime and others.
- Judicial assistance may be refused where the request is not in conformity with applicable treaties or national laws, or where the provision of such assistance would affect Lao PDR’s sovereignty, security, or stability, or any of its important interests.

No specific offences are stated to be specifically covered by the above provisions on international cooperation and judicial assistance. Requests for mutual legal assistance are

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374 Article 90 of the Law on the Protection of Children.  
375 Article 75 of the Penal Code.  
376 Article 97 of the Penal Code.  
377 Article 99 of the Penal Code.  
378 Article 161 of the Penal Code.  
380 US State Department, 2011 Trafficking in Persons Report: Lao PDR.  
381 Article 4 of the Penal Code.
to be made to the Ministry of Justice, but no requirements for making an extradition request are specified by the laws.

c. Assessment of State Policies against Exploitation

Trafficking

Lao laws aligned with the Trafficking Protocol

National laws against trafficking are said to define human trafficking in a way that generally reflects the internationally accepted definition (presumably the definition in the Trafficking Protocol).

“Trafficking”: distracting from the “real” problem?

It has been said that the Trafficking Protocol’s definition is “irrelevant to deal with the reality of the situation in the [Greater Mekong Sub-region].” The focus on movement rather than exploitation sits uneasily with the fact that the majority of cases involve movement that is largely voluntary, and that ends in exploitation at the destination due to the nature and terms and conditions of work, i.e. a combination of voluntary, albeit irregular/illegal migration, and exploitation.

The practical consequences is that the definition, in emphasising movement rather than the act of exploitation, places the responsibility for addressing trafficking on the sending country, i.e. Lao PDR, which is poorer and less equipped to take action. When categorised as a trafficking instead of an exploitation issue, cases are sent to Lao PDR to deal with. Attention and pressure to take action is shifted away from exploitation in the receiving country, i.e. Thailand, which is better equipped to take preventive and protective action.

Combining the 2 Different Anti-trafficking Prohibitions

At least one NGO has called for an anti-trafficking prohibition that combines the 2 existing anti-trafficking prohibitions found in the Penal Law and the Law on the Development of Women respectively. The former is said to have the desired scope (presumably its coverage of men and extraterritorial effect), while the latter is said to have the desired detail (presumably its inclusion of additional acts and means of trafficking).

Sexual Exploitation

The criminalisation of prostitution has been criticised as increasing the vulnerability of sex workers through contributing to stigma and marginalisation, and influencing whether or not they seek medical help. The fear preventing sex workers from accessing general health care services and reporting situations of abuse has been evidenced in a study.

Domestic Work

Concerns have been raised over the fact that the domestic work sector in Lao PDR, and in labour migration to Thailand, remains unregulated. As mentioned above, domestic work is an area excluded from the formal labour migration channel between Lao PDR and Thailand. There is accordingly no requirement for employment contracts for domestic workers. The lack of regulation hinders domestic workers from obtaining their visas and permits to stay and work legally, and made female domestic workers more vulnerable to exploitation and abuse as they are not recognised as legal workers.

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387 UNFPA, Asia Pacific Regional Office, Socio-Cultural Influences on the reproductive health of migrant women: A review of literature in Cambodia, Lao PDR, Thailand and Viet Nam, December 2011, 33.
3. Implementation and Monitoring

a. Implementing and Monitoring Mechanisms

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Role and Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Labour and Social Welfare</td>
<td>Role includes assisting victims, supporting prevention efforts and research, and negotiating bilateral arrangements with Thailand regarding migration.400</td>
</tr>
<tr>
<td>Social Welfare Department</td>
<td>Office for Child Labour and Assistance for Trafficked Women and Children400</td>
</tr>
<tr>
<td></td>
<td>A unit devoted to protection of children from trafficking. Also receives and assists returned Lao victims of cross-border trafficking with reintegration.401</td>
</tr>
<tr>
<td></td>
<td>Unit devoted to child victims with special needs402</td>
</tr>
<tr>
<td></td>
<td>Labour Administration Agency / Labour Inspection Authority</td>
</tr>
<tr>
<td></td>
<td>Inspects the implementation of labour laws, female and child labour.403</td>
</tr>
<tr>
<td>Ministry of Public Security</td>
<td>Anti-Trafficking Division</td>
</tr>
<tr>
<td></td>
<td>Mandated to monitor, support and coordinate the provincial units, handle sensitive investigations and is responsible for international cooperation.404</td>
</tr>
<tr>
<td></td>
<td>Has representatives from the Lao Women's Union and the Lao Youth Union on the team.405</td>
</tr>
<tr>
<td>General Police Department</td>
<td>Central Office / Central Specialist Unit</td>
</tr>
<tr>
<td></td>
<td>Mandated to investigate all reported trafficking crimes at the national level. In practice, undertakes more complex or transnational investigations.406</td>
</tr>
<tr>
<td></td>
<td>6 provincial Anti-Trafficking Units407</td>
</tr>
<tr>
<td></td>
<td>Function as focal points for all trafficking-related issues including investigations. Report to the Central Unit.408</td>
</tr>
<tr>
<td>Tourism Police Department</td>
<td>Works with the Anti-Trafficking Division to investigate incidents of trafficking and commercial sexual exploitation in the tourism sector.409</td>
</tr>
<tr>
<td></td>
<td>Department of Immigration</td>
</tr>
<tr>
<td>Lao Women's Union</td>
<td>Takes responsibility for human trafficking and reintegration of returnees.410</td>
</tr>
<tr>
<td>National Committee against Human Trafficking</td>
<td>An inter-agency mechanism chaired by the (Deputy) Minister of Defence. Comprises high-level representatives of ministries and equivalent bodies.411 Implements the COMMIT Sub-Regional Plans of Action.412</td>
</tr>
<tr>
<td>Ad Hoc Working Group to combat trafficking</td>
<td>Comprises 7 members drawn from various sectors and chaired by the Director of the Social Welfare Department. Reviews bilateral and multilateral cooperation and coordination on trafficking in persons, requests for international aid for activities to combat trafficking in persons and disseminates information on the prevention of trafficking at central and local level.413</td>
</tr>
<tr>
<td></td>
<td>Working group dedicated to victim identification</td>
</tr>
<tr>
<td></td>
<td>Led by the Anti-Trafficking Division, the counselling centre of the LWU, the Department of Social Welfare and the Prosecutor’s Office.414</td>
</tr>
</tbody>
</table>

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389 ASEAN, ASEAN Responses to Trafficking in Persons, April 2006, 33.
392 US Department of State, 2008 Human Rights Report: Lao PDR.
393 Articles 71 and 72 of the Labour Law.
395 ASEAN, ASEAN Responses to Trafficking in Persons, April 2006, 33.
397 ASEAN, ASEAN Responses to Trafficking in Persons, April 2006, 33.
398 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 35.
400 ADB, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 35.
404 CEDAW, Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic reports, Lao People’s Democratic Republic, CEDAW/C/Lao/Q/7/Add.1, 22 June 2009, 10; Lao PDR, 2010 National Report for the Universal Periodic Review, 2010, para. 19.
No special police or other law enforcement units have been set up to deal specifically with cases involving child victims of sexual exploitation or violence, as of 2010.  

National Plans of Action

The National Plan of Action on Commercial Sexual Exploitation of Children (2007 to 2011), approved in 2008, has a limited budget for implementing plans and depends mostly on funding from international sources. Its impact is unclear.

It is unclear why the National Plan of Action against Human Trafficking (2007 to 2012) has not been approved by the Prime Minister’s Office. Multiple stakeholders, including international NGOs and UN agencies, had been consulted in its drafting, and the UNIAP had provided technical assistance. It was reported that the government was in 2009 finding ways to implement the NPA more effectively. The NPA's monitoring and evaluation component had earlier been lauded as “pioneering” and a good practice.

Bilateral and Regional Implementing and Monitoring Mechanisms

Table 31: Bilateral and Regional Implementing and Monitoring Mechanisms

<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Implementing Mechanisms</th>
<th>Monitoring mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMIT</td>
<td>3 Sub-regional Plans of Action have been produced to date, for the periods 2005-2007, 2008-2010, and 2011-2013.</td>
<td>The national COMMIT Task Force is tasked to monitor progress under the Sub-regional Plans of Action.</td>
</tr>
<tr>
<td></td>
<td>The national COMMIT Task Force is tasked to oversee national activities relating to the plans of action. It is not clear what role the Lao PDR COMMIT Task Force has in fact been playing in this regard.</td>
<td>Monitoring meetings are held under the COMMIT Framework. Achievements and progress were tracked from 2005 to 2008.</td>
</tr>
<tr>
<td>2005 Lao-Thai MOU on Cooperation to Combat Trafficking in Persons, Especially Women and Children</td>
<td>A 3-year plan of action to implement the 2005 Lao-Thai MOU on trafficking was agreed upon in 2005.</td>
<td>There are no clear mechanisms for monitoring the effectiveness of actions taken under the MOU.</td>
</tr>
<tr>
<td></td>
<td>A joint taskforce, namely, the Thai-Lao Cross Border Collaboration on Tracing Missing Trafficked Victims in Thailand (THALACC) was established to strengthen linkages between Lao and Thai government officials and improve identification and tracing of victims. It aims to create a more systematic training system in Thailand, through developing a standardised form for reporting information on missing persons and establishing a central database that contains all available information on each missing person case.</td>
<td>When specifically asked during the combined 6th and 7th periodic reviews for CEDAW on the impact of the 2005 Thai-Lao MOU on trafficking, the government’s response was vague, namely that it had “satisfactory results.” Numbers of victims repatriated from Thailand (see below) and successful cases of tracing missing persons under THALACC (28 as at 2007) have been used as proxy indicators for effectiveness. These numbers have been relatively low.</td>
</tr>
<tr>
<td>2010 Lao-Vietnam MOU on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking</td>
<td>Implementing and monitoring mechanisms are unclear.</td>
<td></td>
</tr>
</tbody>
</table>

408 CRC, Concluding Observation: Lao People’s Democratic Republic, CRC/C/Lao/CO/2, 8 April 2011, para. 65.
413 ASEAN, ASEAN Responses to Trafficking in Persons, April 2006, 37.
415 CEDAW, Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic reports, Lao People’s Democratic Republic, CEDAW/C/Lao/Q/7/Add.1, 22 June 2009, 11.
416 CEDAW, Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic reports, Lao People’s Democratic Republic, CEDAW/C/Lao/Q/7/Add.1, 22 June 2009, 11.
b. Complaints Process

A 24-hour child protection hotline was set up by the Lao National Tourism Police and the Tourism Police in 2009, coinciding with the 25th Southeast Asian Games held in Lao PDR.\(^\text{417}\) Apart from that, the existence, accessibility, effectiveness and awareness of avenues by which victims of exploitation and trafficking make reports and lodge complaints are unclear. Such avenues would presumably include the police, Lao embassies, immigration officials, shelters and village mediation units.

Also, apart from the Lao-Thai official repatriation channel, it is not known if there are any official case referral systems in place, whether domestically or for cross-border cases.

Victim Compensation

**Table 32: Victim Compensation for Abuse, Exploitation and Human Trafficking**

<table>
<thead>
<tr>
<th>Offence</th>
<th>Availability of victim compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trafficking under the Law on the Protection of Women</td>
<td>- <strong>Civil proceedings</strong>: Victims of trafficking are entitled under the Law on the Protection of Women to request for compensation.(^\text{418}) Compensation to trafficked victims for damages such as costs of medical treatment, mental rehabilitation and loss of income, appear mandatory.(^\text{419}) - <strong>Criminal proceedings</strong>: In criminal proceedings against trafficking offenders, the court may, pursuant to the Law on the Protection of Women, award compensation for damage suffered by victims.(^\text{420}) Whether this has been done in criminal court cases is unknown.</td>
</tr>
<tr>
<td>Child labour, child sexual exploitation, including prostitution and statutory rape, and child trafficking, under the Law on the Protection of Children</td>
<td>- Under Article 91 of the Law on the Protection of Children, offenders are obliged to pay compensation for damages such as medical treatment, moral injury, sick leave, travel, food and accommodation and other damages. It is unclear if this applies only when a conviction has been secured</td>
</tr>
</tbody>
</table>

Civil suits by trafficked victims against their traffickers have reportedly never been filed in practice.\(^\text{422}\) Whether civil suits for other forms of exploitation have been brought is unknown.

Legal Assistance

There is no legal provision in national laws for access to legal assistance for trafficked persons who are victim witnesses.\(^\text{423}\) Nevertheless, the Lao Bar Association has assisted victims of trafficking through providing legal aid.\(^\text{424}\)

Barriers to Accessing Justice

Victims’ access to legal redress is said to be hampered by a lack of resources on the part of victims and the legal community. Victims are not made aware of available legal resources, even if local officials in their areas have received training on human trafficking.\(^\text{425}\) They are also not made aware of their rights; there is no easily accessible manual on legal rights, or a central location to access national laws, other than through online portals which are inaccessible to the majority of the population.\(^\text{426}\)

Further, victims often do not wish to make complaints as they prefer to be deported; this route of return to Lao PDR is shorter than via the official repatriation procedure for trafficked victims which can take up to 1 year. Delays may be due to ongoing investigations and court cases in Thailand, or obstacles faced in family tracing (which is a mandatory procedure to verify the residence or nationality of the victim before returning her).\(^\text{427}\)

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418 Article 25 of the Law on the Protection of Women.
419 Article 52 of the Law on the Protection of Women.
420 Article 27 of the Law on the Protection of Women.
421 Article 48 of the Law on the Protection of Women.
422 US State Department, 2011 Trafficking in Persons Report: Lao PDR.
423 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 116.
424 US State Department, 2010 Trafficking in Persons Report: Lao PDR.
425 Ibid.
It has been noted that the common practice of resolving disputes and addressing offences via village mediation units first may have a bearing on the extent to which complaints are pursued.\textsuperscript{428} The weak judicial sector may also be a factor.

Rights and Protections During Investigations and Judicial Proceedings

The following rights and protections stated in the Law on the Protection of Women are relevant during investigations and judicial proceedings, and apply only to women and children:\textsuperscript{429}

- the right to testify and present evidence relating to the case to concerned officials;
- the right not to be photographed, video-recorded or broadcast;
- confidentiality for victims and witnesses involved in the investigation and prosecution of cases of trafficking in women and children;
- the right to protection and care for personal safety;
- the right to receive suitable assistance in terms of shelter, food, clothing, and medical services;
- during the criminal process, police officers are obliged to cooperate with doctors, social workers and other parties in order to give necessary and urgent assistance, to provide medical treatment and counselling services to the victims and to send them to safe shelter.

However, according to the US State Department, the government reportedly has not provided such protection to victims, despite encouraging them to cooperate in prosecutions.\textsuperscript{430}

Access to Justice in Thailand

Under the 2005 Lao-Thai MOU on trafficking, Thailand agreed to afford justice and legal assistance to victims of trafficking awaiting repatriation. Under Thailand's Anti-Trafficking in Persons Act, victims can claim compensation from the offenders for any damages caused by human trafficking.\textsuperscript{431} Whether this entitlement has been or can be invoked by Lao victims of trafficking while in Thailand, to take advantage of Thailand's arguably stronger judicial system, is not known.

\textbf{c. Protection and Rehabilitation}

Government efforts in this area appear weak. The government relies "almost completely" on NGOs and international organisations to provide victim assistance.\textsuperscript{432}

Investigation, Identification and Rescue

National victim identification guidelines have been drafted with support from UN agencies and NGOs.\textsuperscript{433} They remain unenforced, however, due to lack of funding and human resources and a lack of government endorsement.\textsuperscript{434}

Labour Exploitation

Key reports made no reference to any efforts to investigate and identify cases of forced or child labour and other labour exploitation through raids on factories, etc. or labour inspections.\textsuperscript{435}

Victims of Trafficking and Sexual Exploitation in Lao PDR

Raid of nightclubs and other places used as fronts for commercial sex in Lao PDR are limited.\textsuperscript{436} Authorities reportedly do not employ screening procedures to identify trafficked victims among persons found in prostitution during these raids.\textsuperscript{437}

\textbf{Trafficking Victims in Thailand}

The following table sets out the 2005 to 2010 figures on persons formally identified as victims of trafficking from Lao PDR to Thailand who were repatriated through the official channel between Thailand and Lao PDR.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
Year & Number of Victims \hline
2005 & 478 \hline
2006 & 429 \hline
2007 & 347 \hline
2008 & 403 \hline
2009 & 368 \hline
2010 & 429 \hline
\hline
\end{tabular}
\end{table}

\textsuperscript{432} US State Department, 2011 \textit{Trafficking in Persons Report: Lao PDR.}
\textsuperscript{435} These are the government's reports to the CEDAW Committee, the CRC Committee, the said Committees' concluding observations, the US State Department Trafficking in Persons reports, and progress reports under the COMMIT Sub-regional Plans of Action.
\textsuperscript{437} US State Department, 2011 \textit{Trafficking in Persons Report: Lao PDR.}

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\textit{Delphia Lim}
The following table compares the numbers of identified victims of trafficking with the total numbers of returnees.

**Table 34: Comparison of Numbers of Identified Victims of Trafficking and the Total Numbers of Returnees**

<table>
<thead>
<tr>
<th>Year</th>
<th>All official returnees</th>
<th>Identified victims of trafficking</th>
<th>Boys</th>
<th>Over 19 years old</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>9750</td>
<td>65</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>2002</td>
<td>11400</td>
<td>76</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>2003</td>
<td>12150</td>
<td>81</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>2004</td>
<td>9600</td>
<td>66</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>2005</td>
<td>27677</td>
<td>245</td>
<td>21</td>
<td>-</td>
</tr>
<tr>
<td>2006</td>
<td>37591</td>
<td>259</td>
<td>9</td>
<td>-</td>
</tr>
<tr>
<td>2007</td>
<td>39905</td>
<td>264</td>
<td>6</td>
<td>39</td>
</tr>
<tr>
<td>2008</td>
<td>27550</td>
<td>235</td>
<td>1</td>
<td>34</td>
</tr>
<tr>
<td>Total</td>
<td>175623</td>
<td>1312</td>
<td>39</td>
<td>73 (499)</td>
</tr>
</tbody>
</table>


According to one NGO report that surveyed a sample of 12 residents at its trafficking shelter in the Vientiane capital, the escape routes of victims of trafficking generally take the course of one of the following scenarios:

- After their escape or rescue, victims approach the police, who send them to the Immigration Detention Centre. Officials then conduct screenings to determine if they are victims of trafficking.
- Victims are arrested for being illegal migrants during police raids on places of prostitution or labour employment, and are then interviewed by the police, assisted by social workers, to determine if they are victims of trafficking.
- Victims arrested in Thailand for being illegal migrants during raids may be sent to Immigration Detention Centres, and thereafter fined and deported to the Thai-Lao border. 444

The identification of victims of trafficking was erstwhile conducted almost exclusively by Thai authorities. Identification efforts by Thai authorities were questionable, particularly as all trafficking victims identified in 2006 were identified in Bangkok, while 4 of the largest Immigration Detention Centres in Thailand outside of Bangkok did not identify any trafficking victims among the 822 illegal migrants deported to Lao PDR that year.445

In this regard, efforts to identify trafficking victims among those deported from Thailand to Lao PDR are now being made by Lao PDR officials. According to the government, in some groups of deportees, 50 to 100 sex and labour trafficking victims were identified by Lao PDR officials and referred to the police for investigation.446

**Non-prosecution of Victims**

Women and children identified as trafficking victims are exempted from criminal prosecution for unlawful acts committed as a direct result of trafficking.447 Article 25 of the Law on the Protection of Women provides that victims of trafficking (as defined in the same law) have the right to not be “prosecuted and detained on any charge of trafficking in women and children, prostitution, or illegal immigration.”

The same does not appear to apply to victims of sexual exploitation, who are not regarded as trafficked victims, since engaging in prostitution is an offence. Child prostitutes below 15 years would not be criminally liable, while child prostitutes 15 to 18 years of age may receive reduced punishment (see above).

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438 UNIAP, “SIREN Human Trafficking Datasheet,” March 2008, citing figures from the MLSW.
439 Ibid.
440 Ibid.
441 US State Department, 2010 Trafficking in Persons Report: Lao PDR.
442 UNIAP, Mekong Region Country Datasheets. Human Trafficking. 2010, 15, citing figures from MLSW.
443 US State Department, 2011 Trafficking in Persons Report: Lao PDR.
446 US State Department, 2011 Trafficking in Persons Report: Lao PDR.
447 Ibid.
Rehabilitation and Reintegration

The government and NGOs are hampered in their efforts to provide assistance to victims because of an insufficient number of trained social workers and vocational teachers, too few shelters, the remoteness of many villages, and lack of funds, including for income-generation projects or investment by the returnees. This was noted in relation to trafficking, but may well be of general applicability.

While efforts relating to trafficked survivors have been in the limelight, the adequacy of government efforts to address recovery and reintegration of women who wish to leave prostitution is of concern.

Shelters

There are a number of shelters in the country for vulnerable populations, including victims of trafficking and sexual exploitation. These shelters provide medical and legal assistance, and vocational training. Some may also assist victims in finding employment.

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The IOM has recommended that walk-in centres or other outreach mechanisms be established in cities/provinces such as Vientiane, Savannakhet and Champasak, so that survivors of trafficking or exploitation who have returned on their own can seek assistance and reintegration support.\\footnote{462 IOM, The Long Road Home: Analysis of Regional and National Processes for the Return and Reintegration of Victims of Trafficking in the Greater Mekong Sub-region, 2007, 22.}

Challenges in Reintegration / Re-victimisation

The extent to which survivors of trafficking and exploitation, particularly sexual exploitation, are able to find gainful employment within Lao PDR is unclear. The extent to which the skills learnt during their vocational training at shelters prove useful to survivors' reintegration is also unclear. It has been said that opportunities to use these skills are more common and lucrative in Thailand.\\footnote{463 Danielle Tan and Didier Bertrand, "How Illegal Migration Turns into Trafficking for Sexual and Labour Exploitation? Raising Voices of Girls and Women from Lao PDR, in the Greater Mekong Sub-region, 2007, 5; MLSW and UNICEF, Broken Promises, Shattered Dreams, 2004, 18.}

Survivors then migrate again to Thailand, where they may be re-victimised.

Indeed, police have reported that persons caught once have been caught again for illegal immigration.\\footnote{464 MLSW and UNICEF, Broken Promises, Shattered Dreams, 2004, 53.} The repeated illegal migration attempts, despite previous bad experiences may be explained by a number of other push factors:
\begin{itemize}
  \item Stigmatisation
  \item There is a view that each migration experience is a matter of luck, and despite previous bad experiences, the next trip might turn out differently.
  \item Villages may also appear too small and backward to one who has been in Thailand.
\end{itemize}\\footnote{465 Ibid. 49.}

Survivors who were illegal migrants may also have to deal with criminal penalties. Fines are commonly imposed by village leaders on persons who have migrated illegally, which especially impacts those with no savings.\\footnote{466 IRIN Asia, "LAO: Family pressures exacerbate trafficking," 26 May 2011, last accessed 11 May 2012, http://www.irinnews.org/Report/92813/LAOS-Family-pressures-exacerbate-trafficking. A lack of acceptance by the community and rejection by family may cause girls formerly in prostitution to leave their villages again, sometimes back to the sex industry: MLSW and UNICEF, Broken Promises, Shattered Dreams, 2004, 53.}

Deportees from Thailand, who may be unidentifled trafficked survivors, have been fined and/or imprisoned by local authorities in the districts they return to.\\footnote{467 MLSW and UNICEF, Broken Promises, Shattered Dreams, 2004, 53.} Fines may be large, ranging from 700,000 to 1,000,000 Kip.\\footnote{470 Ibid. 49.}

Trafficked Survivors from Thailand

Survivors of trafficking identified in Thailand are provided with medical care, counselling and vocational training. Before they are repatriated, family tracing is conducted in Lao PDR, presumably to verify that the survivors are nationals or residents of Lao PDR. Family assessments are also conducted to determine whether reunification with the family should take place.\\footnote{471 Ibid.}

Most returns are through the Nong Khai-Vientiane border to the transit centre in Vientiane. The IOM has called for the development of a return process directly to the southern provinces, rather than through Vientiane, as the majority of trafficking victims come from these provinces.\\footnote{472 Ibid.}

Returnees typically spend a few days at the transit centre, before being returned home to be reunited with their families. Should they not wish to return, or the family assessment is not positive, the returnee may stay in another shelter, such as the LWU and AFESIP shelters, until other arrangements can be made.\\footnote{473 Ibid. Some shelters allow stays for up to 1 year.} Some shelters allow stays for up to 1 year.\\footnote{474 Ibid.}

There is no systematic way or any guidelines for developing reintegration plans for returnees. Some NGOs are of the view that the lack of uniformity is offset by flexibility. According to the IOM, follow-up on the survivor takes place for 6 to 12 months after reintegration.\\footnote{475 Ibid.}
d. Prevention Measures

Prevention activities, such as campaigns and education, are implemented mostly in source areas for trafficking, mainly along the Mekong River towards Thailand.\textsuperscript{476} Whether law enforcement efforts are also concentrated in specific locales is unclear.

The government continues to be largely dependent on the international donor community to fund anti-trafficking activities.\textsuperscript{477}

Law Enforcement in Lao PDR

\textit{Anti-commercial Sex Operations}

Efforts by the government to reduce demand for commercial sex acts, e.g. through periodic raids of nightclubs and discos used as fronts for commercial sex are reportedly limited, or non-existent.\textsuperscript{478}

\textit{Trafficking Prosecutions}

The following table sets out numbers of recent trafficking cases investigated and trafficking convictions:

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases Investigated</td>
<td>38479</td>
<td>50480</td>
<td>20481</td>
<td></td>
</tr>
<tr>
<td>Convictions\textsuperscript{492}</td>
<td>15483</td>
<td>11484</td>
<td>0485</td>
<td>33486</td>
</tr>
</tbody>
</table>

The sources do not indicate whether these cases involved cross-border or internal trafficking, or the type of exploitation involved.

Law Enforcement Mechanisms

Standard Operating Procedures for the Anti-Trafficking Division are being completed.\textsuperscript{487} There are also guidelines for tourism police to ensure consistent enforcement of trafficking, sexual exploitation and tourism laws.\textsuperscript{488}

The following areas for improvement in respect of law enforcement mechanisms have been identified:

- Inter-agency networking and cooperation. The extent to which the units regularly consult with local colleagues and other multi-agency partners, especially those delivering victims support, is unclear.\textsuperscript{489} There are no formal arrangements regarding cooperation between police, prosecutors and victim support agencies in cases not involving the Anti-Trafficking Division.\textsuperscript{490} It has however been reported that the Anti-Trafficking Division “draws on expertise” from the Prosecutor’s Office, the police and victim support agencies.\textsuperscript{491}
- Covert operations. The Anti-Trafficking Division and Units are not empowered to conduct surveillance and undercover operations.\textsuperscript{492}

Law Enforcement Training and Capacity-Building

Efforts to train law enforcement officers appear substantial. Also, regional actors, such as ARTIP and the ARCPPT, and

\textsuperscript{477} US State Department, 2010 Trafficking in Persons Report: Lao PDR; US State Department, 2011 Trafficking in Persons Report: Lao PDR.
\textsuperscript{478} Ibid.
\textsuperscript{479} UNIAP, Mekong Region Country Datasheets. Human Trafficking. 2010, 15.
\textsuperscript{480} Ibid.
\textsuperscript{481} US State Department, Trafficking in Persons Report 2011: Lao PDR.
\textsuperscript{482} Convictions refer to those made during the reporting period for the US TIP reports.
\textsuperscript{483} US State Department, Trafficking in Persons Report 2009: Lao PDR.
\textsuperscript{484} Ibid.
\textsuperscript{485} Ibid.
\textsuperscript{486} Ibid.
\textsuperscript{487} ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 39.
\textsuperscript{489} ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 36.
\textsuperscript{490} ASEAN, ASEAN Responses to Trafficking in Persons, April 2006, 36.
\textsuperscript{491} Ibid, 78.
\textsuperscript{492} ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 37.
\textsuperscript{493} UNIAP, Mekong Region Country Datasheets. Human Trafficking. 2010, 16.
\textsuperscript{495} ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 63.
the Royal Thai police have been involved in delivering or funding training courses.

**Table 37: Examples of Law Enforcement Training Efforts**

<table>
<thead>
<tr>
<th>Examples of Training Efforts</th>
</tr>
</thead>
<tbody>
<tr>
<td>• In 2009, trafficking case analysis workshops were held for prosecutors, judges and police officers in 2009.</td>
</tr>
<tr>
<td>• In 2007, intensive workshops were conducted for judges, prosecutors, lawyers, law enforcement and ministry officials examining national legislation applicable to the crime of human trafficking.</td>
</tr>
<tr>
<td>• Law enforcement officers throughout the country have had the benefit of courses under the ASEAN Training Program on Trafficking in Persons for Front Line Law Enforcement Officials.</td>
</tr>
<tr>
<td>• Anti-Trafficking Division officers have participated in training designed specifically for the police and delivered by police trainers funded by the ARCPPT, e.g. the Human Trafficking Investigation Course, which includes training in the use of reactive investigative techniques while protecting victims' human rights.</td>
</tr>
<tr>
<td>• Anti-trafficking training courses have been organised by the ARTIP Project for the Anti-Trafficking Units, front line law enforcement and legal officers.</td>
</tr>
<tr>
<td>• The UNODC and the Royal Thai Police Department have each been involved in efforts to train local trainers, and conducting investigative skills courses.</td>
</tr>
</tbody>
</table>

A National Training Manual on human trafficking for front-line counter-trafficking officers is being developed. A training curriculum based on the ASEAN Training Program on Trafficking in Persons for Front Line Law Enforcement Officials has been developed or is being finalised, to provide all new police recruits with a basic understanding of the crime of trafficking in persons and the core elements of an effective front line response.

Cross-border Law Enforcement Collaboration

There have been intelligence exchanges on trafficking-related cases by the Anti-Trafficking Division, particularly with Thailand. Border liaison posts have been established at the China/Lao border areas to facilitate police cooperation on human trafficking cases between the 2 countries.

Pursuant to the 2005 Lao-Thai MOU on trafficking, meetings have been held to strengthen bilateral cooperation, and workshops and case management meetings held to exchange information and experiences on human trafficking.

Challenges in Law Enforcement

The following have been identified as key impediments of the government’s ability to combat trafficking in persons:

- A “severe” lack of resources. Further, the task of capturing traffickers is difficult in itself; the long border between Lao PDR and Thailand makes it difficult to police.
- Poor training of officials. This criticism was made despite ongoing efforts to train law enforcement officials. One practical consequence of poor training is that officials are unable to distinguish between a case of illegal migration and one of trafficking, and consequently fine trafficking victims for illegal migration instead of pursuing investigations into trafficking.
- An ongoing corruption problem. Observers of trafficking believe that some public officials, particularly at local levels, are involved in facilitating human trafficking, sometimes in collusion with their Thai counterparts. There is evidence that border officials permit smuggling of all kinds, including of humans. Impunity of corrupt government officials remains a significant problem.

496 ASEAN, ASEAN Responses to Trafficking in Persons, April 2006, 78.
500 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 63.
501 ASEAN, ASEAN Responses to Trafficking in Persons, April 2006, 36
502 ASEAN, Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region, July 2011, 137.
504 US State Department, Trafficking in Persons Report 2009: Lao PDR.
506 US State Department, Trafficking in Persons Report 2010: Lao PDR.
508 US State Department, Trafficking in Persons Report 2010: Lao PDR.
509 Ibid.
510 Ibid.
problem. The government has never administratively or criminally punished any public official for complicity in trafficking in persons.511

- A weak judicial sector and the population's general distrust of the court system.512 Judicial proceedings reportedly lack due process and transparency, and the judicial system remains weak and inefficient.513 The public's reluctance to use the court system hampers the government's ability to effectively pursue trafficking cases.514

Combating Exploitation in the Destination Country

It has been pointed out that the majority of migrants are not delivered directly by traffickers to situations of exploitation but tend to be unwitting self-recruits once across the border, hence the true and much larger problem is the practice of exploitation by some Thai employers.515 In this regard, law enforcement efforts against exploitation in Thailand, being the main destination country, play a significant role in prevention.

Deterring Illegal Migration

Illegal migrants are punished with heavy fines and detention in immigration and correctional centres on both the Thai and Lao sides. This has reportedly failed to discourage illegal migration, and has only contributed to additional burdens on migrants and their families,516 as well as re-victimisation.

Promoting Safe Migration

Interviews with NGOs conducting trafficking projects in Lao PDR reveal that the prevailing view is that migration is a positive phenomenon, as it is a way for individuals, families and communities to improve their conditions. Safe migration, rather than preventing migration, has recently been described as a “standard package” for all anti-trafficking interventions.517

There are efforts to support the continued implementation and improvement of legal labour recruitment channels within the framework of the Lao-Thai MOU on labour cooperation.518 However, long waits of 3 to 8 months, and in some cases, even 1 year, for job placements, and high recruitment fees that take approximately 10 to 12 months to pay off, are deterrents against using the legal channel.519 Moreover, the formal channel does not guarantee safety. Formal contracts bind workers even where the job is not what the worker was promised.520

Further, awareness of how legal channels work may be low. In a 2006 awareness survey, around 60% of respondents were aware that there were employment centres where prospective migrant workers to Thailand could register, but only half knew where they were located.521

With foreign funding and UNIAP’s cooperation, efforts have also been made to publicise the dangers of trafficking, and explain the harmful consequences and risks of illegally looking for work abroad.522

Social networks

This “information, education and communication” approach to promoting safe migration, while worthwhile, may however be missing an important aspect of prevention: the formation of social networks. This has been highlighted as the most effective defence against trafficking, due to the fact that the exploitation occurs usually only at the end of a victim’s voluntary migration.

521 Lucy O’Connor, People Trafficking Baseline Awareness Survey in Three Lao Provinces, ILO, December 2006.
These social networks refer to networks of friends, family and fellow community members who have migrated previously, who know how to cross to Thailand, and who have established relationships with non-exploitative employers across the border. Research has found cases of villages with high rates of migration, but no incidences of trafficking, because the migrants have formed an effective network of information and recruitment. Conversely, traffickers are free to operate and take advantage of weaknesses in villages with only limited pre-existing networks, where would-be migrants are obliged to place themselves in the hands of agents.\footnote{523}

Promoting social networks could be done through community building exercises, as well as providing access to cheap mobile phones.\footnote{524} Key reports however make no specific mention of such projects by the government to promote the formation of such social networks.\footnote{525}

Creation of Employment

Initiatives to alleviate poverty and create employment locally attempt to mitigate the “push” factors for migration. The government has, with the assistance of ILO-IPEC, given grants to villagers to help them generate additional income.\footnote{526} Poverty alleviation projects, using micro-credit schemes, are also noteworthy.\footnote{527} One project, in collaboration with the Consortium of World Education and World Learning, has reportedly provided employment to 1,100 young people at risk of illegal migration and trafficking in 2 districts in Vientiane.\footnote{528}

However, NGO officers in Lao PDR have described such measures, including education, micro-credits and alternative crops, as futile in combating trafficking. “Pull” factors are recognised as the stronger motivators for migration, and “push” factors as having a weaker impact.

Anti-trafficking efforts now generally assume that people will migrate.\footnote{529}

Strengthening the Labour Regime

In February 2012, Lao PDR signed its first Decent Work Country Programme (DWCP). The DWCP has 4 priorities: promoting employment and skills development to support more equitable growth and poverty reduction; improving labour market governance; improving and expanding social protection; and improving the capacity of constituents and strengthening social dialogue. Linked to these four priorities are 15 specific outcomes, including rural employment, skills development, child labour, social protection, migration, gender, occupational safety and health, and support for labour-related policy and legal frameworks.\footnote{530}

The expansion of technical and trade related education in the new Savannakhet Economic Zone has been recommended, to prevent a “race to the bottom” to provide cheap and unprotected labour. Key reports however make no mention of such efforts.\footnote{531} A Skilled Workforce Development centre was set up in Vientiane, in collaboration with the Consortium of World Education and World Learning, which was funded by the US State Department. This was set up to stem illegal migration to Thailand.\footnote{532}

Public Awareness and Education

Trafficking

The MLSW has engaged in continuing efforts, in collaboration with UNICEF and other NGOs, to raise public awareness on the risks of trafficking.\footnote{533}


Ibid, 46, 49.

These are the government’s reports to the CEDAW Committee, the CRC Committee, the said Committees’ concluding observations, the US State Department Trafficking in Persons reports, and progress reports under the COMMIT Sub-regional Plans of Action.


posters on safe migration and contact cards with emergency numbers were distributed.\textsuperscript{534} Government-controlled media continued to report on human trafficking in newspapers.\textsuperscript{535}

In a 2006 awareness survey in 3 Lao PDR provinces, more than 75% of respondents were familiar with the Lao-language term for human trafficking, although understanding of the issue varied. Most respondents had seen or heard media reports about human trafficking and migration.\textsuperscript{536}

Child Sex Exploitation

The Lao National Tourism Administration ran a child safe tourism campaign during the 2009 Southeast Asian Games.\textsuperscript{537} Tourism-sector employees, including taxi drivers, were trained on how to report suspicious behavior relating to child sex tourism and child sexual exploitation.\textsuperscript{538} A national radio campaign was run from 2009 to April 2010 to raise awareness about human trafficking, safe migration and child rights.\textsuperscript{539}

4. Role of Non-State Actors

Lao PDR is heavily reliant on the funding, expertise and efforts of international non-State actors, which have made substantial contributions in the country.

a. Assistance to Victims

The following is a snapshot of ongoing efforts by non-State actors to assist victims of exploitation and trafficking:

\begin{table}[h]
\centering
\caption{Ongoing Efforts by Non-State Actors to Assist Victims of Exploitation and Trafficking}
\begin{tabular}{|c|c|}
\hline
\textbf{Area} & \textbf{Type of effort} \\
\hline
Outreach and Protection & Outreach to prostitutes and victims of sex trafficking and exploitation \\
& An AFESIP outreach social team regularly visits the entertainment sector, transportation areas (such as bus stations and boat piers) and villages at risk to identify victims and provide exit strategies. Efforts are focused in Vientiane, Savannakhet and Champassak provinces and other provinces in the north including Udomxay, Luang Namtha, Bokeo, Xieng Khuang.\textsuperscript{540} \\
& The CARE Project by CARE International aims to reduce the vulnerability of HIV/AIDS infection among sex workers in Vientiane Capital.\textsuperscript{541} \\
& World Vision's Voices of Victims Project in Savannakhet has established child and youth protection committees, with watchdog volunteers and a referral network.\textsuperscript{542} Child Protection Units were set up by Village Focus International in 30 villages in Lao Ngam District, Salavan Province.\textsuperscript{543} \\
& Provides healthcare, psychological and counselling services and vocational training\textsuperscript{544} \\
& Provides health and psychological care, vocational training, job placement, etc., as well as village outreach program focusing on youth empowerment and prevention Main beneficiaries include ethnic minority women and youth, who are survivors of trafficking and domestic violence or potential victims of trafficking.\textsuperscript{545} \\
\hline
Shelters (Rehabilitation and Reintegration) & 2 AFESIP-run shelters in Vientiane and Savanakhet respectively \\
& Provides healthcare, psychological and counselling services and vocational training\textsuperscript{544} \\
& 1 Village Focus International-run shelter in Champasak \\
& Provides health and psychological care, vocational training, job placement, etc., as well as village outreach program focusing on youth empowerment and prevention Main beneficiaries include ethnic minority women and youth, who are survivors of trafficking and domestic violence or potential victims of trafficking.\textsuperscript{545} \\
& 1 Village Focus International-run Drop-In Centre \\
\hline
\end{tabular}
\end{table}

\begin{thebibliography}{99}
\item \textsuperscript{534} US Department of State, 2008 \textit{Human Rights Report: Lao PDR.}
\item \textsuperscript{535} US State Department, \textit{Trafficking in Persons Report 2011: Lao PDR.}
\item \textsuperscript{536} Lucy O’Connor, \textit{People Trafficking Baseline Awareness Survey in Three Lao Provinces}, ILO, December 2006.
\item \textsuperscript{537} UNIAP, \textit{Mekong Region Country Datasheets. Human Trafficking}, 2010, 16.
\item \textsuperscript{538} US Department of State, 2008 \textit{Human Rights Report: Lao PDR.}
\item \textsuperscript{539} UNIAP, \textit{Mekong Region Country Datasheets. Human Trafficking}, 2010, 16.
\item \textsuperscript{541} CARE, “International Address”, available at http://www.humantrafficking.org/organizations/155, last accessed 11 May 2012.
\item \textsuperscript{542} World Vision, Children, Communities, Governments. World Vision's Regional Advocacy Anti-Child Trafficking Project.
\item \textsuperscript{543} Village Focus International, Bi-Annual Report 2009-2010, 21.
\item \textsuperscript{545} Village Focus International, Bi-Annual Report 2009-2010, 20.
\end{thebibliography}
b. Prevention Programmes

The following is a snapshot of ongoing efforts by non-State actors to prevent exploitation and trafficking:

Table 39: Ongoing Efforts by Non-State Actors to Prevent Exploitation

<table>
<thead>
<tr>
<th>Issue</th>
<th>Type of effort</th>
<th>Details / Service Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labour in migration</td>
<td>Reduce exploitation of labour migrants</td>
<td>TRIANGLE (Tripartite Action to Protect Migrants in the Greater Mekong Sub-region from Labour Exploitation) project, which aims to reduce the exploitation of labour migrants by contributing to the development of legal and safe recruitment channels and improved labour protection mechanisms (ILO)552</td>
</tr>
<tr>
<td>Promoting Safe Migration</td>
<td>Migrant Advice Centre in Savannakhet (World Vision)</td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Issue</th>
<th>Type of effort</th>
<th>Details / Service Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trafficking</td>
<td>Vocational training for unemployed youth at risk of illegal migration and trafficking</td>
<td>Mobile vocational training programme in Vientiane Municipality and Center for Skill Development in Vientiane (Lao government and the Consortium of World Education and World Learning)</td>
</tr>
<tr>
<td></td>
<td>Trafficking</td>
<td>UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP)</td>
</tr>
<tr>
<td></td>
<td>Capacity-building</td>
<td>Asia Regional Trafficking in Persons Project (ARTIP) (2006-2011)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) (2003-2006)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>IOM has supported a number of national and bilateral workshops designed to develop standard operating procedures for identifying victims, case reporting, family assessment, return and reintegration.</td>
</tr>
<tr>
<td>Child Exploitation</td>
<td>Law enforcement assistance</td>
<td>Protection Pillar of Project Childhood, implemented by the UNODC in partnership with Interpol (funded by AusAID)</td>
</tr>
<tr>
<td></td>
<td>Awareness-raising</td>
<td>Child Wise Project (funded by AusAID)</td>
</tr>
<tr>
<td></td>
<td>Capacity-building</td>
<td>Training of officials and volunteers to establish a child protection network which operates in five provinces, namely, Vientiane Municipality, Vientiane province, Oudomxay, Savannakhet and Champassak (UNICEF)</td>
</tr>
</tbody>
</table>

Research

As evidenced by the bibliography at the end of this report, research by non-State actors to investigate and understand various aspects of issues of exploitation and trafficking affecting Lao PDR have been fairly substantial.

**c. Monitoring and Collaboration**

Monitoring of the government: Assessments of existing government institutions, legal and policy frameworks, and capacity, have been conducted by UN agencies such as UNIAP (in relation to trafficking), and international organisations such as the IOM and the ILO.

Collaboration with the government: The government restricts the activities of NGOs, which has reportedly impeded progress in anti-trafficking efforts. For instance, according to a US embassy cable leaked via WikiLeaks, the implementation of World Vision’s Voices of Victims project in Savannakhet was stalled due to lengthy negotiations with the government over the memorandum of understanding.

Collaboration with other non-State actors: Various NGOs and UN agencies have collaborated on research, capacity-building and awareness-raising projects. However, in 2009 interviews with NGO officers, repeated references were made to project overlaps and report/manual replication. Efforts to coordinate the sector were seen as insufficient and described as “halfhearted” or “ineffective”. An unwillingness to exchange information among NGOs was attributed to the perceived need to safeguard project funding from donors.

**5. Progress Indicators and Challenges**

Lao PDR’s progress is difficult to gauge, perhaps indicating a need for more monitoring and evaluation. Lao PDR’s National Plan of Action on commercial sexual exploitation of children was implemented, but faced resource constraints. Its effectiveness is unclear. Capacity-building

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563 US State Department, Trafficking in Persons Report 2011: Lao PDR.


measures for authorities, such as trainings, seminars and workshops, have been substantial, but whether their effect is felt on the ground is not known.

Plans to implement a National Plan of Action on human trafficking, victim protection guidelines and standard operating procedures have been initiated and developed, but have yet to come to fruition. The National Plan of Action against trafficking has been finalised and is simply awaiting government approval. Projects by non-State actors have reportedly been delayed due to negotiations with the government.

Efforts by non-State actors have been vigorous and seek to make up for the lack of State capacity and infrastructure. The inevitable drawback to non-State efforts is the lack of overall oversight and planning. With the myriad efforts to combat exploitation and trafficking in Lao PDR taking place simultaneously and at national and regional levels, a database tracking the various projects and programmes, and their locations, would be useful to avoid duplication of efforts, and to identify areas with unmet needs.
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Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

by

Jaclyn Ling-Chien Neo
# Table of Contents

## A. OVERVIEW  507

1. Baseline Literature  507  
2. Background on Malaysia  509  

## B. VIOLENCE  510

1. Description of the Problem  510  
   a. Prevalence of Violence  510  
      (i) Domestic Violence  510  
      (ii) Child Abuse  511  
      (iii) Sexual Violence Against Women and Children  513  
      (iv) Incest  514  
      (v) Child Marriages  516  
      (vi) Female Genital Mutilation  517  
      (vii) Violence Against Sex Workers  517  
      (viii) Violence and Sexual Harassment Against Indigenous Women and Children  517  
   b. Root Causes of Violence and Aggravating Practices  521  
      (i) Gender Stereotypes and Cultural Assumptions  521  
      (ii) Sexual Objectification  521  
      (iii) Social Misconceptions  521  
      (iv) Lower Socio-economic Status  522  
      (v) Remoteness and Limited Reach of Law Enforcement  522  
      (vi) Substance Abuse  522  
      (vii) Financial Problems  523  
   c. Impact of Violence  523  

2. De Jure State Responses  523  
   a. Bases of State Responsibility  523  
   b. National Policies against Violence  524  
      (i) Rape (Sexual Intercourse Without Consent)  524  
      (ii) Rape by Object Penetration  524  
      (iii) Statutory Rape  524  
      (iv) Incest  525  
      (v) Unnatural Sex or Gross Indecency  525  
      (vi) No Marital Rape  525  
      (vii) Domestic Violence Act  526  
      (viii) Child Act  526  
   c. Assessment of State Policies  527  

   (i) Domestic Violence  527  
   (ii) Forced Marriages  528  
   (iii) Child Marriages  528  
   (iv) Female Genital Mutilation  528  
   (v) Sexual Harassment  528  
   (vi) Violence against Sex Workers  529  

3. Implementation, Monitoring and Prevention  529  
   a. Implementing and Monitoring Mechanisms  529  
      (i) Institutionalization  529  
      (ii) Mainstreaming  530  
      (iii) Grassroots Activation  530  
   b. Complaints Process  530  
   c. Protection and Rehabilitation  531  
      (i) Protective/Restraining Orders  531  
      (ii) Shelters  532  
      (iii) One-stop Crisis Centers at Government Hospitals  532  
   d. Prevention Strategy  534  

4. Role of Non-State Actors  535  
   a. Assistance to Victims  536  
   b. Prevention Programs  537  
      (i) Campaign against Rape  537  
      (ii) Campaign against Domestic Violence  537  
      (iii) Campaign Sexual Harassment Out (SHout)  537  
      (iv) An Integrated Approach to Preventing Child Sexual Abuse  538  
      (v) Lobbying for Reform of Religious Laws  538  
      (vi) Services for Women in Rural Areas  538  
   c. Monitoring and Cooperation  538  

5. Progress Indicators and Challenges  539  
   a. Challenges  539  
      (i) Need for Comprehensive and Comparable Data  539  
      (ii) Need to Expand Perceived Coverage  539  
      (iii) More Effective Law Enforcement  539  
   b. Progress Indicators  540  
      (i) Optional Protocol to CEDAW  540  
      (ii) Genderizing Laws  540  
      (iii) Gender-Sensitizing Law Enforcement  540  
      (iv) Public Health and Developmental Issues  540  
      (v) Gender Equality Act  540  

6. Recommendations for Further Study  540  

Jaclyn Ling-Chien Neo
C. EXPLOITATION

1. Description of the Problem
   a. Prevalence of Exploitation
      (i) Trafficking in Women and Children to Malaysia 541
      (ii) Trafficking of Malaysians 542
      (iii) Internal Trafficking 542
      (iv) Child Trafficking 543
      (v) Child Labour 543
   b. Root Causes of Exploitation and Aggravating Practices
      (i) Socio-economic Factors 543
      (ii) Individual Vector 544
      (iii) Market Demand 544
      (iv) Governmental Commitment 544
      (v) Negative Public Misperception 545
      (vi) Evolving and Developing Legal System for Immigration 545
      (vii) Corruption 545
   c. Impact of Exploitation 546

2. De Jure State Responses
   a. Bases of State Responsibility 547
   b. National Policies against Exploitation 547
      (i) Trafficking of Persons 547
      (ii) Child Act / Trafficking in or Selling of Children 549
      (iii) Forced Prostitution 549
      (iv) Child Prostitution 549
      (v) Child Labour 549
      (vi) Rape and Abuse of Authority 550
   c. Assessment of State Policies 550

3. Implementation, Monitoring and Enforcement 550
   a. Monitoring Mechanisms 550
   b. Complaints Process 551
   c. Protection and Rehabilitation 552
   d. Prevention Measures 554

4. Role of Non-State Actors 554
   a. Assistance to Victims 554
      (i) Legal Assistance 558
      (ii) Shelters for Abused/Homeless Female Migrants 569
      (iii) Community Assistance 569
   b. Prevention Programs 569
   c. Monitoring and Cooperation 569

5. Progress Indicators and Challenges 555
6. Recommendations for Further Study 556

D. ABUSE AND DISCRIMINATION IN MIGRATION

1. Description of the Problem
   a. Prevalence of Abuse and Discrimination in Migration 556
   b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices
      (i) Social Isolation in a Domestic Environment 561
      (ii) Slave-Owner Mentality 561
      (iii) Unfair Terms 562
      (iv) Economic Discrimination 562
      (v) Statelessness 562
      (vi) Public Prejudice 562
      (vii) Legal Deficiencies and Corruption 562
   c. Impact of Abuse and Discrimination in Migration 563

2. De Jure State Responses 563
   a. Bases of State Responsibility 563
   b. National Policies against Abuse and Discrimination in Migration 563
      (i) Entry into Malaysia: Immigration Act and Passports Act 563
      (ii) Immigration Enforcement 563
      (iii) Payment of Wages 564
      (iv) Citizenship and Education 564
   c. Assessment of State Policies 564
      (i) Restricted Registration System 564
      (ii) Mandatory Health Checks and Deportation 565
      (iii) Lack of Wage and Other Protection 565
      (iv) Abuse of Power 565

3. Implementation, Monitoring and Enforcement 567
   a. Monitoring Mechanisms 567
   b. Complaints Process 567
   c. Protection and Rehabilitation 567
   d. Prevention Measures 568

4. Role of Non-State Actors 568
   a. Assistance to Victims 568
      (i) Legal Assistance 568
      (ii) Shelters for Abused/Homeless Female Migrants 569
      (iii) Community Assistance 569
   b. Prevention Programs 569
   c. Monitoring and Cooperation 569

5. Progress Indicators and Challenges 570
6. Recommendations for Further Study 571

BIBLIOGRAPHY 572
**Formal Name :** The Federation of Malaysia  
**Capital City :** Kuala Lumpur

| **Population** | Male: 14.4 million  
Female: 13.9 million  
Both sexes: 28.03 million* |
|----------------|--------------------------------------------------|
| **Life expectancy at birth** | Male: 71.05 years  
Female: 76.73  
Both sexes: 73.79 |
| **Age structure** | Median age: 26.2 years  
0-14 years: 27.6%  
15-64 years: 67.3%  
65 and over: 5.1%  
Gender breakdown:  
Male 0-14 years: 14.2% (of total population)  
Female 0-14 years: 13.4%  
Male 15-64 years: 34.8%  
Female 15-64 years: 32.6%  
Male 65 and over: 2.4%  
Female 65 and over: 2.6% |
| **Sex ratio** | Total: 1.01 male(s)/female  
At birth: 1.069 male(s)/female  
Under 15: 1.06 male(s)/female  
15-64 years: 1.01 male(s)/female  
65 and over: 0.79 male(s)/female |
| **Ethnic groups** (Malaysian resident citizens only) | Bumiputra: 67.4%  
(Malays: 54.6%; other Bumiputra: 12.8%)  
Chinese: 24.6%  
Indians: 7.3%  
Natives of Sabah and Sarawak: 4.3%  
Others: 0.7% |
| **Religious groups** | Islam: 61.3%  
Buddhism: 19.8%  
Christianity: 9.2%  
Hinduism: 6.3%  
Taoism/Confucianism/other traditional Chinese religions: 1.3%  
Other/unknown religions: 1.4%  
No religion: 1.0% |
| **Functional literacy rate** | Male: 94.58%¹  
Female: 90.29%²  
Both sexes: 92.1% |
| **National poverty line** | RM720 per month |
| **Percentage of population living below the national poverty line** | 3.8% |
| **Gross Domestic Product per capita** | US$8,3730 |

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### Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study

<p>| | |</p>
<table>
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</thead>
</table>
| **Number of foreign workers in country** | Total: 2.045 million<sup>3</sup>  
Male: -  
Female: - |
| **Percentage of female-headed households** | 15.56%  
(887,000 out of 5.7 million heads of households) |
| **Labour force participation rate** | Total: 62.7%  
Male: 78.7%  
Female: 46.1% |
| **Unemployment rate** | Total: 3.4%  
Male: 3.3%  
Female: 3.6% |
| **Proportion of unpaid family workers** | Total: 4.5%<sup>4</sup>  
Male: 1.7%  
Female: 2.8% |
| **Fertility rate** | 2.4 |
| **Maternal mortality rate** | 31 deaths/100,000 live births |
| **Infant mortality rate** | 6.3 deaths /1,000 live births |
| **Legal definition of 'child'** | The Child Act 2001 defines a 'child' as 'a person under the age of eighteen years' but 'in relation to criminal proceedings, a child is a person under ten years of age.' |
| **Age of majority** | 18 years of age<sup>5</sup> |
| **Marriageable age** | Non-Muslim male: 18  
Non-Muslim female: Licence is required for females aged 16 and 17, not required for 18 and above  
Parental consent for non-Muslim males and females is required until 21 years of age<sup>6</sup>  
18 years of age for Muslim males and 16 years of age for Muslim females |
| **Age of consent** | 16 years of age |
| **Age of criminal responsibility** | 10 years of age<sup>7</sup>, although section 83 provides for an exception for a child above ten years of age and under twelve who has 'not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.' |
| **Minimum age of employment** | 14 years of age |
| **Minimum age for military recruitment and participation** | 18 years of age |

*Unless otherwise indicated, population data are as at 2010, and refer to the total resident population, i.e. citizens and non-citizens.

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<sup>5</sup> Age of Majority Act (1971)


<sup>7</sup> Penal Code (1997 Revised), 82.
A. OVERVIEW

1. Baseline Literature

This study uses as its baseline Malaysia’s combined initial and second periodic reports to the CEDAW Committee (‘CEDAW Report’),\(^8\) Initial Report to the Committee on the Rights of the Child in 2006 (‘CRC Report’),\(^9\) as well as Malaysia’s Universal Periodic Review Report to the Human Rights Council in 2008 (Malaysia’s UPR).\(^10\) The Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are the central international instruments governing Malaysia’s legal-political framework on the protection of women and children against violence, exploitation and migration.\(^11\) Neither CEDAW nor the CRC are part of Malaysia’s domestic law. Malaysia adheres to the dualist tradition; treaties are not self-executing but must be incorporated by an ad-hoc legislative act to be directly applicable in domestic law.\(^12\) At present, the Malaysian parliament has yet to enact the necessary incorporating statute. Nonetheless, the reports give insights into Malaysia’s approaches to the protection of women and children, not just in the positive sense of showcasing areas of improvement but also in the negative sense of highlighting areas where attention is still lacking.

Malaysia submitted its CEDAW Report on 12 April 2004 and the CEDAW Committee considered it in May 2006. Besides the CEDAW Report, the following related documents also formed part of this literature review:


b. Malaysia’s responses to the CEDAW Committee’s list of issues and questions for consideration, 2006 (‘Malaysia’s CEDAW Responses’);\(^14\) and

c. Concluding Comments by the CEDAW Committee, 2006 (‘CEDAW Concluding Comments’);\(^15\)

Malaysia submitted its CRC Report in 2006 and the CRC Committee considered it in June 2007. Besides the CRC Report, the following related documents also formed part of this literature review:

a. Written Replies by the government of Malaysia concerning list of issues received by the committee, 2006 (‘CRC Written Replies’);\(^17\) and

b. CRC Committee’s concluding observations, 2007 (‘CRC Concluding Observations’).\(^18\)

---


12 Judges in common law dualist countries such as Malaysia have however incorporated human rights provisions into their constitutional and statutory interpretation. There was recently a landmark High Court decision where CEDAW’s article 11 provisions against pregnancy discrimination was used to inform the interpretation of Malaysia’s constitutional prohibition against gender discrimination. Noorfadilla binti Ahmad Saikin v Chayed bin Basirun, et. al. [2012] 1 MLJ 832. See further Jaclyn Ling-Chien Neo, Calibrating Interpretive Incorporation: Constitutional Interpretation and Pregnancy Discrimination under CEDAW, Human Rights Quarterly (2013, forthcoming).


14 Malaysia’s Responses to the list of issues and questions for consideration of the combined initial and second periodic report, Committee on the Elimination of Discrimination Against Women, (Mar 27, 2006), CEDAW/C/MYS/Q/2/Add.1 (hereafter ‘Responses to CEDAW Questions’)

15 See also the Concluding Comments of the Committee on the Elimination of Discrimination against Women: Malaysia, Committee on the Elimination of Discrimination Against Women (31 May 2006), CEDAW/C/MYS/CO/2 (hereafter ‘CEDAW Concluding Comments’).


17 Written Replies by the Government of Malaysia Concerning the List of IssuesReceived by the Committee on the Rights of the Child Relating to the Consideration of the Initial Report of Malaysia, Committee on the Rights of the Child (Dec 4, 2006), CRC/C/MYS/Q/1/Add.1 (CRC/C/MYS/Q/1).


Jaclyn Ling-Chien Neo
Malaysia's UPR was a necessary update to Malaysia's CEDAW and CRC Reports insofar as it discussed human rights issues involving problems of violence, exploitation and migration against women.19 The Human Rights Council considered Malaysia's 2008 UPR in its fourth session. Besides the UPR, following documents arising from the UPR were reviewed:

a. Stakeholders’ Submissions to the universal periodic review, 2008 (‘UPR Stakeholder’s Submissions’);20
c. Addendum to the Report of the Working Group, 2009;22
d. Report by the Coalition of Malaysia NGOs in the UPR Process (‘COMANGO Report’);23
e. Joint submission by members of the Migration Working Group (MWG) and the Northern Network for Migrants and Refugees (Jaringan Utara Migrasi dan Pelarian, JUMP) (‘MWG-JUMP submission’);24

As Malaysia’s CEDAW and CRC reports were prepared more than five years ago (i.e. submitted in 2004 and 2006 respectively) and the UPR, though more recent, addresses women’s and children’s issues from a broader human rights perspective, more updated and specialised literature needed to be reviewed to further illuminate the documented prevalence of the problem of violence, exploitation and migration affecting women and children, as well as to evaluate the de jure state responses and the range of implementation, monitoring and prevention mechanisms in Malaysia.

At the national level, various domestic reports and documents prepared by Malaysian government agencies and the Human Rights Commission of Malaysia (SUHAKAM) formed part of this literature review. These were:

2) Police Crime Statistics;
4) SUHAKAM Annual Report 2010

Furthermore, newspaper reports provided the most updated information on the prevalence of the problem, state responses as well as implementation, monitoring and prevention mechanisms.

Lastly, reports by external bodies and NGOs provided external views and important empirical and anecdotal accounts regarding the treatment of women and children in Malaysia. The relevant documents reviewed are:

1) US State Department 2010 Trafficking in Persons Report (‘2010 TIP Report’);
2) US State Department 2010 Human Rights Report (HR Report);
3) Human Rights Watch Report, ‘Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia’ (2004);26
4) Human Rights Watch Report, “They Deceived

19 Malaysia’s UPR (cited in note 9).
25 Malaysian Bar Council, Bar Council’s Report submitted to the

Jaclyn Ling-Chien Neo

The literature review showed that issues of violence against, exploitation of as well as abuse/discrimination arising from migration of women and children manifest in a multitude of situations. These situations raise different but overlapping considerations. As such, while the report seeks to provide a comprehensive view of these issues, it also concentrates on certain issues that disproportionately affect women and children so as to provide a better understanding of the predicament of the most vulnerable groups of women and children in Malaysia. These sub-issues are:

1. Violence against women and children: Domestic violence (against wives and children) and sexual violence (note that issues of violence against domestic migrant workers are addressed under the rubric of abuse and discrimination of migrant);
2. Exploitation of women and children: Trafficking of women and children, and child prostitution;

2. Background on Malaysia

Malaysia’s racial and religious demographic, and its pluralistic legal system are two critical factors affecting Malaysia’s approach to women and children. These formed the basis of Malaysia’s declarations and reservations to CEDAW and CRC. With regard to CEDAW, Malaysia declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29 As for the CRC, the Malaysian government declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29 As for the CRC, the Malaysian government declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29 As for the CRC, the Malaysian government declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29 As for the CRC, the Malaysian government declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29 As for the CRC, the Malaysian government declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29 As for the CRC, the Malaysian government declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29 As for the CRC, the Malaysian government declared that its accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia.29

In conformity with the Constitution, national laws and national policies of the Government of Malaysia. Despite withdrawing reservations to Articles 1, 13 and 15 of CRC, Malaysia still has five reservations in place. This suggests that the Malaysian Government still takes the view that children can be discriminated against, have no right to a name or nationality, have no freedom of thought, conscience and religion, and staggeringly, should not be free from torture and deprivation of liberty, presumably due to the existing views of cultural and religious groups concerning the status of children.

Malaysia practices state legal pluralism; there is a general system of law and courts and a limited system of Islamic or Sharia courts. These Sharia courts are part of the realization of the claims of the religious majority to self-determination and group autonomy in Malaysia. About sixty per cent of Malaysians are Muslims, the rest being of Buddhist, Hindu, and Christian affiliations. While there is some general correlation between race and religion for two of the three major racial groups, that is, most Chinese are Buddhists/Taoists and most Indians are Hindus, there is an almost complete overlap between Malays and Islam in Malaysia.

Criminal law falls within the scope of the federal government, whereas Islamic/Sharia laws fall within the scope of the state government. The Sharia Courts (Criminal Jurisdiction) Act 1965 provides that Sharia courts only have jurisdiction over offences against the precepts of the religion of Islam. Such offences are applicable only to persons professing Islam and the maximum punishment for these offences are three-year imprisonment, a fine not exceeding RM 5,000 and/or 6 strokes of the cane.32 Despite this, jurisdictional conflicts between federal and state governments on the one hand, and secular and Islamic courts on the other, have meant that some laws guaranteeing individual liberties are deemed to be deferred to Islamic requirements, at least for Muslims. The resulting uncertainty on the law may undermine state protection for women and children (see below discussion on statutory rape, child marriages and domestic violence). There are also discrepancies between the general/secular and Sharia laws, with the latter granting fewer protections

27 Human Rights Watch, They Deceived Us at Every Step: Abuse of Cambodian Domestic Workers Migrating to Malaysia” (2011);27


to women. For instance, general laws exempt women from judicial corporal punishment. However, Sharia laws do not similarly exempt women from whipping as a form of punishment. There have been occasions in recent years where women have been sentenced to whipping upon conviction for Sharia offences, which women’s groups heavily criticised. As an example, in 2010, three women were caned after being convicted of engaging in illicit sex under section 23(2) of the Federal Territory Sharia Criminal Offences Act 1997 (Illicit Sex).\(^{33}\) It should be noted that whipping as a form of punishment in the Sharia system is less severe than judicially ordered caning in the general system. Nonetheless, the discrepancies also have symbolic effect. At the very least, the Sharia legal system needs to more seriously take into account the viewpoints of Muslim women. As Malaysia’s Women Action Plan recommended, there was a need to involve women and obtain their opinions in the formulation of religious directions (fatwa) on issues concerning women.

Finally, it should be highlighted that discrimination and abuse is a systemic problem that is closely tied to the degree of political freedoms. Political freedoms are necessary to bring about true reform, which requires more than just legal but also political and social changes. Furthermore, when democratic space is constricted and dominated by a singular mainstream discourse, this can be used to perpetuate gender and patriarchal stereotypes with negative consequences for women and children.\(^{34}\) A corollary effect is that women and children who become politically active are denigrated and their efforts delegitimized because of their perceived (lower) status in society.

B. VIOLENCE

1. Description of the Problem

   a. Prevalence of Violence

There has been growing recognition of the prevalence and seriousness of domestic violence (including child abuse) and sexual violence against women and children in Malaysia in recent years.

\(\text{(i) Domestic Violence}\)

Statistics show that the number of reported cases of domestic violence (\emph{keganasan rumah tangga}) rose sharply in 2007 and 2008, but since then appear to be on the decline. The numbers do not differentiate between men and women victims. This is consistent with the Malaysia’s Domestic Violence Act being gender neutral. Nonetheless, media reports quote the police department acknowledging that about 98% of reported victims have been women.\(^{35}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Domestic Violence</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>3,093</td>
</tr>
<tr>
<td>2006</td>
<td>3,264</td>
</tr>
<tr>
<td>2007</td>
<td>3,756</td>
</tr>
<tr>
<td>2008</td>
<td>3,769</td>
</tr>
<tr>
<td>2009</td>
<td>3,643</td>
</tr>
<tr>
<td>2010</td>
<td>3,173</td>
</tr>
</tbody>
</table>

Source: Royal Malaysia Police and Ministry of Women, Family and Community Development

Based on the statistics, the reported incidences of domestic violence are the highest in urbanized states. The highest number of reported cases occurs in the state of Selangor, which is the most urbanized and developed state in Malaysia. Furthermore, the number of cases reported for Kuala Lumpur may not seem very high in absolute terms, but considering the size of the territory, the numbers are worrying. However, despite an overall decline in the number of reported cases, there has been an increase in the number of reported cases in less developed states such as Kelantan (from 33 cases in 2000, to 242 cases in 2010) and Sabah (from 102 cases in 2000, to 301 cases in 2010).

The higher number of reported cases in urbanized areas may be due to better policing in the area and/or due to more awareness among urbanized women of their right not to be abused, thereby leading to more reports. These factors may also account for the increase in reported cases in less developed states in more recent times as policing and awareness campaigns begin to change cultural and social norms in these areas. The exact causes for the changes (rise and decline) in the number of reported cases are an area of possible research.

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35 Andrew Sagayam, A Rape Every 2.5 Hours, (Malay Mail Online May 19, 2011), online at: http://www.mmmail.com.my/content/72570-rape-every-25-hours (accessed Nov 9, 2011).
DOMESTIC VIOLENCE CASES IN MALAYSIA/YEAR 2000-2010 (By States)

<table>
<thead>
<tr>
<th>STATES/NEGERI</th>
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<tr>
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<td>845</td>
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<td>104</td>
<td>159</td>
<td>112</td>
<td>106</td>
<td>89</td>
<td>62</td>
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<td>273</td>
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<td>300</td>
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<tr>
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<td>23</td>
<td>24</td>
<td>82</td>
<td>90</td>
<td>68</td>
<td>45</td>
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<tr>
<td>KELANTAN</td>
<td>33</td>
<td>36</td>
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<td>27</td>
<td>80</td>
<td>53</td>
<td>184</td>
<td>252</td>
<td>173</td>
<td>242</td>
</tr>
<tr>
<td>SABAH</td>
<td>102</td>
<td>86</td>
<td>85</td>
<td>69</td>
<td>124</td>
<td>114</td>
<td>56</td>
<td>144</td>
<td>218</td>
<td>342</td>
<td>301</td>
</tr>
<tr>
<td>SERAWAK</td>
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<td>203</td>
<td>222</td>
<td>201</td>
<td>208</td>
<td>254</td>
<td>224</td>
<td>416</td>
<td>298</td>
<td>340</td>
<td>260</td>
</tr>
</tbody>
</table>

Source: Women's Centre for Change (Penang)36

(ii) Child Abuse

Child abuse is an area that has received increasing attention from the Malaysian government as well as non-governmental organizations in recent years. Generally speaking, statistics show an increase of reported cases over the years.

According to police statistics, the number of reported cases of physical abuse of children (penderaan kanak-kanak) was at an all-time high in 2010. Compared to 198 reported cases of child abuse in 2005, a total of 257 cases of physical child abuse were reported in 2010. Official statistics for 2011 have not been released to the public.

Source: Royal Malaysia Police and Ministry of Women, Family and Community Development

The Department of Social Welfare's reported number of child abuse cases is higher as it relies on a more comprehensive list of sources. Other than the police, the Department's statistics include reported cases with the call centre 15999, private medical practitioners, government hospitals, members of the public, media, district social welfare officers, schools, nurseries/kindergartens, family members and other institutions.39


37 Data for the year 2008 was not widely available. It was presented in a newspaper report which claimed to rely on statistics released by the police department. Andrew Sagayam, Record High Child Abuse, (Malay Mail Online May 20, 2011), online at http://www.mmail.com.my/content/72695-record-high-child-abuse (accessed Nov 9, 2011). It should be noted that the online content has since been removed.

38 Data provided by the Women's Aid Organisation (on file with author).

Children were abused in Malaysia between 1999 and 2008. According to the Department data, more than 13,000 cases were reported to be victims of child abuse each day in 2008. As an indication, a breakdown of cases according to type of abuse and the gender of the victims for 2007 and 2008 are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child abuse (Total)</td>
<td>1,800</td>
<td>1,999</td>
<td>2,279</td>
<td>2,780</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

Source: Ministry of Women, Family and Community Development

Statistics from the Department of Social Welfare, Malaysia show that 2,780 cases of child abuse were reported in 2008. This means that an average of 7 children were reported to be victims of child abuse each day in 2008. According to the Department data, more than 13,000 children were abused in Malaysia between 1999 and 2008 (a ten year period).\(^42\)

Neglect is the most common form of child abuse in Malaysia, followed by physical abuse and sexual abuse. Sexual abuse disproportionately affects female child victims. As an indication, a breakdown of cases according to type of abuse and the gender of the victims for 2007 and 2008 are as follows:

<table>
<thead>
<tr>
<th>Type of Abuse</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Abandoned babies</td>
<td>30</td>
<td>33</td>
</tr>
<tr>
<td>Neglect</td>
<td>392</td>
<td>369</td>
</tr>
<tr>
<td>Physical Abuse</td>
<td>298</td>
<td>288</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>50</td>
<td>704</td>
</tr>
<tr>
<td>Emotional / Psychological Abuse</td>
<td>7</td>
<td>38</td>
</tr>
<tr>
<td>Incest</td>
<td>2</td>
<td>19</td>
</tr>
<tr>
<td>Others</td>
<td>27</td>
<td>22</td>
</tr>
<tr>
<td>Total</td>
<td>806</td>
<td>1,473</td>
</tr>
</tbody>
</table>

Source: Department of Social Welfare\(^43\)

Malaysia’s representations to the CRC stated that there were 1,390 reported cases of child abuse in 2003 and 1,800 cases in 2005.\(^44\) However, later statistics showed an increase of almost 1,000 cases, e.g. 2,696 or 2,780 cases in 2008. It is not clear if this increase is a real increase, that is, whether it is due to better reporting or because there are more incidences of child abuse. It is also possible that the increase is due to a change in statistical methods, e.g. a broader definition of what constitutes child abuse.

Data presented to the CRC Committee showed that most child abuse victims fall within the 7-15 years age bracket and are of the Malay ethnicity (although the latter could be a function of the population distribution). Furthermore, a large number of female child victims experienced sexual abuse; for example, 524 female victims out of 1170 female victims experienced sexual abuse in 2005.

UNICEF has expressed concern that child abuse is on the rise in Malaysia with an increase of some 700 reported cases between 2006 and 2008 alone.\(^45\) UNICEF Further noted concern that these figures represent only reported cases to the Department of Social Welfare, police or hospitals/clinics when children are treated.\(^47\) There is justified concern that the child abuse is more widespread than these figures show. According to UNICEF, global experience shows that only a small proportion of child abuse is reported and investigated, and few perpetrators are held to account.\(^48\) Anecdotal evidence indicates that, often, only the most acute cases of child abuse are reported.\(^49\) Furthermore, very young children, for example, lack the capacity to report physical or sexual abuse, while older children also often fear reprisals by perpetrators or interventions by authorities, both of which may worsen their overall situation.\(^50\)

\(^40\) There is a gap in the public data.
\(^42\) Department of Statistics Malaysia, Perangkaan Sosial Terpilih 13-4 (cited in note 43).
\(^44\) Written Replies by the Government of Malaysia Concerning the List of Issues (CRC/C/MYS/Q/1) Received by the Committee on the Rights of the Child Relating to the Consideration of the Initial Report of Malaysia, Committee on the Rights of Child, 44th session, (4 December 2006), CRC/C/MYS/Q/1/Add.1.
\(^46\) UNICEF Fact Sheet 2010 (cited in note 45).
\(^47\) UNICEF Fact Sheet 2010 (cited in note 45).
\(^48\) UNICEF Fact Sheet 2010 (cited in note 45).
\(^49\) UNICEF Fact Sheet 2010 (cited in note 45).
\(^50\) UNICEF Fact Sheet 2010 (cited in note 45).
(iii) Sexual Violence against Women and Children

A total of 3,595 cases of rape were reported in 2010. This means that an average of 10 women was raped every day in Malaysia in 2010. Latest 2012 statistics from the Malaysian Police Force show that there were 408 rape cases in the months of January and February 2012 alone. The department noted that this is a decrease of 43 cases from the same period the year before (January and February 2011). Nonetheless, this would still mean that an average of 6 to 7 rape cases occurred over the two-month period each day.

The Malaysian Police Force’s Sexual Crimes and Child Abuse division has started compiling comprehensive data on violence against women and children, which is highly commendable. However, the data is not publicly and widely available but have only been selectively released to the public. There has been a general increase in sexual crimes against women and children, although there is indication that the numbers are decreasing slightly. For instance, compared to the 1,217 cases of reported rape in 2000 (based on Malaysia’s representations to the CEDAW Committee), there were 3,816 reported cases in 2009.

This dropped slightly to 3,595 cases of rape in 2010.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape</td>
<td>1,931</td>
<td>2,454</td>
<td>3,176</td>
<td>3,494</td>
<td>3,816</td>
<td>3,595</td>
<td>3,301</td>
</tr>
<tr>
<td>Outrage of Modesty (Molestation)</td>
<td>1,746</td>
<td>1,349</td>
<td>2,243</td>
<td>2,131</td>
<td>2,110</td>
<td>2,054</td>
<td>1,941</td>
</tr>
<tr>
<td>Sexual Harassment in the Workplace</td>
<td>102</td>
<td>101</td>
<td>195</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

Source: Royal Malaysia Police, and Ministry of Women, Family and Community Development

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52 Perbandingan Jenayah Indeks Bagi Tempoh Jan-Feb 2011 dan Jan-Feb 2012 (cited in note 51).

53 The police department released the booklet to The Malay Mail (a local newspaper), which published a series of articles highlighting some of the relevant data. In addition, the non-governmental Women’s Aid Organisation (WAO) managed to obtain a copy of the booklet after much negotiation and only on condition that it is used for research purposes only. The Malay Mail articles are no longer available online. See: Sagayam, Record High Child Abuse, (cited in note 37); Sagayam, A Rape Every 2.5 Hours, (cited in note 35). (Printed copies on file with author.)

54 Responses to CEDAW Questions at 15 (cited in note 14).


57 Statistics from Malaysian Police Force’s annual report 2009. The report also stated that 95.65% of the cases were solved in 2009, i.e. that 3,650 cases were solved in 2009. This may suggest commitment and efficiency on the part of the police force, as well as the possibility that a large number of perpetrators are known to the rape victims, thereby facilitating identification and arrest. Report Tahunan 2009 at 100 (cited in note Error! Bookmark not defined.). See also Women’s Aid Organization, Statistics on Violence against Women in Malaysia (2000 - 2010), online at: http://www.wao.org.my/Police+Statistics+2007_64_5_1.htm (accessed Jul 25, 2012). Note however there is a slight discrepancy in the 2009 data for one rape. The WAO compilation shows lower number of rape cases in 2007, 2008 and 2009, i.e. 3,098, 3,409, and 3,626 respectively. It is not clear why there is such a discrepancy. WAO uses data provided by the Ministry of Women, Family and Community Development and the Malaysian Police Force.

58 Data provided by Women’s Aid Organisation (stated source: Royal Malaysia Police & Ministry of Women, Family & Community Development) (on file with author).

There are media reports providing the demographic breakdown of the rape victims which show that a significant proportion of rape victims were below 18 years old. It should nonetheless be noted that these data includes statutory rape cases. In order to fully apprehend the nature of the problem of sexual violence, and calibrate legal and policy responses, there is a need to disaggregate statutory rape from the rape data. Furthermore, where male minors are convicted of statutory rape, there is a lack of adequate protection and counselling to address the problem, particularly to ensure that these male minors are treated differently from common criminals.

(iv) Incest

There has been a rise in reported cases of incest in Malaysia, with fathers being the most common perpetrator of incest.

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61 According to the media reports, which claimed to rely on official statistics, a significant number of victims below 18 years of age were very young, i.e. below 13 years. For example, in 2010, the reports stated about 73.9% of rape victims were below 18 years of age, and of these 73.9%, 10% of victims were under 13 years old. This means that of 3,595 reported cases in 2010, 2,658 involved victims below 18 years of age. These numbers could not be independently verified as official statistics have not been forthcoming. This is an area for further research. See Sagayam, A Rape Every 2.5 Hours, (cited in note 35).
The reported number of incest cases was consistently the highest in the states of Selangor, Johor and Sabah from years 2000 to 2009.

### CASES OF INCEST IN MALAYSIA/YEAR 2000-2009 (BY States)

<table>
<thead>
<tr>
<th>STATES/NEGERI</th>
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<th>2003</th>
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<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
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<tbody>
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<td>4</td>
<td>4</td>
<td>1</td>
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<td>21</td>
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<td>31</td>
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</tr>
<tr>
<td>P/PINANG</td>
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<td>13</td>
<td>11</td>
<td>3</td>
<td>11</td>
<td>4</td>
<td>8</td>
<td>7</td>
<td>7</td>
<td>15</td>
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<td>10</td>
<td>10</td>
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<td>28</td>
<td>37</td>
<td>44</td>
<td>42</td>
</tr>
<tr>
<td>SERAWAK</td>
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<td>15</td>
<td>22</td>
<td>17</td>
<td>16</td>
<td>22</td>
<td>9</td>
<td>31</td>
</tr>
<tr>
<td>TOTAL/JUMLAH</td>
<td>213</td>
<td>246</td>
<td>306</td>
<td>254</td>
<td>335</td>
<td>295</td>
<td>209</td>
<td>360</td>
<td>334</td>
<td>385</td>
</tr>
</tbody>
</table>

Source: Royal Malaysia Police, and Ministry of Women, Family and Community

The state of Kelantan has also been publicly flagged by the police for a notable increase in the number of reported incest cases, especially in rural areas.64

(v) Child Marriages

According to data provided in the CEDAW NGO Shadow Report, there was a significant number of marriages involving young girls. The Population and Housing Census 2000 show that there were 6,146 married girls and 4,478 married boys among adolescents aged 10-14. The census also shows that among the 2.49 million children within the age group of 10-14 in Malaysia, 235 were widowed and 77 were divorced or permanently separated.65

Population and Housing Census 2010 claim that there are no married children under the age of 15. It records 145 married persons between the age of 15-19, of which 74 are males and 71 are females.

Media reports however suggest that child marriage is a continuing practice in Malaysia; recent media reports highlight Muslim men marrying under-aged girls as young as eleven years old.66 Reports state that Kelantan has the highest number of underage marriages among all the states in Malaysia. Based on data published by the Malaysian Sharia Courts Department, there were a total of 1,065 requests by parents for court approval of underage marriages in 2010. Of this, cases in Kelantan comprised more than a fifth (20%) at 231 cases. Other problematic states include Sarawak (165 cases), Sabah (146 cases) and Terengganu (107 cases). Penang ranked the lowest with 14 cases in 2010.67

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(vi) Female Genital Mutilation

Malay-Muslims in some regions of Malaysia practice female circumcision.\(^6^9\) There have not been any reports on the more drastic form of female genital mutilation occurring in Malaysia. Although female circumcision was largely practiced in villages as part of the Malay cultural practices, there are reports of an increase in the practice of female circumcision even among adult women.\(^6^9\) Those interviewed believed that circumcision controls a woman’s sexual desires.\(^7^0\) It has been argued that rising Islamic or, more specifically, Arabic influences in Malaysia could be a reason Malaysian Muslims are starting to practice female circumcision. In 2009, the Fatwa Committee National Council of Islamic Religious Affairs Malaysia issued a ruling stating that ‘female circumcision is part of Islamic teachings and it should be observed by Muslims.’ It should however be noted that the ruling went on to say that this practice is only obligatory and not strictly compulsory; ‘circumcision can be exempted if the practice brings harm to the person.’ This is because, the ruling explains, ‘Islam also pays attention to the safety of its people.’\(^7^1\)

(vii) Violence against Sex Workers

There are no figures to show the extent of this problem although sex workers have been known to work throughout pregnancies be forced to perform demeaning sex acts, and be beaten when unwilling to comply with clients’ demands.\(^7^2\) They also lack access to legal and medical recourse.\(^7^3\) They tend to suffer abuse from their pimps, their clients as well as from law enforcement officers. Sex workers are subject to harassment from law enforcement officers such as being handcuffed during raids, subject to demeaning treatment and have their right to privacy violated when their pictures are published.\(^7^4\) In addition, they are subjected to urine tests for drugs and HIV.\(^7^5\) This has resulted in sex workers going further underground and out of reach of social workers who can offer them information on health, STDs, etc.\(^7^6\)

(viii) Violence and Sexual Harassment against Indigenous Women and Children

Besides the above, more attention needs to be given to determine the prevalence of violent acts and practices against foreign and/or indigenous women and children. The CRC Committee noted in its concluding observations that vulnerable groups of children such as children of indigenous populations living in remote places, children of migrant workers and child victims of trafficking are under-served and under-represented in Malaysia’s governmental efforts.\(^7^7\) The more particularized forms of violence against domestic migrant workers and trafficked women and children are discussed generally in the other two sections below.

In Sarawak, Penan women and girls have been sexually violated and harassed by employees or associates of timber companies. A 2009 official report compiled by the Ministry of Women, Community and Family Development confirms the allegations of rape and sexual exploitation of Penan women and girls by employees and associates of timber companies.\(^7^8\) The report further

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\(^7^0\) Zaman, *FGM: It happens in Malaysia too* (cited in note 69).

concluded that one major cause of the sexual violence is due to the reliance of the victim on transportation vehicles belonging to timber companies. Despite this, there have yet to be concrete actions on the part of the Malaysian government to charge the perpetrators and to ensure Penan women and girls are protected from further sexual violence and exploitation. In fact, even when Malaysia addressed this issue in its 2008 UPR, there was little acknowledgement about the seriousness of the issue. Malaysia merely said that:

‘Based on the expected findings put forward by the police as well as SUHAKAM regarding the alleged abuse of Penan women, the Committee will formulate intervention programmes and provide counselling services to help the Penan women. This includes an awareness raising campaign to the Penan society, particularly women, so that they would be able to recognise and address issues of sexual harassment and abuse.’

There was no commitment to prosecuting the perpetrators and to take strong measures to ensure that such acts do not recur.

The Penan Support Group, together with the Asian Forum for Human Rights and Development and the Asian Indigenous Women’s Network, conducted an independent fact-finding mission. The Penan Support Group (PSG) consists of NGOs: Suara Rakyat Malaysia, Women’s Aid Organisation, Centre for Orang Asli Concerns (COAC) and AWAM. The mission documented evidence and statements of survivors who had been sexually abused by timber company employees/associate in a report entitled ‘A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia.’ PSG has submitted the report to SUHAKAM with a request to conduct a national inquiry into the alleged sexual abuse. A preliminary meeting was organised in July 2010 for the Commission to ascertain details of the allegations. However, so far, SUHAKAM has only released a press statement urging the government to conduct a thorough investigation into the claims. The government had previously rejected setting up a Royal Commission of Inquiry to investigate the complaints on the basis that the matter was not urgent. So far, the PSG has given evidence to the police department about the rape claims but follow-up action has been slow.

(ix) Violence against Women Refugee and Asylum-Seekers

There are reports that women refugees and asylum-seekers are targets of violence, including sexual or gender-based violence. They have little protection against such violence, with minimal access to lawyers, medical treatment, safe houses and other necessary support.

(x) Sexual Harassment

Sexual harassment appears to be a prevalent problem in Malaysia. There is little statistical data on how extensive the problem is. Many people, particularly men, still see sexual harassment as being harmless fun. For instance, the Director-General (DG) of Labour Department, commented in 2009 that having a Sexual Harassment Act ‘could lead to a dull and rigid environment in the workplace’ thus trivializing harassment at the workplace. Incidences of harassment are only taken seriously where a crime has occurred. sexist and offensive remarks have been reported even at the highest levels of government, including during parliamentary debate. Then deputy

prime minister (now Prime Minister of Malaysia) Najib Tun Razak defended some of the comments saying that the MP’s offensive remarks should be taken with a sense of humour. It should be noted that there is now increasing recognition that ‘the multiplicity of forms of violence against women as well as the fact that this violence frequently occurs at the intersection of different types of discrimination.’ All forms of discrimination, however small, contribute to a hostile environment to women, which can escalate into physical violence.

Furthermore, sexual harassment becomes most problematic when children are involved since most children are presumptively less well equipped to fend off such harassment. There have been reported cases and police action taken. order to address sexual harassment on all levels, there needs to be an overhaul of societal attitudes towards women and girls.

(xi) Effeminate Boys and Homosexuals

In April 2011, it was reported that the Education Department of Terengganu (a conservative north-eastern state) ordered 66 Muslim boys between the ages of 13 to 17 to be sent to a special camp for counselling on masculine behaviour. They underwent four days of religious and physical education. The boys were selected because they displayed ‘feminine mannerisms.’ The state’s education director said that the students were invited to join the camp but were not compelled to do so. The International Gay and Lesbian Human Rights Commission (IGLHRC) criticized the education department's action, as it would single out certain children for discriminatory treatment, which in turn could lead to bullying in schools, mental health problems, family rejection, and even violence. The organization also pointed out that children who feel unsafe in school typically have low graduation rates.

In 2011, the Malaysian police banned the fourth Seksualiti Merdeka festival, an annual sexuality rights event held in Kuala Lumpur on the basis that the event constituted a threat to public order. Part of the argument was that Seksualiti Merdeka promotes free sex and is contrary to the religious tenets of all religions. However, the Malaysian Consultative Council on Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) have come out in support of Seksualiti Merdeka, declaring that it is against all forms of harassment, intimidation, threats and violent attacks on any Malaysian including those from the lesbian, gay, bisexual or transgender (LGBT) community. It should be noted that Seksualiti Merdeka is not a gay parade; among the events planned were talks, forums, workshops, art exhibitions and stage performances.

(xii) Judicial caning

Children can still be subject to judicial corporal punishment in Malaysia. The Child Act provides some safeguards but does not do away with them. The Child Court is empowered under section 91 to punish a male child by caning.
Section 91(1) If a Court For Children is satisfied that an offence has been proved the Court shall, in addition to any other powers exercisable by virtue of this Act, have power to … (g) order the child, if a male, to be whipped with not more than ten strokes of a light cane: (i) within the Court premises; and (ii) in the presence, if he desires to be present, of the parent or guardian of the child; …

Section 92 further prescribes certain conditions for executing the punishment of whipping:

The following provisions shall be followed when executing the order of whipping:

(a) before executing the whipping, the child shall be examined by a medical officer to certify that the child is in a fit state of health to undergo the whipping;
(b) the person shall use a light cane with average force without lifting his hand over his head so that the child's skin is not cut;
(c) after inflicting a stroke, he shall lift the cane upward and not pull it;
(d) whipping may be inflicted on any part of the body except the face, head, stomach, chest or private parts;
(e) the child shall wear clothes; and
(f) if during the execution of the whipping the medical officer certifies that the child is not in a fit state of health to undergo the remainder of the whipping, the whipping shall be finally stopped.

Women and girls are exempted from judicial corporal punishment, except in the Sharia courts (see discussion above under section A.2.).

Corporal punishment is allowed in schools, but is regulated by the Education Regulations (Student Discipline) 2006. The Regulations state that:

a) Female students are not allowed to be caned;
b) Only the headmaster can carry out the caning;
c) A teacher can only cane when the headmaster delegates this power to him in writing, and he must be a permanent teacher of the school;
d) The student can only be caned on the buttocks or the palm. It cannot be done on bare buttocks and the student cannot be asked to lower his pants;
e) The caning is to be meted out in a confined area;
f) The student's parents will be informed and invited to witness the caning;
g) Caning must only be for a repeated mistake or very serious offence.

The Education Regulations (Student Discipline) 2006 also banned public caning. Malaysian governments do not encourage caning for primary school students, but caning is allowed at the secondary level by the principal or a person to whom he delegates the power to.\footnote{See generally Global Initiative to End All Corporal Punishment of Children, Malaysia Country Report, (January 2012), online at http://www.endcorporalpunishment.org/pages/pdfs/states-reports/Malaysia.pdf (accessed Jul 27, 2012).}

Furthermore, the Penal Code provides parents/guardians a legal defence for corporal punishment done in good faith for the benefit of a person under 12 years of age. The provision states:

Section 89 Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person:

Provided that this exception shall not extend to:

a) the intentional causing of death, or to the attempting to cause death;
b) the doing of anything which the person doing it knows to be likely to cause death for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;
c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;
d) the abetment of any offence, to the committing of which offence it would not extend.

Illustration

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, in as much as his object was the cure of the child.

Furthermore, section 350 which defines criminal force contains an illustration that the caning of a scholar by a head teacher does not amount to criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to cause the
committing of any offence, or intending by the use of such force illegally to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations

(i) A, a head teacher, in the reasonable exercise of his discretion as head teacher, canes B, one of his scholars. A does not use criminal force to B because, although A intends to cause fear and annoyance, he does not use force illegally.

b. Root Causes of Violence and Aggravating Practices

(i) Gender Stereotypes and Cultural Assumptions

Sexism is prevalent in Malaysian society. Even though there is de jure equality between husband and wife under the law, gender stereotypes remain prevalent. Many male politicians in governmental ministries and parliament have displayed sexist attitudes and made disrespectful comments about their colleagues. For instance, a woman MP was once told not to be too emotional in a debate on the Immigrations Act 1963 and the Income Tax Act 1967. In another instance, a male MP claimed in Parliament that most women drivers were slow and paid little attention while on the road.

Such gender stereotypes and entrenched patriarchal attitudes are primary causes for violence against women (and the girl child) in Malaysia. Women tend to be seen as the ‘weaker’ and ‘less valuable’ sex. Assumptions about parental-children hierarchy within the family unit also contribute to violence by parents against children. Consequently, a primary aim of enacting the 1994 Domestic Violence Act was to eliminate certain cultural assumptions that ‘give men authority to abuse their spouses.’

100 Malaysia’s CEDAW Report noted:

‘In many cultures in Malaysia, the man is normally the head of the household while the wife is subservient and has to attend to his needs and comfort as well as take care of the children and elderly relatives in an extended family.’

It is possible that certain practices and ideas commonly associated with some cultural and/or religious group contribute disproportionately to acts of violence against women and children. It is also likely that socio-economic status/class are relevant contributors to violence against women and children.

(ii) Sexual Objectification

Existing culture also support the objectification of women as sexual objects, rather than persons of equal worth and dignity. In the past, Members of Parliament had made sexist remarks on female menstrual cycle of female Members of Parliament. Such sexism contributes to resistance to reform for gender equality.

Women may also contribute to the prevalence of sexual objectification. A group of Muslim women called the Obedient Wives Club have attracted much controversy for their position that wives should behave like ‘first-class whores’ to keep their husbands faithful and happy.

(iii) Social Misconceptions

Certain misconceptions about rape and rape victims make it harder for women to confront the problem squarely. It also makes it harder for survivors to report rape incidences because of fear of social stigma. Such misconceptions blame the survivor for rape rather than see it as a violent crime against the woman. Therefore, some Malaysians (mostly men) have been observed to say that ‘[o]nly young, pretty women are sexually assaulted’ and/or that ‘[g]irls who wear sexy clothes or flirt with men provoke rape.’ Such misconceptions effectively excuse the rapist’s behaviour by focusing on the victim’s

101 CEDAW Report at 81 and 380 (cited in note 8).
104 Women’s Centre for Change (Penang), Myth and Reality of Rape, online at: http://www.wccpenang.org/rape/myth-vs-reality1/(accessed Jul 27, 2012).
personal traits as the root of the problem, rather than to see it as a criminal act of opportunity.

Social misconceptions also make it difficult for healthcare and service providers to adequately address the problems of domestic violence. For instance, a 2008 study on the knowledge, attitudes and practices of primary health care providers regarding the identification and management of domestic violence in a hospital-based primary health care setting showed that there is a lack of understanding and positive practices among the staff towards domestic violence. About 28% of clinicians and 51.1% of nursing staff interviewed tended to see victims of domestic violence as blameworthy. Less than a third of the participants reported knowing of any written protocol for domestic violence management. Only 20% of the clinicians and 6.8% of the nursing staff had ever attended any educational program related to domestic violence. With regard to violence against sex workers, the CEDAW Report stated that ‘negative social attitudes towards sex workers make it difficult for the Government to act against the perpetrators.’

With regard to homosexuality discrimination among children, Malaysia is in many ways still a deeply conservative society. Sodomy is criminalized under section 377A of the Penal Code. Homosexuals and transsexuals are at most tolerated but not accepted. Malaysia has also declared that homosexuality and same sex marriage are incompatible with Islam and other religions practised in the country.

(iv) Lower Socio-economic Status

In its National Policy on Women, formulated in 1989, Malaysia ‘recognizes poverty, lack of education and sometimes culture and tradition’ as ‘major hindrances to women’s progress.’ Furthermore, there appears to be increasing incidences of rape by young persons, which the police department regards as part of a broader problem of rising delinquency among Malaysian youths.

Lower socio-economic status has been identified as a direct contributing factor to sexual violence against Penan women by timber company employees/associates. Remoteness is another. In its conclusion, the report identified poverty, remoteness of residence as resulting in reliance on timber companies not only for transportation to obtain health and education but also for basic goods such as water and electricity supply. Other contributory factors include distrust in authorities and the outsiders’ prejudice against Penan as lazy, prone to lying and alcoholism. This makes it harder for the Penan community to obtain help from local authorities and outsiders.

(v) Remoteness and Limited Reach of Law Enforcement

According to media reports, police officers in less developed states with large rural areas have publicly raised their concerns that there is a higher incidence of sexual violence against women and children there because ‘the culprits [think] that nobody would find out about their behaviour since they lived in remote areas.’

(vi) Substance Abuse

UNICEF Malaysia has also identified substance abuse as a possible contributing factor for child abuse. This is because alcohol and drug use may lessen impulse control that leads adults to behave abusively. Furthermore, increased stress resulting from preoccupation with drugs on the part of the parent may also add to the likelihood of abuse. Similarly, it is possible that substance abuse is a contributing factor to domestic violence. For example, the Women’s Aid Organisation identified alcohol abuse as a triggering factor for domestic violence in 36% of the cases it received in 2011, and drug abuse as a triggering factor for domestic violence in 22.7% of the cases it received in the same year.


106 CEDAW Report, 107 (cited in note 8).


108 CEDAW Report, 77 (cited in note 8).


112 Rise in rape, incest cases in Kelantan has cops worried, (cited in note 64).


114 Women’s Aid Organisation, Annual Statistics 2011, online at: http://
(vii) Financial Problems

There is also some indication that financial problems constitute a triggering factor for domestic violence. According to the Women’s Aid Organisation’s statistics, financial problem is a triggering factor in 38.7% of the cases it received in 2011.115 Similarly, UNICEF Malaysia has raised the possibility that there is a link between economic downturns and increasing number of child abuse cases in Malaysia; it noted that more research is required to establish such a link.116


c. Impact of Violence

UNICEF Malaysia disseminates information through brochures on the impact of child abuse and domestic violence on children. These brochures are available on the UNICEF website.117 For instance, in its brochure, UNICEF noted that the impact of child abuse is far greater than its immediate, visible effects. Child abuse is associated with short- and long-term consequences that may include brain damage, developmental delays, learning disorders, problems forming relationships, aggressive behaviour, and depression. Furthermore, it noted that survivors of child abuse and neglect may be at greater risk for problems later in life—such as low academic achievement, drug use, teen pregnancy, and criminal behaviour—that affect not just the child and family, but society as a whole.118 An academic study on the impact of physical abuse on the personality development of children was recently released. The study was based on 106 children from five selected protection homes, and concluded that physical abuse negative impacts the victims’ personality development, specifically on their emotional adjustment. This may further influence their future wellbeing.119

2. De Jure State Responses

a. Bases of State Responsibility

CEDAW and CRC are the primary international human rights instruments underpinning Malaysia’s international obligations to respect, protect and promote non-violence against women and children. As noted earlier, Malaysia has made several reservations on the basis of asserted incompatibility between CEDAW and the CRC, on the one hand, and Sharia laws, on the other. While some reservations have been progressively withdrawn, reservations to certain provisions of CEDAW and CRC remain. Of these, the reservation to article 16(2) of CEDAW, which seeks to nullify child marriages (and provision for a minimum age for marriage), is the most problematic for the issues under consideration in this literature review.120

As for Malaysia’s remaining reservations to the CRC, it is the reservation to article 37, which deals with torture and the deprivation of liberty, which most concerns this review.121 The CEDAW Committee, the CRC Committee, and the UPR Committee have variously and repeatedly urged Malaysia to reconsider its reservations and to rethink its Sharia interpretations consistently with these human rights standards. Malaysia has repeatedly stated that it is in the process of considering withdrawal of its reservations to CRC and CEDAW.122

On 7 September 2011, the Malaysian Cabinet approved the Ministry’s recommendation to accede to the CRC’s two Optional Protocols: the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (‘OP on Child Sale, Prostitution and Pornography’), and

116 Protecting Children from Abuse and Neglect, (cited in note 113)
120 The remaining reservations are to article 9(2) (equal rights to the nationality of a couple's children); article 16(1)(a) (equal rights to enter into marriage); article 16(1)(c) (equal rights and responsibilities during marriage and at its dissolution); article 16(1)(f) (equal rights and responsibilities regarding guardianship, wardship, trusteeship and adoption of children); article 16(1)(g) (equal personal rights in a marriage, including the right to choose a family name, a profession and an occupation). Malaysia withdrew its reservations to articles 2(f), 9(1), 16(1)(b), (d), (e) and (h) of CEDAW in 1998.
121 The other remaining reservations are to Article 2 (non-discrimination); Article 7 (name and nationality); Article 14 (freedom of thought, conscience and religion); and Article 28(1)(a) (free and compulsory education at primary level). Malaysia withdrew its reservations to articles 1, 13 and 15 of the CRC on 6 July 2010. See United Nations, Statement by the Honourable Gobalakrishnan Nagaparan Member of Parliament and Representative of Malaysia on Agenda Item 65: Promotion and Protection of the Rights of Children, online at www.un.int/malaysia/GA/66/66unga22_65children.pdf (accessed Jul 25, 2012).
the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (‘OP on Children in Armed Conflict’). The signing of OP on Children in Armed Conflict establishes 18 as the minimum age for compulsory recruitment and requires States to do everything they can to prevent individuals under the age of 18 from taking a direct part in hostilities.123 The signing of the OP on Child Sale, Prostitution and Pornography establishes the state’s obligations to protect the child against and eliminate these practices through criminalization.

b. National Policies against Violence

Malaysia’s Federal Constitution contains a fairly broad list of fundamental liberties guaranteed to individuals against the state. The constitution prohibits state discrimination based on gender (article 8(2)) but this is limited to discrimination in law, in professional/trade regulations and in public appointments/employment. Article 8(2) of the Federal Constitution now reads:

‘Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground of religion, race, descent, place of birth and gender in any law or in the appointment to any office or employment under a public authority or in administration of any law relating to the acquisition, holding or disposition of any property or the establishing or carrying on any trade business, profession, vocation or employment.’ (Emphasis added.)

Furthermore, the Penal Code, the Domestic Violence Act and the Child Act constitute the legislative framework protecting women and children from violence.124 The Penal Code criminalizes a wide range of violent acts against women/children. Some crimes are gender-neutral such as voluntarily causing hurt or grievous hurt or wrongful restraint or confinement.125 Others are gender and child-specific. Part XVI of the Penal Code criminalizes the act of causing miscarriage, injuries to the unborn child, exposure of infants, and concealment of births.126 Gender-specific laws include rape and abduction of a woman with the intent of compelling her to marry against her will or forcing/seducing her for illicit intercourse or prostitution.127

(i) Rape (Sexual Intercourse without Consent)

Under the current laws in Malaysia, the crime of rape only applies where the victim is a woman. The legal definition of rape is ‘sexual intercourse with a woman … against her will [or] without her consent’ (Section 375 of the Penal Code).128 This extends to situations where consent was obtained as a result of deception or fear of hurt or death or where the woman is unable to understand the nature and consequences of her giving consent at the time she does it.129 The legal penalty for rape was enhanced in 1989 – a person convicted of rape will receive a jail sentence of between five to 20 years, and may also be liable to whipping.

(ii) Rape by Object Penetration

A new section, 377CA, was included in the Penal Code in 2006 to criminalize rape by sexual penetration of an object:

Any person who has sexual connection with another person by the introduction of any object into the vagina or anus of the other person without the other person’s consent shall be punished with imprisonment for a term, which may extend to twenty years and shall also be liable to whipping.130

(iii) Statutory Rape

Sexual intercourse with a woman under sixteen years of age, with or without her consent, constitutes statutory rape (section 375(g)).131 The lack of consent or when the girl is under twelve years of age (regardless of consent) are considered aggravating factors. Under those circumstances, the punishment is enhanced to a maximum of thirty years.132 It is not entirely clear how to reconcile the criminal offence of statutory rape with

124 CEDAW Report, 450 (cited in note 8).
125 CEDAW Report, 451 (cited in note 8).
126 CRC Report, 144 (cited in note 9).
127 CEDAW Report, 451 (cited in note 8).
129 CEDAW Report, 452 (cited in note 8).
130 The provision includes an exception: ‘This section does not extend to where the introduction of any object into the vagina or anus of any person is carried out for medical or law enforcement purposes.’
131 This was previously stated in §375 of the Penal Code as an Explanation but has been inserted as a proper provision by the Penal Code (Amendment) Act 2006. See CEDAW Report, 452. (cited in note 8).
the practice of child marriages, which are more common among Malay-Muslims. It is arguable that consummation of such child marriages may constitute statutory rape. However, no charges have yet been brought against men who marry under-aged girls. (See further discussion below on child marriages.)

(iv) Incest

Incest was criminalized in 2002. Under section 376A of the Penal Code, a person commits incest if he or she has ‘sexual intercourse with another person whose relationship to him or her is such that he or she is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person’. A girl under 16 years of age or a boy under 13 years of age cannot be charged under this section for incest. They are deemed incapable of giving consent. The punishment for incest is imprisonment for a term between six to twenty years and possible whipping.

There are conflicting secular and Sharia laws, and inconsistency in application. For instance, in 2000, the Kelantan Sharia Court prosecuted a 17 year-old girl for incest on the unproven assumption that the daughter was a willing partner in the crime. This would not have occurred under the Penal Code; the father would likely have been prosecuted for statutory rape or rape. It should be noted nonetheless that the current provision for incest means that a 17 year-old girl could be prosecuted for incest only if it was shown that she consented to sexual intercourse.

(v) Unnatural Sex or Gross Indecency

Section 377A criminalizes sodomy and oral sex, even when such sexual acts are consensual. The section reads:

‘Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.’

Section 377A is supplemented by section 377C, which criminalizes carnal intercourse without consent.

‘Whoever voluntarily commits carnal intercourse

against the order of nature on another person without the consent, or against the will, of the other person, or by putting the other person in fear of death or hurt to the person or any other person, shall be punished with imprisonment for a term of not less than five years and not more than twenty years, and shall also be liable to whipping.’

Furthermore, section 377E targets persons who incites a child to an act of gross indecency:

‘Any person who incites a child under the age of fourteen years to any act of gross indecency with him or another person shall be punished with imprisonment for a term which may extend to five years, shall also be liable to whipping.’

(vi) No Marital Rape

As the CEDAW Report points out, marital rape is still not a crime in Malaysia. Prior to 2007, a man can be charged for rape under section 375 only if he has sexual intercourse with his wife under the following circumstances:

(i) where the wife is living separately from her husband under a decree of judicial separation or a decree nisi not made absolute;

(ii) where the wife has obtained an injunction restraining her husband from having sexual intercourse with her; or

(iii) in the case of a Muslim woman living separately from her husband during the period of ‘iddah’ which is approximately a period of three months.

However, the Penal Code was amended in 2007 to criminalize a husband’s use of force against a wife for sexual intercourse. This new section 375A of the Penal Code was included in 2007 to make it an offence for a husband to cause hurt to his wife in order to have sexual intercourse with her:

‘Husband causing hurt in order to have sexual intercourse

375A. Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to

133 CEDAW Report, 358 (cited in note 8).
134 See §376B of the Penal Code and the corresponding Explanation.
his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.

This amendment has been censured for its narrow scope. The CEDAW Committee criticized the new provision as 'narrowly tailored to criminalize sexual assault based on use of force and death threats by the husband, rather than marital rape based on lack of consent of the wife'.

The Committee has urged Malaysia 'to enact legislation criminalizing marital rape, defining such rape on the basis of lack of consent of the wife'. At present, marital rape remains a highly contested issue culturally and socially in Malaysia. In 2009, a man was convicted under the amended penal laws for forcing his wife to have sex with him. This is the first successful prosecution under the 2007 amendment to the Penal Code. The current laws however only address situations where a husband causes fear of death or hurt to his wife but not to circumstances where the level of coercion does not meet that threshold.

It should be noted however that section 129 of the Islamic Family Law Act (which applies to the federal territories and is put forward as a model family law for the other states) makes it an offence for a wife to be disobedient to her husband. The section states:

‘Any woman who wilfully disobeys any order lawfully given by her husband according to Hukum Syarak commits an offence and shall be punished with a fine not exceeding one hundred ringgit or, in the case of a second or subsequent offence, with a fine not exceeding five hundred ringgit.’

There is a danger that such a provision continues to affirm the notion that the Muslim wife is subservient and subordinate to the husband.

(vii) Domestic Violence Act

The 1994 Domestic Violence Act was enacted in response to campaigning by women's groups for a law to protect abused and battered women. It defines domestic violence broadly as covering all conduct that wilfully places the victim in fear of physical injury, causes physical injury, compels the victim by force or threat to engage in any conduct or act, sexual or otherwise from which the victim has a right to abstain, and harassment or psychological harm so as to cause ill health. The DVA provides women and children with the recourse of obtaining a protective order against their abusers. Malaysia is the first country with a Sharia legal system to pass an act on domestic violence. However, the DVA's emphasis on the sanctity of individual liberty may conflict with the Sharia's emphasis on the primacy of the family and community, which tend to contribute to the idea of wives being subservient to their husbands (see e.g. section 129 of the Islamic Family Law Act).

(viii) Child Act

The 2001 Child Act is the primary comprehensive legislation protecting children against violence and all forms of exploitation and discrimination. The Child Act 2001 was promulgated based on the principles enumerated in the Convention on the Rights of the Child (CRC) which Malaysia acceded to in 1995. This suggests that acceding to human rights conventions does affect how states think about their laws and policies, at least in the official position. Section 31 of the Act, for instance, makes it an offence for any person having care of a child to abuse, neglect, abandon or expose the child to physical or emotional injury or to sexually abuse the child. In addition, section 31(4) states that '[a] parent or guardian or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause him physical or emotional injury if, being able to so provide from his own resources, he fails to provide adequate food, clothing, medical or dental treatment, lodging or care for the child.' The CRC Committee noted

138 CEDAW Concluding Comments, 21 (cited in note 15).
139 Ibid.
142 CEDAW Report, 455 (cited in note 8).
143 See also Domestic Violence Act (1994), 2.
144 Violence against Women: harmful traditional and cultural practices in the Asian and Pacific region, Expert Group Meeting on Regional Strategies for Implementing the Recommendations from the Secretary-General's In-depth Study on All Forms of Violence against Women, with particular emphasis on harmful traditional and cultural practices and the role of national women's machineries, (26-27 April 2007), United Nations Conference Centre, Bangkok, Thailand, 17.
145 UPR, 16 (cited in note 10).
that the Child Act is ‘guided by the principles of the Convention and aims at providing every child with care, protection and psychosocial assistance.’

While many positive policy measures have been taken, there is a need to ensure that the measures are effective and that there is effective use of resources.146

c. Assessment of State Policies

The constitutional prohibition under article 8 does not extend to gender discrimination by private companies or individuals.147 The constitution also does not directly address gender-based violence whether committed by the state or non-state actors.

(i) Domestic Violence

The Domestic Violence Act defines domestic violence broadly. The definition of domestic violence was widened to include psychological harm in 2011 following criticism of the omission. Now, ‘domestic violence’ includes causing physical injury, wilfully placing the victim in fear of physical injury, compelling the victim to engage in any conduct (including sexual conduct), confining the victim against his/her will, destroying property to cause distress to the victim, causing psychological or emotional injury to the victim, or causing the victim to suffer delusions using intoxicating substance without his/her consent (including where the consent was unlawfully obtained). Where the victim is a child, his/her consent to use intoxicating substance or any other substance is irrelevant.148

The DVA protects spouses, former spouses, children, any other member of the family, and even any incapacitated adult living with the offender from physical and psychological abuse. The Act includes ‘a de facto spouse’ which it defines as ‘a person who has gone through a form of ceremony which is recognized as a marriage ceremony according to the religion or custom of the parties concerned, notwithstanding that such ceremony is not registered or not capable of being registered under any written law relating to the solemnization and registration of marriages’.149 This restriction to de jure and de facto spouses discriminates against women cohabiting with a man but who has not undergone any religious or customary marriage ceremonies. The Joint Action Group for Gender Equality has proposed that the category of victims/perpetrators be broadened to include intimate partners, so that relationships outside of marriage can be included under the protection of the DVA.150

As the CEDAW Report acknowledges, the Domestic Violence Act is gender neutral: it covers spousal abuse against both men and women.151 As such, it is only incidental that the Act’s primary beneficiaries are women. The Report stated that most reported cases involve a woman victim: ‘In the year 2000, out of a total of 2,462 reported cases of domestic violence, 98 per cent of the victims were women.’152 The numbers show that women are most likely to be abused in a domestic relationship and thus most in need of protection from their spouses.

The CEDAW Report noted that the main recourse the DVA provides is the right of a victim to apply for protective orders (POs) against his/her abuser.153 One critical question that should arise is whether or not a gender-neutral legislation such as the DVA is sufficiently sensitive to the psychological, physical and economic conditions that are more often identified with women. The Act also covers domestic violence against children; the same criticism against this broad-brushed approach can be levelled here. This concern gave rise to the amendment in 2011, which expanded the definition of domestic violence to mental, emotional and psychological abuse.154

146 In relation to women’s rights for instance, the NGO Shadow Group recommended that the many policies and action plans be streamlined and consolidated. NGO Shadow Group Report (cited in note 13) (on article 104).

147 See e.g. Beatrice a/p At Fernandez v Sistem Penerbangan Malaysia & Anor [2005] 3 MLJ 681 (‘Federal Court decision’) highlighted by the CEDAW Committee in their deliberations on Malaysia’s report where the Malaysian courts held that article 8 ‘does not extend its substantive or procedural provisions to infringements of an individual’s legal right by another individual; thus limiting the scope of article 8’s prohibition against gender discrimination to matters involving state action. See Jaclyn Ling-Chien Neo, Malaysia’s First Report to the CEDAW Committee, 13, Asian Yearbook of Int’l Law 303 (2007); Jashpal Kaur Bhatt, Gender Discrimination in Employment - How far Does Article 8 of the Federal Constitution guarantee gender equality?6 MLJ xliv (2006).


149 Ibid.


151 CEDAW Report, 456 (cited in note 8).

152 Ibid, 103 (cited in note 8).

153 Ibid, 456 (cited in note 8).

It should be noted however that the DVA does not criminalize domestic violence as a specific crime punishable by new penalties. It merely supplements existing criminal legislation. Perpetrators of domestic violence are prosecuted under general crimes in the Penal Code. Consequently, there is a concern that charges for domestic violence offences under the Penal Code do not reflect the seriousness of domestic violence which is often more damaging because of its persistent and repetitive nature. In addition to the Penal Code, the Islamic Family Law Act (applicable to federal territories) makes it an offence for any person to ill-treat his wife mentally, emotionally or physically. Section 127 of the IFLA states: 'Any person who ill-treats his wife or cheats his wife of her property commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or both.'

(ii) Forced Marriages

Officially, forced marriage is not an accepted practice in Malaysia society. The Law Reform (Marriage and Divorce) Act 1976, which applies to non-Muslim marriages, requires the Registrar of Marriage to be satisfied that both parties freely consent to the marriage before solemnizing the marriage (section 22(6)). Furthermore, it is an offence for a person to use force or threats to compel a person to marry against his or her will or to prevent a person who has attained the age of 21 from contracting a valid marriage. Invalidity of consent is a ground for voiding a marriage. Women formally have the same freedom as men to choose their spouses.

Muslim marriages similarly require consent. Section 13 of Islamic Family Law Act states that a marriage shall not be recognized or registered under the Act unless both parties freely consent to the marriage and either the Wali (the woman’s guardian for marriage) or in the absence of Wali the Sharia Judge has also consented.

(iii) Child Marriages

Child marriage is prohibited among non-Muslims unless one obtains special dispensation. The Law Reform (Marriage and Divorce) Act 1976 prescribes the minimum age for marriage as eighteen years. The Chief Minister of a particular State may in his discretion grant a license authorising the solemnisation of a marriage of a girl child who is under the age of eighteen years and has completed her sixteenth year.

The legal age of marriage for Muslims is 18 for males and 16 for females. However, there are developments towards lowering the legal age for marriage among Muslims. Furthermore, current Sharia laws allow Muslims who want to marry underage persons to do so by seeking the permission of the kadi. It has been argued that child marriage is not strictly prohibited under Islamic law although scholars are divided on the issue. More attention and research is needed to determine de jure and de facto practice of forced marriages and child marriages in the different states. Data on child marriages should also be disaggregated according to ethnic groups to distil cultural determinants on the problem.

(iv) Female Genital Mutilation

Malaysia does not have specific laws prohibiting female genital mutilation.

(v) Sexual Harassment

There is no specialized omnibus legislation addressing the problem of sexual harassment in Malaysia. However, after much lobbying by women’s groups, the Malaysian parliament finally amended the 1955 Employment Act in 2011 to include provisions defining sexual harassment and putting in place a procedure for complaints to be investigated. The amended Employment Act now defines ‘sexual harassment’ as ‘any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural

155 Joint Action Group: The amendments to the Domestic Violence Act are not comprehensive enough, (cited in note 150).
156 CEDAW Report at ¶459 (cited in note 8).
158 See CEDAW Report, 390 (cited in note 8).
159 CEDAW Report, 390 (cited in note 8).
160 Ibid, 390 (cited in note 8).
161 Ibid, 391 (cited in note 8).
162 See CRC Report, 131 (cited in note 9).
or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment."166 This legalizes the Code of Practice on the Prevention and Handling of Sexual Harassment in the Workplace,167 which provided non-binding working definitions of sexual harassment and guidelines for employers on how to deal with it.168

The new provisions are designed to ensure that internal processes of a company so far as possible deal with complaints of this nature. In particular, employers must inquire into complaints received about sexual harassment, and take or recommend disciplinary action where sexual harassment has occurred. A person found ‘guilty’ of sexual harassment may be dismissed, downgraded or suspended without wages for up to two weeks. Unlike other sections of the Act, the Bill offers protection from sexual harassment to all employees, regardless of their salary. This presumably responds to one criticism that merely amending the Employment Act to include sexual harassment provisions would be of limited effect since the Act generally only applies to employees earning below RM1,500, thus excluding other categories of workers.169 The Act makes it an offence for an employer not to investigate a complaint of sexual harassment.170

It should be noted that a 2006 Amendment to the Penal Code now includes within its rape definition abuse of authority to coerce a woman into having sex. The new section 375(f) provides that a woman’s consent to sexual intercourse does not provide a valid defence to rape ‘when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her’. This new section is aimed at protecting women who are vulnerable to the sexual advances of their employers and superiors.

(vi) Violence against Sex Workers

As the CEDAW Report stated, there are no special provisions relating to violence against a sex worker and in such an instance, the offence would come under the Penal Code which legislates against acts such as assault, using criminal force, wrongful restraint or confinement and causing hurt or grievous hurt.

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

There appears to be a greater willingness on the part of the government to channel resources into addressing the problem of domestic violence and child abuse, as well as to address rising sexual violence against women in Malaysia. There is also a greater effort to address the problem of abuse of domestic foreign workers in Malaysia, following public outcry and increased pressure from sending countries like Indonesia.

(i) Institutionalization

The Ministry of Women Affairs (now Ministry of Women, Family and Community Development) was established in 2001. It created the institutional structure for a comprehensive approach towards protecting and advancing women’s and children’s rights in Malaysia. In December 2004, this was complemented by the creation of a Cabinet Committee on Gender Equality chaired by the Prime Minister; this ensures that gender issues, especially those under CEDAW, are being taken into consideration at the highest level of government.171

As the NGO Shadow Report highlights, the creation of a separate Ministry has been a positive measure; as a full-fledged ministry, there has been an increase in staff capacity and, over the years, a steadily increasing budget allocation.172 For instance, the number of personnel in the Ministry increased from 67 in 2001 to 246 in 2006 and budget allocation has increased from RM4.11 million in 2001 to RM96.75 million in 2006.

The Department of Social Welfare (housed under the Ministry) was restructured to create a Child Division in 2005. A Coordinating Council for Protection was established under the 2001 Child Act to advise the Minister of Women, Family and Community Development on all aspects of child protection as well as to coordinate resources between various governmental departments involved in child protection.173 The Council renders advice on the management and operation of Child Protection Teams throughout the country.174 This Council is chaired by the Director-General of the Department of Social Welfare and is represented by relevant Government departments, child experts

166 Employment Act (1955), 2.
167 CEDAW Report, 210 (cited in note 8).
168 Ibid., 211 (cited in note 8).
170 The punishment is a fine not exceeding ten thousand ringgit.
171 Responses to CEDAW Questions, 13 (cited in note14).
173 CRC Report, 129 (cited in note 9).
174 Ibid.
and NGOs. These institutionalization measures are important advancements in the implementation and monitoring process of women's and children's rights in general.

(ii) Mainstreaming

Gender focal points have been appointed in all government ministries and departments. To raise awareness, the Department of Social Welfare with the funding support of UNICEF, trains social welfare officers and other governmental personnel to deal with child abuse cases professionally.

Due to the federal nature of Malaysia, most mainstreaming efforts have to be implemented at the state level. This means that efforts and effects are not uniform. More progressive and urbanized states like Penang and Selangor tend to be more concerned and successful in mainstreaming gender awareness and implementing protection measures for women and children. For instance, the Penang government recently set up the Penang Women's Development Corporation (PWDC), a special state-run body to promote gender equality. The PWDC will advise the state government in formulating policies to realise gender and social equality, undertake advocacy to promote good governance, as well as monitor laws and policies that are gender discriminatory. As a flagship programme, the PWDC will implement a 3-year Gender Responsive Budgeting project to mainstream gender equality in the budgetary process and policies of local governments. One of the expected outcomes of this project is to have sex-disaggregated data. The Penang state government has allocated RM1.5 million to the PWDC's programmes and operations for 2012.

(iii) Grassroots Activation

The establishment of State Women and Family Development Councils in all states and parliamentary constituencies facilitate the implementation of governmental programmes and activities more effectively at the grassroots level. A Child Unit was also set up at all state and district levels.

The CRC Committee observed that Malaysia's CRC Report tends to focus on legal provisions rather than de facto implementation of the conventions. The Committee also notes the lack of a national central database on children and the lack of indicators to ensure that data is collected and that they are disaggregated by age, sex, urban, and rural area and by group of children in need of special protection, as well as by ethnicity. Furthermore, the Committee noted the lack of attention and thereby insufficient data on vulnerable groups of children, such as children of indigenous populations living in remote places, children of migrant workers and child victims of trafficking.

b. Complaints Process

The Malaysian Police Force records a high rate of successful closure of rape cases, i.e. 95.65% in 2009.

Malaysia considers 'the best defence against child abuse [to be] the public participation in reporting the cases.'

The Malaysian government, through the Ministry, has sought to create awareness as to the prevalence of the problem of child abuse, as well as to educate the public about the impact of violence. In a 2009 press statement, the Minister for Women, Family and Community Development made a clear statement that children who complain of abuse should be given the benefit of the doubt, and the most immediate and broadest protection. She stated:

‘When a child complains that 'someone touched me', the person to whom the child complained should take the matter seriously and immediately call the Department of Social Welfare, Police or Talian Nur 15999 so that action can be taken to rescue the child. Children at young ages do not lie about such matters.'
….. Non-abusing parents usually keep silent about the abuse because of fear, hopelessness and isolation or lack of support from other family members.189

_Talian NUR_, launched in 2007, now serves as a single point of contact for reporting, complaints and queries concerning domestic violence, child abuse and even natural disasters.190 _Talian NUR_ also administers Childline Malaysia for children in need of assistance (see below under Non-State Actors). It replaces the toll-free helpline _Teledera_, which the Department of Social Welfare started in 1994 to allow members of the public and victims to report child abuse directly to the Department for immediate action.191 In its CRC Report, Malaysia noted that as of December 2005, a total of 4,163 cases of child abuse and domestic violence were reported through the hotline.192 This toll-free _Teledera_ hotline was terminated on 15 January 2010 in a streamlining effort to channel complaints of all social problems an integrated one-stop call centre_Talian NUR_ 15999.

Malaysia has not signed the Optional Protocol to CEDAW, which allows the CEDAW Committee to consider individual communications concerning discrimination in Malaysia. Nonetheless, as the reports stated, the Human Rights Commission of Malaysia (SUHAKAM) was established in 1999 with the mandate, inter alia, to ‘inquire into complaints regarding infringements of human rights’.193 In discharging this function, SUHAKAM may act on its own motion in addition to acting on complaints submitted to it. SUHAKAM has the power to advise the Government in relation to the complaints and recommend appropriate measures.194 The one constrain is that SUHAKAM may not investigate complaints which are the subject matter of proceedings pending in a court of law or which have been finally decided by any court. In other words, such investigations have to cease if the matter being investigated is brought before the court.

**c. Protection and Rehabilitation**

(i) _Protective/Restraining Orders_

The primary legislation empowering state intervention in cases of violence against women and children are the Domestic Violence Act and the Child Act. The DVA gives women the right to obtain a court-issued protective order (PO) against her abuser. The Court may also issue an interim PO pending investigation of an alleged domestic violence offence, or during the course of proceedings.195 A court granting a PO is also empowered to grant other protective orders such as granting the right of exclusive occupation to a protected person and excluding the ‘abuser’ from any shared residence. A court may also prohibit or restrain a person against whom the order is made from entering any protected person’s place of residence, school or other institutions. The restrained person may also be prohibited from making written or telephone communications with the protected person. Besides that, the court may require an enforcement officer to accompany the restrained person when entering the place of residence to collect his belongings.196

Besides issuing POs, the court may also order the parties concerned to be referred to bodies providing counselling, rehabilitation therapy, psychotherapy and reconciliatory counselling.197 The law also provides that a protection order may be sought during any criminal proceedings where the accused is charged for a domestic violence offence under the Penal Code as a condition for the accused to be released on bail or upon the compounding of such offence.198

The reports state that Muslim wives have the alternative of applying to the Sharia Court for a restraining order against her own husband.199 Section 107(1) of the Islamic Family Law Act empowers the Sharia court to order any person to refrain from acts of molestation pending any matrimonial proceedings, or on or after the grant of an


191 _CRC Report_, 190 (cited in note 9).

192 _Ibid._, 190 (cited in note 9). The CRC Committee commended the existence of such a hotline. _CRC. Concluding Observations_, 57 (cited in note 18).


194 _Ibid._


197 _Ibid._, 457 (cited in note 8).

198 _Ibid._

199 _Ibid._, 458 (cited in note 8).
order of divorce or annulment. However, to obtain such an order, the applicant must usually prove that there has been molestation in the past or that the wife is in a dangerous situation and that an order is necessary for her protection. It is not clear if there are any differences, and if so, what the differences are between a PO and a restraining order issued by the Sharia court.

(ii) Shelters

According to the CEDAW Report, there are ‘shelters for abused and battered women and children [that are] provided by both governmental as well as voluntary organisations.’ These homes provide temporary shelter to women and children who are victims of violence. Furthermore, the Rumah Nur (Women Centre) in Selangor will be a dedicated shelter for foreign victims of trafficking. There are currently 11 Shelter Homes for neglected, abused, abandoned and orphaned children under the purview of the Department of Social Welfare in Malaysia. More information is required on the number of shelters available in Malaysia, and if such shelters are spread throughout the country and are accessible to both urban and rural women. There needs to be more attention given to violence against women in rural areas. The NGO Shadow Report for instance highlighted that there have been a number of cases of abuse against women in the agricultural estates (more rural parts of Malaysia).

(iii) One-stop Crisis Centres at Government Hospitals

The Ministry of Health in partnership with the National Council of Women’s Organisations (NCWO) and women’s groups, other agencies, established one-stop crisis centres at all major hospitals for proper and coordinated management of rape and other forms of violence against women and children. These crisis centres provide a broad range of services to help survivors of violence, besides medical attention. These include protection, safe accommodation, support, counselling, and legal assistance. The first One-Stop Crisis Centre was established at the University Hospital, Kuala Lumpur in 1986 as the result of a campaign against violence against women by women’s organisations the previous year. By 1997, they were established in 90 per cent of government hospitals across the country.

The standard protocol is that when a woman appears at the Accident and Emergency Department of one of these hospitals alleging injuries from domestic violence, the victim/survivor is first examined and treated by a doctor and seen by a counsellor within 24 hours in a separate examination room to protect her privacy and to ensure confidentiality. Subsequently, should it appear that the victim will be in danger if she returns home, the doctor or counsellor would arrange for her to go to an emergency shelter or admit her to the accident and emergency ward for 24 hours. If the patient chooses not to seek shelter, she is encouraged to return to see a social worker at the hospital at a later date. She is also encouraged to make a police report at the police unit based in the hospital. In cases involving severe injury, the police see the patient in the ward to record her statement and start investigations.

A 2011 article on One Stop Crisis Centres in Malaysia shows that a close and clearly defined partnership between NGOs and health staff can be a very powerful influence to the legal and policy environment in which health care services for domestic violence are developed. The article concludes that it is critical to gain high-level support from the Ministry of Health in order to institutionalize the response to violence across the entire health care system. Otherwise, without clear operational details and resources, policy implementation cannot be fully ensured and taken to scale.

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207 UN Secretary General, In-depth study on all forms of violence against women, 92 (cited in note 206)

208 Ibid.

209 Ibid.

210 Ibid.


212 Ibid.

(iv) Child Protection Teams

The CRC Report highlights several measures taken by the Department of Social Welfare to build the capacity of its officers to address the problem of child abuse. First, Child Protection Teams were established throughout the country to provide counselling, crisis intervention services, and other support services. According to the reports, there were 131 Child Protection Teams established as of 2005. These Teams are trained to address issues pertaining to child welfare, with special focus on working with abused children, affected families and perpetrators. It appears from the reports that Child Protection Teams are based in and manage Child Activity Centres and Crisis Intervention Centres. More information is needed to analyse and better evaluate the work of such Child Protection Teams.

Secondly, the Child Activity Centres established by the Teams conduct lectures, seminars and workshops on parenting and other family-oriented topics. According to the reports, the activities carried out at the Child Activity Centres have, in some ways, contributed to the prevention of many social ills such as child abuse, child neglect, school dropout, truancy and moral decadence. Furthermore, the reports state that such Centres established at state and district levels are aimed at mobilizing community participation to assist the Department of Social Welfare in implementing prevention programs and to deal with child abuse cases by coordinating locally based services to families and children.

(v) Court of Children

Furthermore, the Child Act empowers the Court of Children to separate the child from his or her parents or guardian where such parent or guardian have ill-treated, neglected, abandoned them, or have exposed the child to moral danger, used the child as prostitutes or beggars or have unlawfully transferred possession, custody or control of the child. The Court will order such a child in need of care, protection and rehabilitation to be cared for in a place of safety, place of refuge, in the custody of a foster parent, or in the care of a person who is willing and whom the Court considers to be fit and proper to undertake the care of such a child. The Court for Children may order parents or guardian of a child to attend ‘an interactive workshop to enable them to establish positive relationship and mutual understanding in overcoming their problems towards a harmonious family.’ The Child Act also provides for the identification, reporting, referral, investigation, treatment and follow-up of the child in need of care, protection and rehabilitation.

(vi) Children's Homes

All Children's Homes (run by the Department of Social Welfare) are considered as Places of Safety. The duration of stay in the Homes is only for a specified period as determined by the Court for Children. The children may be returned to their own families or placed by Social Welfare Officers with suitable foster families. In 2010 the Department of Social Welfare have developed minimum standards of care for children in care centres / homes managed by NGOs to ensure the child is protected and cared for in an institutional setting. This shows the government’s acknowledgment that ultimate accountability in ensuring that children’s rights are upheld and their welfare promoted rests with the Government.

(vii) Profession of Social Work

In April 2010, the Malaysian government approved Social Work Competency Standards to serve as guidelines for social workers. The Competency Standards aim to equip and professionalize the human resource capacity of government to deliver quality primary, secondary and tertiary interventions in child protection. The competency standards will be used as a key tool for the government and the Malaysian Association of Social

214 CRC Report, 268 (cited in note 9).
216 Ibid, 268 (cited in note 9).
218 CRC Report, 202 (cited in note 9).
219 Ibid., 202, 237 (cited in note 9).
220 Ibid., 180 (cited in note 9).
221 Ibid., 236 (cited in note 9).
222 Ibid.,223 (cited in note 9).The Child Act, in section 54, states that such places of safety as those that have been gazetted by the Minister accordingly for the care and protection of children.
223 Ibid.
224 Ibid.
227 Ibid.
Workers (MASW) to set up systems to generate professional, competent and accountable social workers and deliver competent and timely welfare services. This will include building capacity to efficiently prevent, intervene and respond to incidences of abuse, neglect and violence among women, children and other vulnerable groups. Specifically the Government approved the following six recommendations:

i. Establish the National Competency Standards for Social Work Practice and Education;
ii. Enact a Social Workers Act;
iii. Set up a regulatory licensing board;
iv. Recruit social work graduates into social work positions in the civil service;
v. Standardise all social work programmes in Institutions of Higher Learning;
vi. Develop social work courses at certificate and diploma levels.

There are further plans to pass a Social Worker Act to legalise these requirements and to formally regulate the profession of social work in Malaysia and strengthen the provision of welfare services towards the care, safety and protection of all citizens in Malaysia.

d. Prevention Strategy

Malaysia sees gender stereotypes as a major contributory factor to violence against women (and children). Thus, much of the national policies addressing this problem focus on ‘awareness and training programmes relating to understanding gender roles and expectations’. These include ‘[g]ender sensitisation courses … for agencies involved in the handling and management of domestic violence cases’ and the development of standard operating procedures to ensure better coordination between agencies to increase effectiveness.

The two national policies on children and child protection set the framework for two national reform processes. According to Malaysia’s 2009 National Child Policy and Child Protection Policy, a holistic approach is needed to protect and preserve the rights of children. The National Child Policy directs the development of a conducive environment to safeguard the rights of children to survival, protection, development and participation. The National Child Protection Policy and Child Policy expressly aim to mobilize intra and inter-ministerial involvement to address the needs of children and community. They also intend to maximize the efforts and leverage the roles of the private sector, media, civil society and the community. The policies additionally encourage a systematic approach to advocacy and building evidence to help make in-depth analysis related to children, and propose interventions that would promote child well-being.

The Legal and Advocacy Division of the Department of Social Welfare has taken steps to advocate child issues, including conducting training courses on handling child abuse cases throughout the country for social welfare officers. The Department of Social Welfare has developed Training Modules on Handling Child Abuse Cases with UNICEF’s funding, which are directed at training Social Welfare Officers, members of the Child Protection Teams, Health Department, police and prison personnel to handle child abuse cases professionally. More information as to the scope and content of such courses, the efficacy of the training as well as whether there has been increase in the quantity of such courses conducted would be useful.

Malaysia has launched various campaigns to counter problems of gender-stereotyping and cultural biases.

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230 Ibid., 2.


236 CRC Report, 120 (cited in note 9).
Ministry is strong on public education campaigns; it engages the services of the private sector including public relations experts, advertising agencies and event organizers to organize campaigns and conference to generate visibility of women's issues. Such campaigns include ‘Keluarga Bahagia’ (Happy Families), ‘Caring Society’, ‘Legal Literacy’, and the ‘Morality and Character Building for Children and Youth’, which broadly address social consciousness and family values. Other campaigns are more directed, such as the Women against Violence Campaign (WAVe), which raise awareness of children and women's issues. The reports also state that Women and Family Development Councils implemented Seminars on Reducing Violence against Women in 219 parliamentary constitutions all over the country; in 2004, 15,485 participants supposedly benefited from the seminars. In addition, the National Population and Family Development Board also developed a Belaian Kasih module in 1998 to equip parents with parenting knowledge and skills needed to handle children. Part of the module also educates parents on issues of safety at home including possibilities of sexual abuse. More information on the content, dissemination and effectiveness of these campaigns/training would also be useful.

The Government's Communications and Multimedia Content Code prohibits obscene and violent content which includes pornographic material, the portrayal of sex crimes (which includes rape, attempted rape, statutory rape and bestiality) as well as other non-consensual sex, or violent sexual behaviour, child pornography and the portrayal of women, men or children as mere sexual objects or in a demeaning manner.

4. Role of Non-State Actors

There is strong women's rights activism in Malaysia. Women's rights NGOs are among the best-organized and most effective civil society groups in the country. There are broadly speaking two types of civil society groups addressing women's rights, advocacy groups and service providers. Among advocacy groups are two sub-groups, those engaged in general advocacy and those engaged in specialized advocacy for gender equality within Islamic laws. Some more prominent advocacy groups for women are:

- Women's Aid Organisation (WAO);
- All Women's Action Society Malaysia (AWAM);
- Women's Centre for Change (Penang) (formerly Women's Crisis Centre);
- Tenaganita;
- Islam-focused advocacy group: Sisters in Islam;
- EMPOWER
- Good Governance & Gender Equality Society Penang (3Gs).

Women NGOs in Malaysia are extremely active in advocacy, awareness and assistance efforts. They have become well organized, effective in mobilization and in enlisting media assistance in broadcasting issues affecting women. They also provide strong community assistance to survivors of violence. Many NGOs also provide legal advice and service to survivors. There are also cooperative efforts between the respective state governments, on the one hand, and women rights NGOs, on the other.

Child rights activists usually focus on empowerment. The Mousedeer Group for example uses social media to encourage children in Malaysia to be involved in active discussion about human rights. UNICEF also collaborates with local individuals and organizations to promote awareness of the rights of children. This is aimed at changing parents’ mind-sets and empowering children. For example, UNICEF enlisted Marina Mahathir (a social activist and daughter of former Prime Minister Mahathir Mohammad) as one of its advocates. Marina Mahathir pioneered the popular television programme 3R, which stands for Respect Relax Respond. It is an award-winning programme that addresses a range of issues affecting the young, such as family ties, careers, romantic relationships, sexuality, and substance abuse.

238 CEDAW Report, 83 (cited in note 8).
239 CEDAW Report, 83 (cited in note 8).
240 CRC Report, 190 (cited in note 9).
241 Responses to CEDAW Questions, 19 (cited in note 14).
242 CRC Report, 191 (cited in note 9).
243 CRC Report, 191 (cited in note 9).
a. Assistance to Victims

According to the CRC Report, non-state actors provide assistance to child victims through the Family System Children’s Homes (Rumah Tunas Harapan) scheme. The scheme is broadly conceived as an innovative alternative to institutional care for children who are unable to stay with their natural families due to unavoidable circumstances (which presumably would include abuse).249 Children are placed in groups of eight or ten in specially built homes under the care of married couples selected from the community to act as foster parents.250 As the report states, this scheme relied on partnerships and collaborations among the government, corporate bodies, NGOs, community based organizations and the National Welfare Foundation.251 As of 2006, there were 8 Homes with 25 house units operating with 225 children.252

The Women’s Aid Organisation (WAO) provides shelter for abused women and their children, as well as a Child Care Centre (CCC) for children of former residents at the shelter. At the shelter, social workers offer face-to-face counselling and telephone counselling. The WAO shelter is a Ministry-designated safe house for victims of domestic violence.253 The WAO publishes an annual review containing important data on the clients who receive its services. In 2011, the WAO counselled 104 women face-to-face, and 1,347 over the phone.254 About 110 women received shelter with the WAO in 2011; domestic violence was the main reason women sought shelter.255 Besides that, a total of 16 children lived at its CCC where they are provided a home, education at local schools and a support system to meet their physical, mental and emotional needs.256

In addition, WAO also runs an Anak Angkat program which invites the public to sponsor children who were victims of domestic violence or whose mothers were victims of violence. The aim is to help pay for the daily living costs and school expenses of a child so as to reduce the financial burden on the women and children as the mothers seek and establish themselves in work, after leaving their abusive partners.257

Women’s Centre for Change Penang also operates a shelter home where the women and their children can stay temporarily. Staff from the centre will accompany them to the police and hospitals to make official reports, and to other agencies such as the welfare department or the Courts. Since 2009, the Women’s Centre for Change manages the Pusat Perkhidmatan Wanita S. Perai (PPW), a project initiated by the Penang State Women, Family and Community Development. The PPW provides crisis intervention services such as direct counselling, telephone counselling, e-counseling, temporary shelter for abused women and children, as well as legal advice. According to its website, the WCC provides direct counselling to more than 270 women, serves about 1,000 telephone calls for counselling, and provides emergency shelter to more than 10 women and 20 children each year.258 WCC expanded its services to provide victim support to rape survivors in court trials; in 2011, the WCC undertook three rape cases, including that of a 4-year old child who was allegedly raped by a director of the kindergarten she attended. WCC also worked with the Deputy Public Prosecutor’s Office to educate and brief victims about the court process prior to trial.259

In East Malaysia, the Sarawak Women for Women Society (SWWS) operates a crisis hotline for women and a one-stop centre to provide counselling and support for survivors of domestic violence and rape.260 The SWWS’ work is crucial for women in rural areas.

Information outside of the reports does show that civil society is very involved in providing assistance and protection to victims of violence. For instance, Childline Malaysia, launched in 2010, is a national non-profit public safety project aimed at creating a national 24-hour phone

249 CRC Report, 226 (cited in note 9).
250 Ibid.
251 CRC Report, 226 (cited in note 9).
252 Ibid.
253 NGO Shadow Report (cited in note 13) (on article 7).
255 Ibid.
256 Women’s Aid Organisation, WAO Services, online at http://www.wao.org.my/Services_11_3_1.htm
257 The monthly sponsorship is RM70 per month per child and goes towards items such as school uniforms, books and stationery, milk etc. We hope that you will commit to helping a child for a full year at RM860.00 (inclusive of an administrative fee of RM20). WAO also welcome one-off donations to the Anak Angkat Programme Fund. Women’s Aid Organisation, WAO Anak Angkat Program, online at http://www.wao.org.my/WAOs+Anak+Angkat+Programme+me_39_4_1.htm (accessed Jul 25, 2012).
service for children under 18 years who are in need of information, care and protection.261 It is the country’s first helpline dedicated to children below 18. Childline is a collaborative effort between non-governmental and private sector organizations in partnership with government agencies such as the Ministry of Women, Family and Community Development (MWFCID), the Social Welfare Department Malaysia (JKMM), UNICEF Malaysia, MCTF and Child Helpline International (CHI). It aims to link children to short and long-term intervention and rehabilitation services.262 While Childline deals with a wide range of issues involving children from eating disorders to serious abuse, it remains a useful avenue for children and other adults to report instances of child abuse. Indeed, the helpline service number 15999 has been publicized through the mass media as an appropriate channel to report instances of child abuse.

b. Prevention Programs

All NGOs run campaigns to raise community awareness as part of preventive measures. The Association of Women Lawyers (AWL) organizes legal literacy programmes to teach people about the legal rights of a rape survivor and legal protections against rape.263 Many women’s and children’s organisations work closely with the Ministry of Women, Family and Community Development.264 More importantly, many women’s NGOs work closely with one another. The Joint Action Group (JAG) coordinated by the All Women’s Action Society (AWAM) was formed in 1986, comprising ten (now eleven) organizations concerned with gender equality.

(i) Campaign against Rape

JAG’s first major collaboration was a public campaign against rape in 1986-1987. It consisted of a traveling road show to present issues concerning rape and domestic violence to communities through dramas, skits and workshop discussions.265 Street theatre, public opinion surveys, petitions, exhibitions at shopping malls, and seminars in educational institutions and with community groups were also used.266 This was supplemented by a broad public initiative called Citizens against Rape’ in 1987 and again 2003. AWAM played a major role in the CAR initiatives. The CAR campaigns were reactions to the brutal rape and murder of a nine year-old girl, Ang May Hong, in 1987; and to the violent rape and murder of another young woman, Canny Ong.267 NGOs in the JAG group disseminate information and run programs to increase awareness about violence. For instance, WAO publishes on its website, among other helpful information, 15 ways to help a survivor of violence, which includes assuring the woman that she is not to blame.268

(ii) Campaigns against Domestic Violence

AWAM, WAO and WCC have been at the forefront of campaigning efforts against domestic violence. Not only did they organize activities and petitions to raise awareness, they also successfully lobbied the government to enact the Domestic Violence Act and, later, to amend it to broaden the definition of ‘domestic violence’. However, they have yet to achieve their initial goal of making domestic violence a specific crime. Women’s groups have been monitoring the implementation of the DVA.

(iii) Campaign Sexual Harassment Out (SHout)

In 2011, the women’s groups formed a joint-committee specifically directed at campaigning against sexual harassment in Malaysia.269 The Sexual Harassment out (SHout) Joint-Committee has the following objectives:

- To build awareness on the issue of sexual harassment at all levels of society, from homes, schools, workplaces to public spaces.
- To have a specific law against sexual harassment either at Federal level or at State level.

The SHout campaign aims to educate women about their rights and to draw the line between permissible and impermissible attention so that they can identify

261 Sagayam, Record High Child Abuse, (cited in note 37). The helpline reportedly received about 3,000 calls from children in six months since it was established. Of these, 484 reported abuses by parents.


264 E.g. CRC Report, 192, 230 (cited in note 9).


266 Organizations Addressing VAW: Malaysia (cited in note 265).


sexual harassment, particularly in the workplace. The Joint-Committee sees sexual harassment as a form of discrimination contrary to CEDAW and a form of violence against women.

(iv) An Integrated Approach to Preventing Child Sexual Abuse

Since 1997, the Women’s Centre for Change (WCC, previously known as Women’s Crisis Centre) developed a comprehensive and integrated approach to help parents, teachers, and children prevent and counter child sexual abuse. It launched a successful primary school project to provide talks to teachers and students to increase their awareness of sexual violence and worked with the Young Theatre Penang to conduct a drama roadshow titled ‘Ok Tak Ok’ (Ok Not Ok) to teach children to distinguish between good touches and bad touches, and how to respond to possible situations of sexual abuse.270 These efforts involve experts in child psychiatry and psychology, representatives from the police and the Social Welfare Department, and medical and social staff from hospitals.271

Following that, WCC developed an educational package ‘Bijak itu Selamat’ (Smart is Safe) in 2001 to help teachers, school counsellors and educationists to teach children to be aware of the dangers of child sexual abuse. This package is specially produced for children between 10 and 12 years of age and consists of following materials.

The WCC uses the ‘Bijak itu Selamat’ (BIS) package to conduct personal safety programmes in primary schools. The programmes consist of a one-hour interactive session and a half-day workshop aimed at the following objectives:

- Create awareness in children about preventing sexual abuse
- Help them differentiate between good touch and bad touch
- Teach them what steps to take if they are in a risky situation
- Encourage them not to keep secrets which make them feel uncomfortable
- Urge them to inform a trusted adult who can help them

WCC’s website contains extensive information about child sexual abuse, how to identify and how to prevent it.272

(v) Lobbying for Reform of Religious Laws

The Sisters-in-Islam’s central objective is the advocacy for the rights of Muslim women under Islamic (Sharia) laws. SIS has established a specific law reform project to educate the public and lobby for better legal protection of Muslim women. SIS also seeks to sensitize Sharia lawyers, Kadis and Muslim counsellors to the discrimination and biases against women that exist in the Sharia laws, or in their implementation. The organisation has published simple pamphlets such as ‘Can Muslim Men Beat their Wives?’ and ‘Are Women and Men Equal before Allah?’ to disseminate information to women who face abuse.

(vi) Services for Women in Rural Areas

The Sarawak Women for Women Service provides a range of services for women facing violence, including young women from rural areas. As the only women’s organisation providing support for rape survivors in Sarawak, SWSS lobbied for the creation of a Rape Survivor Support Group. Since 1989, this committee has brought together medical personnel, welfare officers and representatives from the police department to provide support for rape survivors. Rape victims are also assisted at a special room in the General Hospital that has been specially reserved for SWWS volunteers. SWSS also has a Crisis Phoneline, which provides women with a listening ear, empathy and emotional assistance, assists them to explore ways to resolve their crises and encourages them to make their own decisions.

c. Monitoring and Cooperation

The government also closely involves NGOs in formulating policies on women and children. Representatives from NGOs such as the National Council of Women Organisations (NCWO) and All Women Action Malaysia (AWAM) have been appointed to sit on various advisory councils in order to promote co-operation between governmental agencies and NGOs.273 NGOs have played a critically important role in highlighting areas of oversight and in suggesting needed improvements. The Joint Action Group for Gender Equality for instance, campaigned for a long time for a specific law on sexual harassment in Malaysia and in 2001 submitted a proposed Sexual Harassment Bill to the government.274


271 Organizations Addressing VAW: Malaysia (cited in note 265)


273 CEDAW Report, 21 (cited in note 8).

The Coalition of Malaysian NGOs in the UPR Process (COMANGO) has recommended for more governmental efforts to address rising violence against women in Malaysia.

Suggestions included the criminalization of marital rape, legislation to prohibit sexual harassment and stalking, more efficient implementation of the Domestic Violence Act 1994, and active training of the police and judiciary on gender awareness.\(^{275}\) This echoed many of the earlier recommendations by the NGO Shadow Report Group to CEDAW. There has been much valuable work by NGOs in Malaysia in collecting and publicizing much needed data and information on the problem of violence against women and children.

5. Progress Indicators and Challenges

a. Challenges

(i) Need for Comprehensive and Comparable Data

In general, the reports show that there is a need to broaden and deepen Malaysia’s data collection and reporting practices to include more empirical data on the prevalence of violence against women and children in Malaysia. Such data needs to be more comprehensive, showing for example the severity of such violence or otherwise, to the identity of the primary perpetrators of such violence, the breakdown of such cases by social class, racial or religious groups, and so on. Malaysia noted in its CEDAW Report that it has developed a Gender Disaggregated Information System (GDIS) to monitor the progress of women’s program and activities.\(^{276}\) Malaysia’s CEDAW Report stated that information available in the GDIS include data on child abuses, drug addicts, incest, rape, molest, domestic violence and sodomy but that the information are available only from 1997 to 2004.\(^{277}\)

In any event, the GDIS should continue to be usefully applied to gather and analyse the necessary data on the problem of violence against women and children. This data should be made publicly available. In the same vein, the Police Force should release its collected data on sex crimes for broad dissemination to the public.

It should be noted that the respective women’s non-governmental organisations collect valuable data on their clients, which can help to provide insights into the prevalence of the problem of violence against women and children, its causes, the background of the victims and perpetrators (age, income levels, nationality, etc.), as well as information on how to alleviate and deal with the problems.\(^{278}\) A central aggregation and analysis of the data would be helpful.

(ii) Need to Expand Perceived Coverage

Furthermore, there is a fundamental need to recognize that Malaysia’s human rights obligations extend also to indigenous women and children, as well as to foreign women and children. In general, it appears that there is a severe lack of reliable data concerning rural, migrant, aboriginal or indigenous women.\(^{279}\) This would include data on the prevalence of and the root causes of violence against such women.

(iii) More Effective Law Enforcement

In Malaysia’s Millennium Developmental Goals Report, it was noted that there is a pressing need to address the low rate of prosecution. The report noted that for rape, there were only 184 prosecutions in 2008, and 162 in 2009. The concern is that the low rate of prosecutions makes it appear that perpetrators can commit violence against women with impunity, indirectly rendering their actions acceptable.\(^{280}\)

Similarly, there is still concern over effective implementation of the Domestic Violence Act.\(^{281}\) Related laws such as the Evidence Act and the Criminal Procedure and Penal Codes still have to be amended. Furthermore, women’s groups express worry over the attitude of frontline agencies, including the police. There has been anecdotal observation that some police officers still consider domestic violence to be a private matter and would sometimes ask the abused wives to go back home.\(^{282}\) Gender sensitization among law enforcement authorities is crucial to ensure proper implementation.

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\(^{276}\) See e.g. CEDAW Report, 243, 354 (cited in note 8).


\(^{279}\) See e.g. CEDAW Report, 243, 354 (cited in note 8).

\(^{280}\) See Women’s Action Organisation, *Concern over Effective Implementation of Domestic Violence Act (DVA) in Malaysia*, online at \(http://www.wao.org.my/Domestic+Violence_37_5_1.htm\) (accessed Jul 25, 2012); see also Lee, *Concern over Effective Implementation of Domestic Violence Act*.  

Jaclyn Ling-Chien Neo
b. Progress Indicators

Malaysia's MDG report identified the following progress indicators to promote gender equality and empower women:

1. Ensuring mainstreaming of gender into all government policies through establishment of a gender management system.
2. Integrating gender into strategic planning and implementation processes such that gender is included in all development targets.
3. Implementing a gender and development budget policy requiring all government departments and agencies to identify those components of their budget aimed at addressing gender issues.
4. Intensifying the implementation of gender training programmes in the public and private sector to improve skills for gender analysis and policy formulation.
5. Training gender specialists in line ministries and sectors to implement gender mainstreaming.
6. Requiring public and private organizations to develop a gender equity policy—the Tenth Malaysia Plan's objective of getting all organizations to publish the gender and ethnic composition of their employees is a significant step.
7. Shaping public discourse by engaging civil society in identifying appropriate indicators and by regularly publishing the results of monitoring and evaluation of these indicators.

(i) Optional Protocol to CEDAW

The ratification of or accession to the Optional Protocol to CEDAW would allow women a direct channel of recourse. Malaysia has indicated that it will look into the possibility of ratifying or acceding to the Optional Protocol 'when and only if' all obligations of the country to the provisions of the Articles in CEDAW have been fulfilled.283

(ii) Genderizing Laws

Despite enactment and revision of laws protecting women, such as the Domestic Violence Act and expanding the law relative to rape, there remain several laws, which still indirectly discriminate against women and children. For instance the Evidence Act and the Criminal Procedure Code still do not afford adequate consideration to the specific vulnerabilities of women and children victims.

(iii) Gender-Sensitizing Law Enforcement

Although the DVA now includes psychological abuse as a form of domestic violence, there is concern that frontline law enforcement and implementation agencies, including the police, are not sufficiently well-acquainted with the need to protect women and children against such abuse.284 For instance, there is concern that there is a lack of qualified persons to determine if psychological abuse has taken place. Furthermore, existing counsellors and psychiatrists may not be adequately qualified or experienced to deal with psychological abuse in a domestic situation.

(iv) Public Health and Developmental Issue

Malaysia's Millennium Developmental Goals’ Report noted the worrying prevalence of violence against women. The Report recognized the need to recognize gender-based violence as 'a public health and development concern'.

(v) Gender Equality Act

The Ministry of Women, Family and Community Development has started discussions and consultations with governmental agencies, NGOs, and SUHAKAM on the proposal to enact a Gender Equality Act. SUHAKAM has stated that it is in full support of the proposal as it will enhance women's rights and promote gender equality.285

6. Recommendations for Further Study

Violence against women and children is a problem that has gained much attention in the past few decades, no less due to the success of women's groups in mobilizing the public and with the support of the media. This success is manifest in the increased data collected and the attention that the government has given to the issue. Nonetheless, there remain some areas of concern, which were alluded to earlier. These are:

(i) Inconsistencies between general laws and Sharia laws, especially where the former is more protective of women and children. Practices such as child marriages and subordination of wives have been justified on the basis of Sharia.

283 Responses to CEDAW Questions at 31 (cited in note 14).

284 Lee, Concern over Effective Implementation of Domestic Violence Act(cited in note 281).


Jaclyn Ling-Chien Neo
There is a need for Malaysia to reconcile the gap consistently with its CEDAW and CRC obligations. Malaysia should also withdraw its reservations to CEDAW and CRC, which were justified on the basis of Sharia.

(ii) Gap between law on the books and law in action due to lack of enforcement commitment.

(iii) Incest and sexual abuse of children by family members need to be given more attention. More disaggregated data and analysis into the causes and how to prevent family sexual abuse is critical.

(iv) Overt sexist and chauvinistic behaviour even among politicians was observed. Sexist remarks and behaviour should be condemned.

(v) Sexual harassment should be seen as a serious, and not a trivial matter. In this regard, data on the extent of the problem of sexual harassment needs to be collected.

(vi) Sexual violence against indigenous women involves particular dimensions of power and needs special attention.

C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

(i) Trafficking in Women and Children to Malaysia

Malaysia is a major transit point for human trafficking in the Eastern and Southeast Asia region.286 It is also a significant destination state for human trafficking.287 Trafficked persons are subjected to conditions of forced labour; women and children are often subjected to sexual exploitation. Malaysia has been on the US Department’s Trafficking in Persons Tier 2 Watch List for the past two years (2010-2011).288 Countries on the Tier 2 Watch List are those that do not fully comply with the [United States’ Trafficking Victims Protection Act’s] minimum standards, but are making significant efforts to bring themselves into compliance with those standards. In addition, these countries have a significant or significantly increasing number of victims of severe forms of trafficking or have failed to combat severe forms of trafficking.289

Trafficking in persons mostly involves women and children who are smuggled across borders and made to work under extremely exploitive conditions.290 Data provided by the Malaysian The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Majlis Antipemerdagangan Orang dan Antipenyeludupan Migran or MAPO) show that between 2008 and mid-2012, a total of 1,086 victims of human trafficking have been rescued and placed under Protection Order.291 A breakdown of the relevant figures from 2008 to 2011 is as follows:

| Statistics for Trafficking in Persons Cases From Feb 28, 2008 to Jun 30, 2012 |
|---|---|---|---|---|
| CASES | YEAR | 2008 | 2009 | 2010 | 2011 | 2012 (till Jun 30, 2012) | TOTAL |
| TOTAL CASES | 17 | 151 | 132 | 116 | 119 | 535 |
| TOTAL NO OF ARRESTED | 20 | 217 | 195 | 159 | 137 | 728 |
| TOTAL NO OF VICTIMS (INTERIM PROTECTION ORDER) | 85 | 956 | 870 | 445 | 567 | 2,923 |
| TOTAL NO OF VICTIMS (PROTECTION ORDER) | 29 | 206 | 471 | 218 | 162 | 1,086 |

Source: Ministry of Home Affairs292

In 2010, Malaysia amended its laws to differentiate voluntary from involuntary trafficking. The former is


287 Malaysia’s UPR at 93 (cited in note 10).


292 Ministry of Home Affairs, Statistic Cases of Trafficking in Persons and Smuggling of Migrants until June 2012 (cited in note 291)

Jaclyn Ling-Chien Neo
classified as smuggling in migrants. This reduced the number of persons classified as trafficked persons since a significant number of those persons were instead classified as smuggled migrants.

\textbf{Statistics for Smuggling in Migrants Cases}
\textbf{From Nov 15, 2010 to Jun 30, 2012}

<table>
<thead>
<tr>
<th>CASES</th>
<th>YEAR 2010</th>
<th>YEAR 2011</th>
<th>YEAR 2012</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL CASES</td>
<td>3</td>
<td>19</td>
<td>18</td>
<td>40</td>
</tr>
<tr>
<td>TOTAL NO OF ARRESTED</td>
<td>2</td>
<td>30</td>
<td>20</td>
<td>52</td>
</tr>
<tr>
<td>TOTAL SMUGGLING OF MIGRANTS</td>
<td>18</td>
<td>409</td>
<td>326</td>
<td>753</td>
</tr>
</tbody>
</table>

Source: Ministry of Home Affairs\(^{293}\)

According to MAPO, women and children make up a disproportionately large proportion of the victims. For instance, of the 977 victims rescued between 2008 and March 2012, 595 were women (about 61%) and 122 were children (about 12%).\(^{294}\)

The TIP Reports and other reports show that the majority of trafficking victims are foreign workers who migrate willingly to Malaysia, but subsequently subject to exploitative work conditions.\(^{295}\) Trafficked women victims are at high risk of being subject to sexual exploitation. A significant number of young women were falsely induced by promises of lucrative job contracts.\(^{296}\) Many recounted being recruited for work in Malaysian restaurants and hotels, and were granted ‘Guest Relations Officer’ visas.\(^{297}\) They were subsequently coerced into Malaysia’s commercial sex trade. Traditionally, the main source countries of trafficked women have been Indonesia, Nepal, India, Thailand, China, the Philippines, Burma, Cambodia, Bangladesh, Pakistan, and Vietnam.\(^{298}\) In recent years however, the list of source countries have expanded. In October 2011, Malaysian police rescued 21 Ugandan women who had been lured with promises of lucrative jobs and opportunities to study in colleges but were forced into prostitution by their captors.\(^{299}\) The women were brought first to China and then to Malaysia on social visit passes.\(^{300}\)

(ii) Trafficking of Malaysians

Malaysia is also a very small source state; every year, a small number of Malaysian women and children, primarily of Chinese ethnicity, have been trafficked abroad to Singapore, Macau, China, and Japan for commercial sexual exploitation, and the United States.\(^{301}\) The Malaysian Ministry of Foreign Affairs and NGOs estimate that fewer than 100 Malaysian women were trafficked abroad annually, and that the number had declined in recent years.\(^{302}\) Many of these women and girls were from rural areas and were enticed by promises of employment.

(iii) Internal Trafficking

There is also the problem of internal trafficking. Women and girls from rural areas, especially from East Malaysia, are particularly vulnerable to trafficking for sexual and labour exploitation in more prosperous states like Selangor and Johor.\(^{303}\) According to Tenaganita and Sarawak Women for Women Association (SWWS), there were many cases of Sarawak women who were promised jobs in West Malaysia but were later coerced into the sex trade.\(^{304}\) In 2011, the Secretary-General of the Ministry of Home Affairs Mahmood Adam announced that 136 people had been rescued between January and August in 53 human trafficking cases. Of the survivors, 8 were

\(^{293}\) Ibid.


\(^{296}\) See NGO Shadow Report, art. 6 (cited in note 13)


\(^{303}\) Group to hold seminar (cited in note 260).

Malaysians.305

(iv) Child Trafficking

Child trafficking is a growing problem in Malaysia, which recorded 118 cases between February 2008 and October 2010.306 Between January and August 2011, a total of 10 boys and 15 girls were rescued from human traffickers.307 These children were subsequently detained in government facilities.308 Reported forms of child trafficking involve labour exploitation, sexual exploitation, forced marriage, criminal activities, armed conflict, adoption and begging.309 Commercial sexual exploitation is the most commonly reported purpose of child trafficking.310 Small children and babies are also in high demand; syndicates use them to beg or they are sold to childless couples.311 Women are also trafficked to Malaysia for the purpose of selling their children for illegal adoptions.312 There are also cases where Malaysian children were bought or abducted for sexual exploitation.313

(v) Child Labour and Child Begging

There are no official statistics to show the number of children (under 15 years) who work in Malaysia. Many of these children work informally for their families, whether in markets, hawker centres, plantations or farms. It has been observed that many middle and lower class families in Malaysia have tended, for a long time, to see child labour as not abusive and even necessary for the welfare and prosperity of the family.314 However, there are long-term negative effects for the child who has to bear the stress of long and vigorous work hours. Many child labourers neglect their school work or end up not attending school, thereby foregoing opportunities to acquire education and skills for their personal and future development.

There are also reported incidences of children being used as beggars whether on their own or accompanied by adults. There are likewise no official statistics on this.

b. Root Causes of Exploitation and Aggravating Practices

(i) Socio-economic Factors

Poverty and/or persisting unemployment are key contributing factors to human trafficking.315 Furthermore, substance abuse, which frequently leads to financial and familial problems, as well as other stressors associated with financial hardships, may also be a reason for parents to ‘sell’ their children to human traffickers.316 Children with low levels of education and lack viable employment opportunities are also more frequently vulnerable to exploitation because they are more likely


309 UNICEF, Child Trafficking in East and South-East Asia (cited in note 286).

310 Ibid.


312 Responses to CEDAW Questions at 18 (cited in note 14)

313 Kurniawati Kamarudin, Child Trafficking in Malaysia (cited in 306).


316 Suka Society or Persatuan Kebajikan Suara Kanak-kanak Malaysia is a registered non-governmental organization set up to preserve and promote the best interests of children, online at: http://www.sukasociety.org/?page_id=2 (accessed Jul 15, 2012).

317 UNICEF, Child Trafficking in East and South-East Asia, 8 (cited in note 286).

318 Ibid.

Jaclyn Ling-Chien Neo
to accept unskilled or lower-skilled employment such as domestic service or factory work. Discriminatory practices within their home countries may also restrict the opportunities available to certain groups of people thereby causing them to voluntarily allow themselves to be trafficked or make persons more susceptible to abuse and exploitation.

(ii) Individual Factors

Factors relating to a person's individual circumstances, life experiences, skills and knowledge, personal documentation and physical environment may also contribute to his/her susceptibility to human trafficking. The lack of educational qualification and work opportunities can result in making one vulnerable to labour exploitation as well as human trafficking for labour exploitation. Children living on the street also typically lack proper adult supervision and support and are more susceptible to exploitation. In addition, those lacking citizenship and/or proper official documentation are also more vulnerable to labour and sexual exploitation. (See further chapter below on Stateless and Street Children.)

Internal conflict can also lead to displacement of persons, forcing them to move internally and across borders to seek shelter and employment. Their conditions make them more susceptible to human trafficking.

(iii) Market Demand

However, as has been observed, poverty per se does not cause trafficking. Instead, the demand for cheap or exploitable labour, for sex with children, for adoption outside the legal channels, and for women or girls for marriage all contribute to the trafficking phenomenon. Malaysia still does not give sufficient attention to address the trafficking problem from the demand side. There needs to be stricter laws and enforcement against persons who use the services of trafficked women and children.

(iv) Governmental Commitment

For some time, Malaysia saw its capacity to address the problem of human trafficking as being secondary to that of the source state. This is reflected in its UPR which states that '[t]he problem can never be solved by the transit or destination State'. Instead, '[t]he onus has to be on the source State to address the root cause of migration.' The UPR states:

'Malaysia acknowledges its human rights obligations to every person, but due to Malaysia's porous borders the influx is increasing despite pledges by source states that they have taken progressive measures and ranked higher in the Annual US State Department's Trafficking in Persons Report. The problem can never be solved by the transit or destination State. The onus has to be on the source State to address the root cause of the migration. All the actions taken by the transit and destination State would only be deemed as temporary as it would be unable to address the root cause of the migrations. As such Malaysia feels that the international community should place more emphasis on the source State both in financial and capacity building.'

Consequently, the Malaysian government have tended to approach the problem as one concerning illegal immigration rather than as a human rights issue. As the NGO Shadow Report noted, many foreign women who have been trafficked for sex are charged with immigration offences instead of prostitution, thereby making it harder to determine the extent of the problem. NGO Shadow Report states that it is crucial for the state to monitor and provide statistics as to the number of arrests, prosecutions and convictions obtained over the years under these laws to assess the effectiveness of these laws in dealing with what appears to be a growing phenomenon.

Furthermore, many victims of trafficking are also asylum seekers, refugees or stateless persons. However, their status as refugees and/or stateless persons are not always recognised and as such, they are subject to deportation back to their home country after being held in the Malaysian government's shelters for trafficked persons. It is said that many victims of trafficking who were rescued are placed in immigration detention depots. Conditions of the Malaysian immigration detention depots are

320 Ibid.
322 Ibid.
323 Ibid.
324 Ibid.
325 Ibid, 27.
326 UNICEF, Child Trafficking in East and South-East Asia at 8 (cited in note 286).
327 Ibid, 8, 27.
328 Malaysia's UPR, 94 (cited in note 10).
329 Ibid.
330 Ibid, 94-5.
331 NGO Shadow Report, art. 6 (cited in note 13).
332 NGO Shadow Report (cited in note 13) (on article 6).
deplorable and completely unsuitable to house detainees, much less rescued victims of trafficking.

There are positive signs of change. In January 2012, Malaysia jointly hosted the Bali Process Workshop on Protection of Victims of Trafficking in Persons with the International Organization for Migration (IOM). It is increasingly shifting its policies towards a victim-centred approach, consistent with international standards (see below on change in policy to allow trafficking victims to work).333

There is also evidence indicating that Immigration Officers are themselves complicit in human trafficking activities. Several NGOs drew attention to the human rights violations and discrimination faced by non-citizens. MWG-JUMP reported that deportees testify that Immigration officials collude with human smugglers/traffickers.334 It further reported that gender-based violence is significant amongst non-citizens with irregular status, since perpetrators are aware that victims are reluctant to lodge police reports for fear of getting arrested on immigration offences.335 In 2010, nine individuals, including seven Immigration Officers, were detained for their involvement in human trafficking. They were detained under the Internal Security Act 1960 (ISA), which provides for detention without trial, instead of being charged under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants 2007 (hereafter ‘Anti-Trafficking in Persons Act’).336

(v) Negative Public Misperception

The NGO Shadow Group report further identifies negative public perception as one of the causes for the lack of support and help for trafficked victims.337 Negative media imaging suggests that women involved in prostitution, even those who have been trafficked, are corroding public morality and even responsible for their own predicament.338 The illegality of their immigration status further dehumanizes them.

(vi) Evolving and Developing Legal System for Immigration

Malaysian national immigration policy is still evolving which requires more consistent and long-term planning. The status of migrants in Malaysia is not properly managed nor planned in the long term; they are not adequately protected against unscrupulous recruitment agencies and employers.339 Furthermore, there is an absence of coordination between the various national Ministries involved in the management of migrant workers.340 The absence of written immigration policy or immigration quotas reflects an ad hoc approach,341 which contributes to the abuse and discrimination of migrant workers, including migrant women and children.

The HRW has criticised Malaysia’s process of employing migrant works.342 Under the current system, companies are not responsible for sending unwanted migrant workers back to their countries of origin.343 Furthermore, there are no strict laws prohibiting agents from imposing heavy administrative fees on workers. This entraps them in a system of debt bondage, which is exacerbated in cases where the employers or the agents refuse to hand over the wages earned after the employment period. The government does not screen or accredit the recruitment agencies for domestic workers.

(vii) Corruption

According to a 2011 Issue Paper by the United Nations Office on Drugs and Crime, there are consistent indications that corruption plays an important role in facilitating and fostering the crime of trafficking


334 OHCHR Summary at 49 (cited in note 20).

335 Ibid.


337 NGO Shadow Report (cited in note 13) (on article 6).
in persons.\textsuperscript{344} The World Bank’s working definition of corruption is ‘the abuse of public power for private benefit’.\textsuperscript{345} Transparency International takes a broader approach and understands corruption as ‘the misuse of entrusted power for private gain’.\textsuperscript{346} Corrupt behaviour can be active (violating duties, accepting or transferring bribes, and facilitating transactions) or passive (simply ignoring or failing to follow-up on indicators that corruption may be taking place).\textsuperscript{347} As was highlighted in a 2005 Council of Europe report, corruption can facilitate human trafficking at many points:

(a) in the trafficking chain e.g. recruitment or acquisition of victims, provision of documentation, transportation within or across countries, control and exploitation of victims, and laundering of proceeds;

(b) in the criminal justice chain, e.g. refraining from drafting and adopting legislation, investigate or prosecute offenders, or generally enforce laws;

(c) in the victims support and protection chain, e.g. revealing or selling information on victims, or preventing victims from testifying against their traffickers.\textsuperscript{348}

According to the United Nations Convention against Corruption (UNCAC), manifestations of corruption would include: bribery of national public officials, foreign public officials, and officials of public international organizations; embezzlement, misappropriation and other diversion of public property, trading in influence, abuse of functions, and illicit enrichment by public officials; and bribery and embezzlement in the private sector, as well as laundering of the proceeds of crime, concealment and obstruction of justice.\textsuperscript{349} Malaysia is a party to the UNCAC.\textsuperscript{350}

Official corruption is a crime in Malaysia. There is increasing effort to enforce the law and recent cases involve high-level officials in the government. There still remains an enforcement gap. Furthermore, there is still a broadly held and persistent public perception of widespread corruption and cronyism in government.\textsuperscript{351} At present, Transparency International (TI) Corruption Perception Index (CPI) ranks Malaysia as the 60th least corrupt nation among the list of 183 countries worldwide included in the survey. This ranking however has been declining for three consecutive years.\textsuperscript{352} The Whistleblower Protection Act was passed in 2010 to encourage persons to disclose information on corrupt practices in both the public and private sectors. The whistleblower is immune from civil or criminal charges.\textsuperscript{353}

Corruption is a serious impediment for good governance. It is becomes egregious and abusive when corrupt officials take advantage of the weak and the poor such as migrant workers. According to the 2011 TIP Report, for instance, RELA volunteers have used the threat of immigration detention to extort money from migrant workers.\textsuperscript{354}

c. Impact of Exploitation

Women and children are trafficked primarily for sexual and labour exploitation. These women and children have their rights violated at multiple levels: when she is forced into prostitution, forced to have unprotected sex, is physically abused, not paid for services and punished by the law.\textsuperscript{355} Their health risks and special needs associated with such exploitation needs to be further studied.

The government recognises that trafficked victims often experience severe emotional trauma, and have taken measures to provide psychological counselling in shelters

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\textsuperscript{345} UNODC, \textit{The Role of Corruption in Trafficking in Persons} (2011) at 5 (cited in note 344).

\textsuperscript{346} \textit{Ibid.}

\textsuperscript{347} \textit{Ibid.}, 6.


\textsuperscript{349} UNODC, \textit{The Role of Corruption in Trafficking in Persons} (2011) at 6 (cited in note 344).


\textsuperscript{351} United States State Department, \textit{Country Reports on for 2011: Malaysia} (cited in note 305).


\textsuperscript{353} United States State Department, \textit{Country Reports on for 2011: Malaysia} (cited in note 305).

\textsuperscript{354} 2011 \textit{TIP Report} (cited in note 288). The Report states that this practice has continued although there are decreased reports of it.

\textsuperscript{355} NGO Shadow Report (cited in note 13) (on article 6).

2. **De Jure State Responses**

   a. **Bases of State Responsibility**

Malaysia grounds its anti-trafficking efforts in the following regional and international instruments:

(i) The 2004 ASEAN Declaration against Trafficking in Persons Particularly Women and Children;
(ii) The United Nations Declaration on Human Rights;
(iii) CEDAW;
(iv) CRC;
(v) United Nations Convention Against Transnational Organised Crime (UNTOC);\footnote{Ratified in 2004.}
(vi) UNTOC’s Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children;\footnote{The CEDAW Committee and the CRC Committee had urged Malaysia to accede to the Protocol, *CEDAW Concluding Comments*, 24 (cited in note 15); *CRC Concluding Observations*, 96 (cited in note 18).}
(viii) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.\footnote{The CRC Committee had urged Malaysia to accede to the two Protocols. *CRC Concluding Observations*, 107 (cited in note 18). Malaysia announced its accession in 2011.}

The signing of the OP on Child Sale, Prostitution and Pornography deserves special attention as it obligates states to criminalize the sale, prostitution and pornographic portrayal of the child, and to foster increased public awareness and international cooperation in efforts to combat them.

In addition, Malaysia's state responsibility is also informed by the following conventions.

- **Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery**;
- **ILO Convention Concerning Forced or Compulsory Labour**;
- **ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Labour, and**
- **ILO Convention concerning Migration for Employment**.

   b. **State Policies against Exploitation**

(i) **Trafficking of Persons**

Malaysia enacted a specialized legislation targeting anti-trafficking in 2007\footnote{The CEDAW Committee criticized Malaysia for not having enacted legislation on trafficking and has not established a comprehensive plan to prevent and eliminate trafficking in women and to protect victims. *CEDAW Concluding Comments* at 23 (cited in note 15).} and, following criticisms of under-enforcement of the law, established the National Action Plan in 2010 as a proposed coordinated effort to combat human trafficking. The 2007 Anti-Trafficking in Persons Act criminalizes human trafficking and sets up a legal mechanism for providing care, protection and shelter for the victims. It establishes the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) whose function is to implement the Act, formulate policies and programmes to prevent and suppress trafficking in persons including programmes in rendering assistance to trafficked persons, formulate protective programmes for trafficked persons and initiate education programmes to increase public awareness of the causes and consequences of the act of trafficking in persons.\footnote{Anti-Trafficking in Persons Act (2007), §§6, 7.}

The prescribed penalties for human trafficking are maximum 15 years of imprisonment for trafficking in adults and 20 years for trafficking in children. The penalties are commensurate with those of other serious offenses, such as rape. Section 12 of the Act states:

‘Any person, who traffics in persons not being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to fine.’

Furthermore, section 14 states:

‘Any person, who traffics in persons being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.’

357 Ratified in 2004.
358 The CEDAW Committee and the CRC Committee had urged Malaysia to accede to the Protocol, *CEDAW Concluding Comments*, 24 (cited in note 15); *CRC Concluding Observations*, 96 (cited in note 18).
360 The CEDAW Committee criticized Malaysia for not having enacted legislation on trafficking and has not established a comprehensive plan to prevent and eliminate trafficking in women and to protect victims. *CEDAW Concluding Comments* at 23 (cited in note 15).
The Act defines a ‘child’ as a person who is under the age of eighteen years.

Trafficking in persons is broadly defined under the Act as the ‘recruiting, transporting, transferring, harbouring, providing or receiving of a person for the purpose of exploitation.’ Exploitation is further defined as including ‘all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.’ In 2010, the government amended the Act to broaden the definition of trafficking to include all actions involved in acquiring or maintaining the labour or services of a person through coercion, and to create a new offence of smuggling of migrants which targets non-coerced acts of illegal migration.

Malaysia’s anti-trafficking policies involving women and children is said to be ‘viewed from a holistic perspective and not isolated from violence against women or abuse of children or confined solely to migrant women.’ Its anti-trafficking legislation is supplemented by other measures protecting women and children from rape, criminal force and assault, kidnapping, abduction, slavery and forced labour. The Anti-Trafficking in Persons Act supplements existing law such as the Penal Code which makes it an offence to import, export, remove, buy, sell or dispose of any person as a slave or to accept, receive or detain any person against his will as a slave (section 370). In addition, section 373A of the Penal Code makes it an offence to use false pretences or false representations to bring into Malaysia any woman for prostitution. Anti-Money Laundering Act 2001 makes the trafficking and prostitution offences under the Penal Code predicate offences, which means that proceeds from those unlawful activities can be frozen, seized and forfeited under the Act.

Section 26A of the Anti-Trafficking of Persons Act criminalizes the smuggling of migrants:

‘Any person who carries out smuggling of migrants commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to fine, or to both.’

The smuggling of migrants is defined as:

‘(a) arranging, facilitating or organizing, directly or indirectly, a person’s unlawful entry into or through, or unlawful exit from, any country of which the person is not a citizen or permanent resident either knowing or having reason to believe that the person’s entry or exit is unlawful; and

(b) recruiting, conveying, transferring, concealing, harbouring or providing any other assistance or service for the purpose of carrying out the acts referred to in paragraph (a), thereby targeting non-coerced acts of unlawful entry.

According to the Secretariat of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, the key distinctions between trafficking in persons and smuggling of migrants is determined as such:

<table>
<thead>
<tr>
<th>TRAFFICKING IN PERSONS</th>
<th>SMUGGLING OF MIGRANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The instrument/international law involved is Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children under UN Convention on Transnational Organised Crime.</td>
<td>The instrument/international law involved is Protocol against the Smuggling of Migrants by Land, Air and Sea under UN Convention on Transnational Organised Crime.</td>
</tr>
<tr>
<td>The main element to prove any offence relating to trafficking in persons is exploitation and it may happen in a country without being a cross-border offence. It may also happen at the domestic level.</td>
<td>The important element in the smuggling of migrants is the cross-border occurrence.</td>
</tr>
<tr>
<td>Involving the elements of exploitation, manipulation, threat against victims. Continuous and repeated exploitation.</td>
<td>Involving consent of the smuggled persons and profits for the people smuggling syndicates. The smuggling activity ends upon arrival at the destination.</td>
</tr>
</tbody>
</table>

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362 Anti-Trafficking in Persons Act (2007), art. 2.
363 Ibid.
365 Malaysia’s UPR, 91 (cited in note 10).
366 Ibid.
367 CEDAW Report, 105(iii) (cited in note 8).
368 Ibid, 105(iv)
(ii) Child Act / Trafficking in or Selling of Children

The Child Act also criminalizes trafficking and selling of children. Section 48 for instance makes it an offence for any person to participate in any transaction aimed at transferring or conferring possession, custody or control of a child for valuable consideration. The prescribed punishment is a fine not exceeding ten thousand ringgit or to imprisonment not exceeding five years or both.

(iii) Forced Prostitution

Malaysian law criminalizes the exploitation of women for sex, although prostitution itself is not a criminal offense. Section 372 of the Penal Code makes it an offence to sell, let for hire, procure, buy or hire any person with the intent that such a person is to be employed for prostitution and have sexual intercourse with any other person within or outside Malaysia. It is also an offence to use false representations or false pretenses to bring or assist in bringing any person into or out of Malaysia with the intention that the person is to be employed or used for the purpose of prostitution. Other related offenses include receiving or harbouring a victim of forced prostitution, restraining someone for prostitution, acting as an intermediary for prostitution, soliciting for prostitution, and living on the earnings of a prostitute (sections 372, 372A and 372B). In addition, section 373 criminalizes the owning of a brothel.

(iv) Child Prostitution

The Child Act supplements the Penal Code’s framework of criminal laws against forced prostitution. Section 43 of the Child Act specifically provides that it is an offense for a person to sell, procure, harbour, detain and advertise any child for the purpose of prostitution or having sexual intercourse either within or outside Malaysia. A child is defined as a person who has not yet completed his/her fourteenth year of age, while a young person is defined as a person who is above fourteen years old but has not yet completed his/her sixteenth year of age.

Exploitation in the form of using a child for begging is criminalized under section 32 of the Child Act. The causing or procuring of a child for the purposes of begging, receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for

(v) Child Labour

As highlighted in the CRC Report, Malaysia's Children and Young Persons (Employment) Act 1966 regulates the employment of a child or young person in Malaysia. The Act prohibits the employment of a child unless under the following circumstances:

- employment involving light work suitable to his capacity in any undertaking carried on by his family;
- employment in any public entertainment, in accordance with the terms and conditions of a license granted in that behalf;
- employment requiring him to perform work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel; and
- employment as an apprentice under a written apprenticeship contract.

Similarly, the employment of a young person is prohibited except under the following circumstances:

- employment as a domestic servant;
- employment in any office, shop (including hotels, bars, restaurants and stalls), warehouse/godown, factory, workshop, store, boarding house, theatre, cinema, club or association;
- employment in any industrial undertaking suitable to his capacity; and
- employment on any vessel under the personal charge of his parent or guardian.

A child is defined as a person who has not yet completed his/her fourteenth year of age, while a young person is defined as a person who is above fourteen years old but has not yet completed his/her sixteenth year of age.

Exploitation in the form of using a child for begging is criminalized under section 32 of the Child Act. The causing or procuring of a child for the purposes of begging, receiving alms, whether or not there is any pretence of singing, playing, performing or offering anything for
sale’ is prohibited and punishable by imprisonment of up to two years and a fine of up to five thousand ringgit. The same section criminalizes the causing or procuring of a child to carry out ‘illegal hawking, illegal lotteries, gambling or other illegal activities detrimental to the health and welfare of the child’. A person having care of the child may also be prosecuted under this section for allowing a child to be on the street, premises or place for the prohibited purposes.

(vi) Rape and Abuse of Authority

A 2006 Amendment to the Penal Code inserted a new basis for invalidating consent of a woman so as to constitute rape. The new section 375(f) provides that a woman’s consent to sexual intercourse does not provide a valid defence to rape ‘when the consent is obtained by using his position of authority over her or because of professional relationship or other relationship of trust in relation to her.’ This new section is aimed at protecting women who are vulnerable to the sexual advances of their employers and superiors.

c. Assessment of State Policies

According to the National Plan on trafficking of persons, the main sources of reference for the Anti-Trafficking in Persons Act are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, which supplement the United Nations Convention Against Transnational Organized Crime (UNTOC). Malaysia signed and ratified the UNTOC, and acceded to the TIP Protocol in 2009. According to the Ministry of Home Affairs, as at 2010, up to 180 people have been prosecuted under the Anti-Trafficking in Persons Act.378

Malaysia takes a crime and punishment perspective on the problem of trafficking and exploitation of women and children. It further identifies the Royal Malaysian Police as the main law enforcement agency addressing the problem of trafficking and exploitation, while the Social Welfare Department plays a secondary role in protecting and rehabilitating women below the age of 21 who have been victimized or coerced or forced into prostitution.379 This crime and punishment approach also means that action against exploitation of women can only be taken if such exploitation is criminal in nature.380

Malaysia’s policies differ based on whether the person exploited is a foreign national or a Malaysian national. The policies also differ according to whether the exploited Malaysian national is below 18 years of age. In the latter situation, there is a stronger policy for the protection and rehabilitation of such exploited girls. Thus, girls found to have been exposed to moral danger or involved in prostitution are placed in rehabilitation centres throughout the country (see Child Act).381 The primary agency monitoring and implementing such measures is the Social Welfare Department (as opposed to the Police Force).382

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

(i) Legal Framework andProsecutorial Practices

Malaysia now has in place a legislative framework specially targeting human trafficking and has increased the number of convictions obtained under the Anti-Trafficking Act.383 Between 2008 and March 2012, a total of 621 persons had been arrested for trafficking in persons.384 Of these, 412 persons had been charged and 78 convicted.385 In 2011, the government prosecuted and successfully convicted 11 sex trafficking offenders and three individuals involved in labour trafficking; the convicted offenders were sentenced to three to eight years’ imprisonment.386 In another case, in 13 February 2011, a Myanmar national was jailed a total of 23 years (to run concurrently) and sentenced to four strokes of the cane for entering the country illegally, smuggling of six persons in his car in January, and having 17 false visit passes.387

However, there remains an implementation gap. The


379 CEDAW Report, 104 (cited in note 8).

380 CEDAW Report at 106 (cited in note 8).


382 Ibid.


2011 TIP Report highlights that there are still cases which Malaysia have yet to effectively investigate and prosecute its offenders in 2011.388 At the end of 2011, for instance, a total of 141 trafficking cases remained pending in Malaysian courts.389 There is also a high acquittal rate in trafficking cases – at 68% in 2011. Observers attribute this high rate of acquittal to lack of adequate victim-witness protection (whose testimonies are key evidence).390 Some also attribute this to poor judicial training on human trafficking.391

Furthermore, Malaysia has yet to ‘address problems of government complicity in trafficking.’392 There are reports of collusion between police and trafficking offenders.393 A case against a Malaysian immigration official arrested in July 2009 for the trafficking of Burmese refugees to Thailand is still pending.394

(ii) Key Agencies

Malaysia has also established an Inter-Agency Committee on Protection and Rehabilitation of Trafficked Victims in which NGOs and academicians are also members.395

One of the key issues that this Committee needs to tackle is to change perceptions among law enforcement officers and the public such that, instead of seeing the women and children criminals, they are seen as victims in need of compassion and help. Practical issues such as providing trafficked victims with translators who can speak their home language would allow them to communicate their problems and allow them to seek the legal, medical and emotional help they need.

While authorities continued some anti-trafficking training for officials with responsibilities to combat trafficking, including trainings conducted through cooperation with a foreign donor, international organizations, and NGOs, the lack of understanding of human trafficking by many Malaysian front-line officers, such as police and immigration, continues to hinder the identification and proper investigation of trafficking cases and identification and assistance to trafficking victims.396

Furthermore, it is not clear if there is effective inter-agency coordination among the Council on Anti-Trafficking of Persons, the police, Department of Immigration, Attorney-General's Chambers, Department of Welfare in carrying out all of the steps involved in fighting trafficking, including identifying a location, performing raids, identifying the victims, providing them with services, taking statements from victims, investigating criminal activity, prosecuting the perpetrators, as well as assisting victims with return and repatriation.397

As the CEDAW NGO Shadow Report Group emphasized, while statistics on trafficking and prostitution might be difficult to obtain due to the nature of the crime, it is important for the Government (especially the Royal Malaysia Police and the Department of Immigration) to put in place mechanisms to identify the extent of the problem and analyse the patterns and movements of trafficked persons in and out of the country.398

(iii) Informal and Underground Child Labour

The nature of child labour (informal and within the domestic setting) and of other forms of child exploitation (tending to be underground) makes it more difficult for governmental monitoring. Nonetheless, the existing legislative framework under the Child Act allows legal action to be taken wherever such exploitation becomes known.

b. Complaints Process

The government’s policy of detaining trafficking victims against their will (see section below) provides a disincentive for victims and their advocates to bring cases to the government’s attention or to cooperate with authorities.399 There is no specialized complaints process for women and children victims of exploitation, or for members of the public to report trafficking or exploitation

390 Ibid.
391 Ibid.
392 Kishna, Talk on US Trafficking in Persons (TIP) Repor (cited in note 388); NGO Shadow Report (cited in note 13) (on article 6).
394 Ibid.
395 Malaysia's UPR, 93 (cited in note 10).
397 The NGO Shadow Group had criticized the government for lacking inter-agency coordination. NGO Shadow Report (cited in note 13) (on article 6).
398 NGO Shadow Report (cited in note 13) (on article 6).
offences. The hotline for cases of trafficking is 999, which is the general number for emergency police and ambulance services.

Since the launch of Talent NUR, the Council for Anti-Trafficking in Persons should also list 15999 as a possible contact. Malaysia’s immigration policies of charging victims with immigration offences and lack of protection for victims of trafficking (detention in government facilities) may discourage victims from coming forward even if they had the opportunity to do so.

The UPR states that Malaysia is setting up a One Stop Information Centre which would provide comprehensive information on the statistics of traffickers and victims. The lack of a one-stop centre was one of the criticisms raised by the NGO Shadow Group in relation to Malaysia’s CEDAW Report. However, it appears that this one stop centre is only informational. The NGO Shadow Group’s proposal was for the establishment of a one-stop centre where trafficked victims can access the full range of legal, medical and emotional assistance needed for the individual situation. Further information is required on the work of the Centre, including its progress and effectiveness. There also needs to be more information on the accessibility of the Centre and as to how information about the Centre itself is disseminated so that trafficked victims may access the information and help available there. As noted by the NGO Shadow Group, sex workers are often subject to close monitoring and control by syndicates and are therefore unable access information for help. It is therefore vital that when the opportunity presents itself for them to get out, they or any person helping them know exactly whom they can call for help. Therefore, the public also needs to be made aware of where and how to access help for trafficked victims.

Enforcement of the Anti-Trafficking in Persons Act lies with the Royal Malaysian Police, Immigration Department of Malaysia, Malaysian Maritime Enforcement Agency, Royal Malaysian Customs and Labour Department.

c. Protection and Rehabilitation

According to the 2011 TIP Report, Malaysia has some, though limited and inadequate, efforts at improving victim protection in recent years. There remain serious concerns concerning Malaysia’s legal framework for addressing victims of trafficking, as well as the conditions to which these victims are subjected.

First, the government continues to treat victims of trafficking as illegal aliens and subject them to deportation to their countries of origin after their cases have been heard. The Anti-Trafficking in Persons Act legally provides immunity to trafficking victims for immigration offenses such as illegal entry, unlawful presence, and possession of false travel documents. Nonetheless, victims continued to be detained and deported, thereby treated akin to illegal immigration offenders. Furthermore, some victims who were not formally identified as trafficked persons are routinely processed as illegal migrants and held in prisons or immigration detention centres prior to deportation. Foreign embassies have complained that Malaysian authorities do not always inform them that their nationals have been detained in shelters, and have not always granted diplomatic mission access to these nationals.

Secondly, victims identified by authorities are issued an ‘interim protection order’ or ‘protection order’ which allows their detention in ‘shelters’ (‘places of refuge’ under sections 44 and 51 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act). These shelters are operated by the Ministry of Women, Family and Community Development. Residents are

400 Ibid.
402 Kishna (cited in note 392).
403 Malaysia’s UPR, 92 (cited in note 10).
404 NGO Shadow Report (cited in note 13) (on article 6).
405 Ibid.
406 Ibid.
407 Council for Anti-Trafficking in Persons, Information Leaflet on Trafficking (cited in note 401).
410 See 2011 TIP Report (cited in note 288) and Malaysia’s UPR, 92 (cited in note 10).
412 Ibid.
413 Ibid.
415 There are three shelters for women (one in Sabah and the other two in Kuala Lumpur), one for children victims (in Kuala Lumpur),...


418 Ibid.


421 Ibid.

422 Ibid.

423 Ibid.

424 *First Batch of 32 Victims of Human Trafficking to Work Here – Lee* (cited in note 333).

425 *Victims of Trafficking Allowed to Take Up Employment in Malaysia*, (Bernama Jan 13, 2012), online at http://mapo.bernama.com/

426 First Batch of 32 Victims of Human Trafficking to Work Here – Lee (cited in note 333).


428 Victims of Trafficking Allowed to Take Up Employment in Malaysia (cited in note 425).

429 Ibid.

430 Responses to CEDAW Questions, 19 (cited in note 14).

431 CEDAW Report, 110 (cited in note 8).

432 Ibid.

433 Responses to CEDAW Questions, loc. cit.

However, certain conditions have to be satisfied. Not only must the victim provide personal consent and approval from their respective diplomatic missions, they must also show that their safety is not guaranteed if they return to their country of origin and that they have entered the country legally. Under this changed policy, 32 Bangladeshi workers who were former victims of human trafficking for labour exploitation were allowed to take up employment in March 2012. An additional five Indian nationals who were also victims of human trafficking for labour exploitation were allowed to stay and work in Malaysia in May 2012.

This new policy has its limits. It only affects victims released from shelter homes, i.e. whose cases have been resolved. Those detained in shelters under protection orders are still not allowed to work; instead, they are given temporary jobs in shelter homes. Also, it remains to be seen how this change in policy would assist sex trafficking victims or child trafficking victims.

On the other hand, Malaysian women who have been involved in prostitution and/or have been sexually exploited are housed in centres called ‘Rumah Nur’ all over the country. Such centres offer rehabilitative programs such as education (formal and non formal) as well as vocational training for instance handicrafts, ICT literacy and other relevant skills to prepare them for re-entry into society. Although the CEDAW Committee requested the Malaysian delegation to provide ‘a description on the effectiveness of [the rehabilitative and protective measures]’, this was not provided. Such centres are primarily for Malaysian women. Women below 18 years of age who have been involved in prostitution are placed in rehabilitation centres. These centres provide protection and rehabilitation programs such as formal education, religious/moral education, vocational training and counselling.
In November 2011, the government announced that it was in the process of drafting a Memorandum of Understanding to participate in DNA-Prokids, a program founded by Dr Jose A. Lorent at the University of Granada in Spain aimed at creating an international DNA database to help match and reunite victims of child-trafficking with their families.434

**d. Prevention Measures**

Malaysia raises public awareness on trafficking in persons by conducting seminars and workshops as well as disseminating brochures.435 The government acknowledged in its National Action Plan that the problem of trafficking, its seriousness and its implications for national security and human rights are not fully understood by the Malaysian public, as well as government agencies, the private sector and NGOs.436 As such, public awareness campaigns are required to educate the public and to disseminate information widely.437 It recognizes that efforts to combat and prevent trafficking in persons require the support and cooperation of all sectors including participation of civil society.438

The Ministry of Women, Family and Community Development publish pamphlets on the indicators of trafficking; these pamphlets are distributed at border checkpoints.439 The Department of Social Welfare has also implemented preventive measures against sexual exploitation of women by raising community awareness about gender equality and women's rights. This includes Legal Literacy Programs, which were implemented in 219 parliamentary constitutions all over the country by Women and Family Development Councils.440 Recommendations to avoid being trafficked include: making sure there is an official job offer letter, understanding the job contract, making sure the salary is reasonable and consistent with the scope of work, verifying the agency/company's credentials, sharing information on the job and destination country with family, and to arm oneself with the address and telephone of the embassy at the destination country.441 Besides these efforts, the government also provided anti-trafficking training to Malaysian troops prior to their deployment abroad on international peacekeeping missions.442

Furthermore, there is increased cooperation with NGOs to improve anti-trafficking responses. For instance, the government provided a group of 125 women's organizations with $64,500 in funding to promote capacity building and awareness programs related to human trafficking.443 There are also state-level (as opposed to federal-level) efforts; for example, the state of Selangor created its own state level anti-trafficking council in 2011 staffed with leaders from the NGO community.444

Unfortunately, as the 2011 TIP Report pointed out, there is a lack of measures to address the problem from the demand side. No measures have been taken to reduce the demand for forced labour or commercial sex acts.445

**4. Role of Non-State Actors**

**a. Assistance to Victims**

Women's groups in Malaysia are closely involved in providing assistance to victims. For instance, groups such as Tenaganita and WAO offers services for women in need of support and assistance, and this includes trafficked women and girls.446

Several NGOs that provided comprehensive services to trafficking victims reported that they no longer refer cases to the police, as it is clear that doing so was detrimental to the welfare of the victims.447 Additionally, the referral of victims to authorities led to the transfer of custody to government facilities, where NGOs were reportedly barred from additional contact with the victims.448

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435 Malaysia’s UPR, 93 (cited in note 10).
437 Ibid.
438 Ibid.
440 Responses to CEDAW Questions at 19 (cited in note 14). It was stated that in 2004, 30,799 participants attended the Legal Literacy Programmes.
441 Council for Anti-Trafficking in Persons, Information Leaflet on Trafficking (cited in note 401).
443 Ibid.
444 Ibid.
445 Ibid.
446 NGO Shadow Report (cited in note 13) (on article 6).
448 Ibid.
b. Prevention Programs

Civil society has been increasingly involved in engaging the public in preventing human trafficking generally. For example, SUHAKAM publishes and disseminates a helpful Anti-Trafficking in Persons Brochure. On 9 December 2011, the Bar Council of Malaysia hosted a talk on 'US Trafficking in Persons (TIP) Report and Advocacy to Combat Human Trafficking', in collaboration with the Coalition against Modern-Day Slavery in Asia ('CAMSA') and with the support of Embassy of the United States, Kuala Lumpur ('US Embassy'). Thirty participants, comprising representatives of SMRIA, Malaysian Trades Union Congress, civil society organisations and law students, attended the talk.

NGOs and UNICEF work closely to deal with child trafficking and sexual exploitation of children. For instance Against Child Trafficking (ACT) Asia conducted a four-day workshop in February 2011 in collaboration with child rights organisation P.S. Save the Children.

5. Progress Indicators and Challenges

It is commendable that Malaysia has given increasing attention to address the problems of trafficking in women and children as well as of street children and stateless children, all of whom are especially subject to economic and sexual exploitation. However, while several measures have been taken, including the passing of legislation such as the Child Act and Human Trafficking Act to address these issues, more needs to be done to squarely deal with these problems. It is possible that there is still a misconception that the primary responsibility of such problems lies with the home countries of the trafficked women and children as well as of the undocumented migrants. As such, these issues tend to be seen as foreign (rather than domestic) problems that just happen to occur in Malaysia.

Furthermore, although Malaysia has acknowledged that trafficking in persons is a major crime and violates basic human rights, the current framework is still rooted in treating trafficking as an immigration problem. More needs to be done to overhaul the current framework and the attendant attitudes of persons in positions of authority towards trafficked victims.

The reports suggest several recommendations to address the problem of trafficking in women and children:

First, it is crucial for the state to monitor and provide statistics as to the number of arrests, prosecutions and convictions for trafficking in order to assess the effectiveness of the laws in dealing with trafficking.

Secondly, there is a need to establish monitoring mechanisms on the enforcement of laws and policies related to trafficking in women and the exploitation of prostitutes.

Thirdly, there needs to be effective and equal enforcement of current laws against the entire network that sustains the trafficking industry, and not just the women and children who are trafficked and exploited. This includes brothel owners, agents who bring in the women from other countries and clients who solicit sex services.

Fourthly, the public and enforcement agents need to be better educated as to the problems of trafficking and exploitation so they may see trafficking and exploitation as human rights violation rather than as purely and issue of crime and punishment. Law enforcement officers need to be trained to identify rapidly and accurately victims of trafficking so as to be able to render the necessary assistance and protection.

The National Action Plan identifies nine main goals that will lead to the realisation of the national vision in combating trafficking in persons while ensuring effective implementation of the National Action Plan:

1) Improve the anti-trafficking response by strengthening legal framework.
2) Implement integrated action among enforcement agencies.
3) Raise public awareness through information dissemination to the public.
4) Provide protection and rehabilitation services that conform to international standards in collaborations with the NGOs.
5) Combating labour trafficking.

449 SUHAKAM, Anti-Trafficking in Persons, online at http://www.suhakam.org.my/anti_trafficking_in_persons(accessed Jan 25, 2012). This was also noted in the 2011 TIP Report (cited in note 288).
450 Kishna (cited in note 392).
451 Ibid.
452 NGO Shadow Report (cited in note 13) (on article 6).
453 Ibid.
454 Ibid.
455 Ibid.
456 Ibid.
7) Develop information management system for government agencies involved in fighting trafficking in persons.
8) Develop local and international partnership.
9) Strengthen Governance.457

In ensuring the sustainability of the outlined measures, specific parameter and systematic evaluation approach is vital to assess the effectiveness of the efforts.458

6. Recommendations for Further Study

Exploitation is not one incident but the result of an entire worldview that fails to see each and every human being as valuable and imbued with dignity. The current legal and political system of Malaysia still has a tendency to view trafficking and exploitation as primarily a law and order, and economic issue; as opposed to it being a human rights issue. There needs to be systematic and targeted efforts to change this.

Furthermore, it is likely that the escalating racial and religious rhetoric in the country contributes to an overall intolerant environment that sees people of a different race, colour, religion, socio economic status as unequal and less valuable. Not only is there a need for better and clearer data on the extent of exploitation of women and children in the forms mentioned above, there is also a need to interrogate why Malaysians are willing to engage in such exploitative acts, as well as the possibility that the hostile (racist and intolerant) environment engendered by the constrictive democratic space causes or at least contributes to such systemic exploitation in the country.

In addition, specific data and in-depth analysis of the role of corruption in trafficking in persons remains limited.459 This is detrimental to establishing integrated and effective strategies to understand and combat trafficking in persons.460 It has been hypothesized that states with high level of corruption also tend to be states with low standards and efforts against trafficking.461 Considering the allegations of corruption, more attention and scrutiny on the interrelations between corruption and human trafficking is required to better understand and combat trafficking of women and children in Malaysia.

Lastly, there is a need to review and map out the background of persons convicted of trafficking to determine if existing prosecutorial practices and convictions are adequately directed at all culpable persons, and not only those who are disadvantaged (e.g. foreigners and/or low-level assistants) and/or less acquainted with the criminal justice system.

D. ABUSE AND DISCRIMINATION IN MIGRATION

1. Description of the Problem

a. Prevalence of Abuse and Discrimination in Migration

According to the Migration Working Group and the Northern Network for Migrants and Refugees’ (MWG-JUMP) representations to the UPR Working Group, Malaysia hosts around 2.1 million documented migrant workers, amongst whom there were 315,703 domestic workers in 2009.462 It is further estimated that there may be an additional estimated 1.9 million undocumented migrant workers in the country,463 although there is no reliable way of determining the numbers. Most female documented migrant workers in Malaysia are domestic workers.

(i) Domestic Workers

Migrant domestic workers in Malaysia are exposed to various kinds of abuse and discrimination such as physical abuse, sexual abuse, psychological abuse and economic victimization, including restrictions on movement, non-payment of wages, passport confiscation, or debt bondage.464 Abused domestic workers report employers beating and overworking them, withholding their salary, subjecting them to malnourishment and denying them contact with family.465 Furthermore, domestic migrant

457 National Action Plan Against Trafficking in Persons, 8 (cited in note 436).
458 Ibid, 7.
461 Council of Europe, Trafficking in Human Beings and Corruption, 8, (cited in note 348).
workers are also subject to forced confinement in training centres where the workers live in squalid quarters, with inadequate food and water. Systematic abuse and discrimination of migrant domestic workers start from the moment of recruitment in their home country and is not confined to the host country or limited to their employers. Such restrictive conditions have been described as ‘indicative of trafficking.’

Most reports of domestic worker abuse involve Indonesian workers since they form about 90% of domestic workers in Malaysia. Consequently, most of the abused maids have been Indonesians who report beatings, torture, harsh and exhausting working conditions, failure of employers to pay salaries and even rape. Indonesia has criticized Malaysia as being the most problematic of all Asian countries that hire Indonesian domestic workers.

The CEDAW Committee expressed concern about the lack of legislation and policies on the rights of migrant workers, particularly migrant domestic workers who are mostly women. At present, official police statistics do not provide separate statistics on domestic worker abuse cases. Most of the available data on the extent of and modes of migration and violence, abuse, exploitation of migrants, the impact of their countries of origins, and the extent of their vulnerability are from non-governmental sources, media reports, and are based on anecdotal accounts.

The number of abuse cases involving domestic workers is relatively low, considering the number of workers present in Malaysia. Malaysia’s response to the CEDAW Committee states that less than 1% of workers (not gender disaggregated) have lodged complaints of abuse before the Ministry of Human Resources and other relevant authorities. The police department has also stated in media reports that the number of reported abuse cases is not very high, especially relative to the number of domestic workers in Malaysia. For instance, there were 39 cases in 2005, 45 in 2006, 39 in 2007 and 42 in 2008. However, incidences of domestic worker abuse tend to be highly publicized and the severity of those few incidences of abuse have tended to invoke public outcry.

It should nonetheless be noted that the low number of reported police cases may also be due to under-reporting: first, because many domestic workers continue to suffer in silence partly because they lack knowledge of their rights or are unable to gain access to such authorities; and secondly, because many prefer to approach their own embassies for help.

Indonesian media reports had claimed in 2009 that there were up to 150 complaints of abuse, overwork, ill treatment and unpaid salaries lodged by maids each month. The police reports show that most cases of physical abuse (beatings) were carried out by wives of the employer, their children, relatives, and even by agents. In 2009, Indonesia declared that it has ceased sending domestic workers to Malaysia after news reports highlighted gory incidents of Indonesian domestic workers tortured by employers. The ban was only lifted in 2011 after Malaysia signed a Memorandum of Understanding guaranteeing more protection for Indonesian domestic workers.

Nonetheless, even though the reported cases of abuse form a small percentage of the number of domestic workers, the accounts that have surfaced have shocked the public for their inhumanity and brutality. The police department has stated that more than 65% of the cases reported involved sexual abuse of maids aged between 25 and 35. Between 2005 and 2008 for instance, police handled 85 cases of maids who were raped, mostly by employers; and 29 cases of outrage of modesty. There have also been instances of deaths following brutal beatings by their employers. In 2011, Cambodia banned its citizens from working as domestic workers in Malaysia following the death of three Cambodian maids, as well as accusations of abuse including two reported rapes and sexual assaults.

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466 HRW, Help Wanted, (cited in note 26).
467 HRW, They Deceived Us at Every Step, (cited in note 27); Human Rights Watch, Help Wanted, (cited in note 26).
470 D’Cruz, Slave Maids a Black Mark for Malaysia (cited in note 469).
471 CEDAW Concluding Comments, 25 (cited in note 15).
472 Responses to CEDAW Questions at 17 (cited in note 14).
474 Pandiyan, Only a small percentage of domestics are abused (cited in note 473).
475 Ibid.
477 Pandiyan, Only a small percentage of domestics are abused (cited in note 473).
forced isolation.\textsuperscript{478} Several Cambodian domestic workers also report of their employers refusing to pay their wages.\textsuperscript{479}

There is also a problem of minors working as migrant domestic workers in Malaysia. Lax monitoring and supervision of agency practices have facilitated this. Foreign minors are not allowed to work as domestic workers in Malaysia. For example, according to the Women’s Aid Organisation, three out of the nine migrant domestic workers who sought shelter with the organisation in 2011 were younger than 20 years old.\textsuperscript{480} This is even though they possessed passports stating that they were 21 years of age.\textsuperscript{481} The youngest migrant domestic worker the WAO sheltered in 2011 was a 12 year old from Cambodia.\textsuperscript{482}

More needs to be done to fully understand the extent of the problem of discrimination and abuse suffered by migrant domestic workers in Malaysia, but more importantly a stronger commitment on Malaysia’s part is needed to address the problem.

\textbf{(ii) Undocumented/Stateless Children}

As the CRC Committee noted, there is a lack of relevant data on ‘non-Malaysian children living in Malaysia.’\textsuperscript{483} Non-Malaysian children born in Malaysia, including asylum-seeking/refugee children and children of undocumented migrant workers, are at high risk of not being registered at birth.\textsuperscript{484} According to NGO and international organizations, many stateless children were born to Filipino and Indonesian immigrants of irregular status in Sabah. Most of these immigrants entered the country illegally whereas others are refugees holding IMM13 immigration stay pass. These immigrants often fail to register their children’s birth.\textsuperscript{485} Without a birth certificate, the child would not be able to trace his/her family’s country of origin and therefore would be unable to apply for a passport.\textsuperscript{486} Under those circumstances, the child would be stateless or at a high risk of being stateless.\textsuperscript{487}

It has been highlighted that many undocumented migrants did not register their children’s birth because, in order to obtain a birth certificate in Malaysia, migrants are often required to produce a valid passport for each parent and a certificate of marriage—documents which they are unlikely to possess.\textsuperscript{488} Even if parents are able to register the birth of their children and are able to obtain birth certificates, the citizenship status of their children can be uncertain. Malaysia does not grant citizenship by birth; children born in Malaysia are citizens only if one parent is a citizen of Malaysia.\textsuperscript{489} These undocumented children or even those with foreigner status in their birth certificates suffer discrimination in many aspects.

The lack of citizenship or documentation proving their status makes these children especially vulnerable to exploitation and trafficking.\textsuperscript{490} There are no official figures on the total number of undocumented and/or stateless children in Malaysia. It has been estimated that there are at least thousands of street children in Sabah itself, mostly of Filipino descent.\textsuperscript{491} These numbers have yet to be accurately verified since many of these children are transient and highly mobile – moving within the city.

\begin{footnotesize}
\textsuperscript{478} Accounts from Cambodia’s Community Legal Education Centre, which helps abused domestic workers. Isabelle Lai & Lim Wey Wen, \textit{Cambodia bans its citizens from working as maids in Malaysia}, (The Star Oct 15, 2011), online at: \url{http://news.asiaone.com/News/AsiaOne+/News/Malaysia/Story/1Story20111015-305100.html} (accessed Jul 25, 2012).


\textsuperscript{480} WAO, \textit{Annual Statistics 2011} at 28 (cited in note 114).

\textsuperscript{481} \textit{Ibid}.

\textsuperscript{482} \textit{Ibid}.

\textsuperscript{483} CRC Concluding Observations, 25 (cited in note 18).

\textsuperscript{484} \textit{Ibid}.

\textsuperscript{485} \textit{Undocumented Children in Sabah Vulnerable to Statelessness} (cited in note 500); The International Observatory on Statelessness, \textit{Report on Malaysia}, online at \url{http://www.nationalityforall.org/malaysia} (accessed Jun 24, 2012). This problem is also noted in the United States State Department’s \textit{Country Reports on for 2011: Malaysia} (cited in note 305).

\textsuperscript{486} \textit{Undocumented Children in Sabah Vulnerable to Statelessness} (cited in note 500)

\textsuperscript{487} \textit{Undocumented Children in Sabah Vulnerable to Statelessness} (cited in note 500); The International Observatory on Statelessness, \textit{Report on Malaysia} (cited in note 540).


\textsuperscript{489} \textit{Undocumented Children in Sabah Vulnerable to Statelessness} (cited in note 500).

\textsuperscript{490} This problem was also noted by UNICEF in its 2009 report on child trafficking: UNICEF, \textit{Child Trafficking in East and South-East Asia} (cited in note 286).

\textsuperscript{491} \textit{Undocumented Children in Sabah Vulnerable to Statelessness} (cited in note 500)
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from city to city and even across Sabah's porous borders. The CRC Committee expressed regret in its concluding observations that '[a]s regards children living and/or working in the streets, particularly in Sabah ... [Malaysia] could not present studies on the extent and nature of this problem.'

Furthermore, a significant number of undocumented children end up living on the streets when their parents are arrested for their undocumented status and deported. The CRC Committee noted that while Malaysia expressed a firm intention not to separate migrant children from their migrant parents to be deported, the implementation of current provisions of the Immigration Act 1959/63 (Act 155) has resulted in detaining and deporting migrant workers without effective efforts to prevent the separation of children from their parents. Consequently, unless they have other family or guardian in Sabah, most children whose parents have been deported end up living and working on the street at a very young age, and often in fish markets. These street children earn meagre sums for labour-intensive work and are discriminated against by the local population who see them as undesirable or criminal elements. These children are also targets for arrest and detention by immigration and police; in 2006 for instance, Sabah police arrested about 160 street children for unknown reasons. The CRC Committee noted such 'cleaning operations' with concern.

It should be noted that monitoring irregular migration in Sabah is a problem that extends beyond street children. The historical, cultural and geographical conditions of Sabah make it highly susceptible to intractable irregular migration. NGO and media reports highlighting the predicament of these undocumented/stateless children have led to increased attention on the issue.

Besides Sabah, another locality that has been identified for the higher concentration of stateless and/or street children is Chow Kit in Kuala Lumpur. Presently, the Malaysian government have identified more than 500 children have of primary and secondary school age without proper education in the Chow Kit area. This corresponds with NGO and media reports concerning a large number of children loitering at night in the back streets of Chow Kit, with some as young as six-years old. Children in Chow Kit are often neglected by the mothers/parents, as well as exposed to the risk of child labour, child trafficking, sex work and exploitation by drug dealers and pornographers. They also are at high risk of multiple diseases including mumps, chicken pox, rubella, skin afflictions and sexually transmitted diseases. It should be noted that street children in Chow Kit are not limited only to children of undocumented migrants; a significant number are of Malaysian origin whose parents have neglected to register their births. A collaborative study between UNICEF and the Education Ministry revealed that there were many homeless children in the Chow Kit area who were unable to get proper education due to poverty and the poor environment.

(iii) Refugees and Asylum Seekers

In 2011, Malaysia entered into a 'people swap' agreement with Australia, according to which 800 asylum seekers would be sent to Malaysia in exchange of 4,000 United Nations verified refugees. The 800 include unaccompanied children (children who are alone). The pact was heavily criticized because Malaysia is not a signatory to the

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492 CRC Concluding Observations, 93 (cited in note 18).
493 The International Observatory on Statelessness, Report on Malaysia (cited in note 540).
494 CRC Concluding Observations, 36 (cited in note 18).
495 Undocumented Children in Sabah Vulnerable to Statelessness (cited in note 500)
496 Ibid.
498 CRC Concluding Observations, 93 (cited in note 18).
503 Zaman, Faceless Street Kids of Chow Kit (cited in note 500).
504 Ibid.
505 Education for Chow Kit Kids (cited in note 501).
United Nations convention on refugees, raising questions about the treatment of the 800 asylum seekers it has agreed to accept.506 Malaysia’s immigration detention centres are over-crowded and detainees are subject to poor living conditions.507 There was also criticism that the move would endanger the lives of the young, thus violating the CRC, to which Australia is a party.508 The worry is that asylum seekers, particularly children, could face starvation and abuse, failure to attend school and be at risk of being detained for more than 4 or 5 years once they arrive in Malaysia.509

The Australia-Malaysia deal is now in abeyance after the Australian High Court struck it down.510 Lawyers representing asylum seekers successfully challenged the deal on the basis that Malaysia was not a signatory to the UN Refugee Convention and therefore could not guarantee the protection of asylum seekers sent from Australia, including unaccompanied children.511 The High Court agreed, ruling that under Australian law the government could not send asylum-seekers to any country that could not adequately protect them.512 Despite this, Australia has told Malaysia that it is still keen to go ahead with the deal, but must first get the support to bring the matter to Parliament.513

Malaysia estimates that there are almost 178,000 refugees, stateless persons and other ‘people of concern’ to the United Nations in the country.514 As at January 2012, the UNHCR had registered about 97,000 asylum-seekers and refugees, of which 19,700 were children below the age of 18.515 However, UNHCR has acknowledged that a large number of people are still waiting to be registered by the United Nations High Commissioner for Refugees for refugee status determination.516 Refugees and asylum-seekers have no legal right to work in the country. They do not receive assistance from the government, and some resort to working without authorization to survive.517 The UPR Working Group noted that as of 1 August 2008, the UNHCR had registered 41,405 persons of concern, of which 11,172 were children.518 Furthermore, it was noted that an additional 61,314 Muslim refugees from a nearby country reside in Sabah with documented status under IMM13 work permits.519 It is estimated however that thousands more individuals remain unregistered and outside UNHCR’s protection.520

Prior to 2009, both UNHCR-registered and unregistered asylum seekers, refugees and stateless persons were considered irregular migrants by most government agencies, in particular the Immigration Department and People’s Volunteer Corps (Ikatan Relawan Rakyat or RELA), which continued to arrest them for immigration offences.521 However, beginning in 2009 the government provided preferential treatment to those individuals carrying a UNHCR card.522 Reports of government deportation of some refugees and asylum seekers with UNHCR refugee cards effectively ceased.523 Nonetheless, there remain occasional reports by refugees of needing to pay bribes to police to avoid detention, despite carrying a UNHCR card.524

516 Loh, Australia-Malaysia deal endangers asylum seekers (cited in note 507).
518 OHCHR Summary, 9 (cited in note 20).
519 Ibid.
520 Ibid.
521 Ibid.
522 United States State Department, Country Reports on for 2011: Malaysia (cited in note 305).
523 Ibid.
524 Ibid.
Prior to 2009, prison and immigration detention centre officials tended to deny the UNHCR access to unregistered asylum seekers in detention. However this has since changed. Since 2009, immigration detention centres have scheduled UNHCR visits to interview some unregistered potential refugees. Through these interviews, the UNHCR secured the release of 1,351 refugees from detention centres from January to August 2011.525

There have also been incidences of refoulement.526 For instance in August 2011, the government deported to China 11 ethnic Uighur individuals who had been denied access to the UNHCR.527 This attracted strong condemnation from several human rights groups who feared the Uighurs would be mistreated, tortured, or killed upon their return.528 The government justified the deportation on the basis that the individuals had been involved in a people-smuggling ring and that China had requested their extradition.529 Three others, who had applied for refugee status with the UNHCR, were charged with possession of falsified documents, released on bail, and at year’s end were awaiting trial.530 Two others were released without being charged.531

b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices

According to reports, Malaysia sees the presence of foreign workers as a temporary phenomenon. In its UPR, Malaysia states that the employment of foreign workers ‘is a measure to overcome the current shortage of labour in the country.’532 Employers who employ foreign workers are subject to certain conditions, one of which is the responsibility of eventually returning foreign workers to their countries of origin.533 This is symptomatic of the existing legislative and policy framework, which does not adequately protect the rights of foreign workers, thereby exposing them to discrimination.

(i) Social Isolation in a Domestic Environment

Domestic migrant workers are especially vulnerable to abuse and discrimination because they work in the domestic environment and are thereby shielded from public observation. Domestic migrant workers are socially isolated because they often do not have contact with their family and friends. Many are not allowed a day off (except for Filipina workers) and may be confined to the employer’s home, often with little outside contact. Letters may be monitored, telephone calls curtailed or banned.534

(ii) Slave-Owner Mentality

It has been suggested that Malaysians’ abusive practices arise from cultural misunderstandings about the nature of domestic help. Human Rights Watch for example has observed that some Malaysians adopt ‘a slave owner mentality in their relationship with their foreign domestic help.’535 According to the Women’s Aid Organization, many Malaysians have negative perceptions of migrant domestic workers, which contributes to the frequency, and severity of abuse.536 Foreign domestic workers are often viewed as culturally inferior, sometimes ‘less than human’, and not considered as deserving of the same respect and consideration given to other human beings.537 The following factors the Malaysian Women’s Aid Organization identified contribute to domestic migrant workers’ especial vulnerability to abuse by their employers:

525 United States State Department, Country Reports on for 2011: Malaysia (cited in note 305).
526 The forced return of a person to a country where he or she faces persecution. OHCHR Summary at 9 (cited in note 20). The MWG-JUMP Report cited the U.S. Committee for Refugees and Immigrants (USCRI) report that in 2007, nearly 2,300 asylum seekers and refugees were deported to Thailand, of which at least 14 were deported by Thai authorities to Myanmar, of which 3 were arrested by Myanmarese authorities upon arrival. See MWG-JUMP Submission (cited in note 24).
527 United States State Department, Country Reports on for 2011: Malaysia (cited in note 305).
528 Ibid.
529 Ibid.
530 Ibid.
531 Ibid.
532 Malaysia’s UPR, 27(cited in note 10).
533 Ibid.
534 Women’s Aid Organization, Migrant Domestic Worker Abuse, online at:http://www.wao.org.my/Migrant+Domestic+Workers_54_5_1.htm(accessed Jun 25, 2012).
536 WAO, Migrant Domestic Worker Abuse(cited in note 534).
537 Ibid.
(iii) *Unfair Terms*

There is no standard, fair contract of employment or adequate legislation to protect migrant domestic workers. Domestic work is often de-valued and domestic workers are not considered as ‘proper’ employees. There is a tendency for state and local policies to safeguard the interests of employers, rather than migrant domestic workers.  

(iv) *Economic Discrimination*

The Malaysian government’s policy towards migration is one of a temporary solution to a domestic problem. This can contribute to discriminatory and/or abusive practices against domestic workers since they are seen as transient. As stated in its UPR, Malaysia sees the employment of foreign workers as a necessity to ‘overcome the current shortage of labour in the country’. The government does not encourage or facilitate foreign workers settling in Malaysia. It stated in the UPR that ‘[t]he employment of foreign workers is subjected to certain terms and conditions, such as, the responsibility of employer for the return of foreign workers to their countries of origin and the provision of suitable living condition and wages’. Furthermore, Malaysia appears to regard the protection of foreign workers as primarily a function of its foreign relations with the source countries. Its UPR refers to two agreements with the Government of Indonesia as positive measures in addressing the problem of migration and employment of foreign workers.

(v) *Statelessness*

The plight of stateless/undocumented street children has come to public attention only in more recent times. A direct cause is the failure of the Malaysian government to grant children born in Malaysia citizenship. Malaysia has chosen not to adhere to the principle of *jus soli*. However, this is mitigated by article 14(1)(b) of the Federal Constitution, read with section 1(e) of Part II of the Second Schedule, which provides for the possibility that children born to non-citizens in Malaysia may gain citizenship. The relevant provision reads: ‘every person born within the Federation who is not born a citizen of any country otherwise than by virtue of this paragraph’ are citizens by the operation of law’. As such, it is open to Malaysia to recognize children born in Malaysia who are not registered as citizens of another country to be granted citizenship. This however has not been done.

(vi) *Public Prejudice*

The CRC Committee has also identified ‘negative public attitudes and prejudices against street children’ as a factor exacerbating their difficult situation. For instance, it has been observed that the local population in Sabah tends to see street children who are forced by circumstances to live in the fish markets as undesirable or criminal elements. Street children in Chow Kit face similar discrimination and more because of their mothers’ sex work. This is why some conservative segments of society are not fully supportive of initiatives to assist street children in Chow Kit; they are concerned that the initiatives may be perceived as sanctioning prostitution since the children’s mothers are not prosecuted. As an activist who has been working to provide a safe environment for street children in Chow Kit observed: ‘Many people think it is useless to help such children, claiming that they would eventually end up like their parents.’

(vii) *Legal Deficiencies and Corruption*

Malaysia’s immigration policies do not distinguish between refugees, asylum seekers, trafficking victims, and undocumented migrants. This means that there is no calibrated response to the specific vulnerabilities and predicament of each irregular migrant. This critically undermines their human rights. Corruption exacerbates the matter when labour and immigration officers make migrants pay for services that should be free. There are increasing incidences of corruption and extortion to which undocumented asylum seekers and even UNHCR-confirmed refugees are vulnerable.

Furthermore, the government does not have a consistent or well thought out policy to deal with legal migrants who

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538 Ibid.
539 Malaysia’s UPR, 27, (cited in note 10).
540 Malaysia’s UP, 27, (cited in note 10) (emphasis added).
541 Malaysia’s UPR, 28, (cited in note 10).
542 Ibid.
543 Undocumented Children in Sabah Vulnerable to Statelessness (cited in note 500).
544 CRC Concluding Observations, 93,(cited in note 18).
545 Undocumented Children in Sabah Vulnerable to Statelessness (cited in note 500).
546 Singh, Helping Malaysia’s Street Children (cited in note 502).
548 Loh, Australia-Malaysia Deal Endangers Asylum Seekers (cited in note 507).
are refugees or asylum seekers. For instance, when it started implementing the 6P amnesty program for undocumented workers, it suddenly decided (without clear explanation) that it would also include documented workers. Later, the Home Ministry announced abruptly that refugees would also have to be registered. Thousands of refugees with UNHCR cards, including the elderly, young children, and mothers with babies, stood in waiting for hours in a cramped place, only to be told that they had to come the next day as the Immigration department could only register up to 2500 persons a day.\textsuperscript{549} According to information received from refugees who had registered, they received slips called ‘Slip Pendaftaran PATI’ which had another statement: ‘Tujuan: Pulang Ke Negara Asal’ (Purpose: Return to Home Country). This return slip has created a host of uncertainties and fears among the refugees that they could now be deported to their country of origin despite the fact they are recognized as refugees by UNHCR.\textsuperscript{550}

c. Impact of Abuse and Discrimination in Migration

Migrant women and children can suffer from serious health problems due to malnutrition and abuse. There are reported instances where domestic migrant workers are not properly sent home to their countries after their period of work expires, but are left on their own without money or documents.\textsuperscript{551} This may drive them to despair and to work on the streets as prostitutes to earn their way home. Children who are left behind find no way of supporting themselves except on the streets and in vice activities. There is a heavy social and economic cost involved in the abuse and discrimination of migrant women and children. There needs to be more systematic study on the physical, psychological, and social impact of abuse and discrimination against women and children in migration.

2. De Jure State Responses

a. Bases of State Responsibility

Malaysia’s CEDAW Report and CRC Report did not discuss the issues arising from abuse and discrimination of domestic workers or of undocumented/stateless street children, although Malaysia did provide some response as to measures taken to protect domestic workers from abuse and discrimination. In general however, there is a need to reinforce the commitment that Malaysia’s CEDAW and CRC obligations extend to women and children regardless of nationality. This is especially since Malaysia committed to protecting and promoting the rights of migrant workers when it signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007.

b. National Policies against Abuse and Discrimination in Migration

(i) Entry into Malaysia: Immigration Act and Passports Act

The Immigration Act 1959/63 (Act 155) forms the cornerstone of the Malaysian immigration system. In addition, the Passports Act 1966 (Act 150) specifies requirements relating to presentation of passports on entering or leaving Malaysia, and possession of the relevant visas. Entering and staying in Malaysia without a permit (illegal entry) is punishable with a fine of up to 10,000 ringgit (US$2,915), imprisonment of up to five years and, since 2002, ‘whipping of not more than six strokes’. The same punishment, including caning, applies to those who unlawfully re-enter or reside in Malaysia after they have been deported. Overstaying a visa is punishable by a fine and imprisonment on the same terms as illegal entry – up to 10,000 ringgit and five years – although caning is not included. The same punishment applies to those who enter or leave Malaysia other than at an authorized immigration control post.

(ii) Immigration Enforcement

The police and a volunteer citizens’ police force, the People’s Volunteer Corps (RELA) are authorized by law to examine people’s identification documents and investigate their immigration status. RELA has been criticised for conducting raids targeting illegal migrant communities in which refugees, asylum seekers, and trafficking victims are detained along with allegedly illegal migrants.\textsuperscript{552} This practice has reportedly decreased compared to previous years.\textsuperscript{553}


\textsuperscript{550} Tenaganita, \textit{Malaysian Immigration Creates Confusion and Fears within Refugees} (cited in note 549).

\textsuperscript{551} See e.g. Murdoch, \textit{Maid in Malaysia: AStory of Beatings, Abuse} (cited in note 533); HRW, \textit{Help Wanted}, (cited in note 26).

\textsuperscript{552} 2011 TIP Report (cited in note 288).

\textsuperscript{553} Ibid.
(iii) Payment of Wages

According to Malaysia’s responses to the CEDAW Committee, foreign domestic workers are protected under the provisions of Part III (Payment of Wages) of the Employment Act 1955 (the Act).554 This means that any domestic worker, whose salary has been unfairly withheld by her employer, is entitled under the law to lodge a complaint with the nearest Department of Labour (DL) for action to be taken against the errant employer.555 The responses also noted that the government is taking steps to formulate memorandums with sending countries to ensure domestic workers are socially protected and that their working environment is enhanced.556

(iv) Citizenship and Education

Malaysia’s UPR states that non-citizens can be accepted into Government-assisted schools, as long as the provisions of the Education Regulation are fulfilled and approval from the Ministry of Education had been obtained.557 The Report did not say what such provisions are; neither did it explain how approval from the Ministry of Education can be obtained and the success rates of such applications. On the other hand, other observers have noted that children without documentation (e.g., birth certificates) are not able to attend government schools.558 The CRC Committee have also noted that many asylum-seeking and refugee children, among them the Muslim children from Myanmar, including the Rohingya refugee children who have lived in Malaysia since 1990s, lack access to formal education, because of their undocumented/stateless status.559 The UPR states that non-citizens are nonetheless free to enrol in any private schools throughout the country.560 According to Refugees International, the cost of attending private schools is prohibitive for most families, although there are church and community organizations in Sabah that offer private education at a reduced cost.561

The UPR states that in view of the influx of foreign workers from Indonesia, Malaysia reached an agreement with Indonesia to appoint qualified teachers and develop syllabus for schools established by Humana, an institution established through mutual cooperation between the educational agencies of both countries, for children of foreign workers from Indonesia.562 It also states that the government also constantly engages with various international organizations such as the United Nations Children’s Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR), and civil societies, to ensure that children of illegal immigrants attend informal classes conducted by NGOs, such as, through community-based schooling.563

c. Assessment of State Policies

The CEDAW Committee noted the lack of legislation or policies protecting the rights of migrant workers, particularly migrant domestic workers who are mostly women,564 as well as the lack of laws or regulations concerning the status of asylum-seekers and refugees that include women.565

(i) Restricted Registration System

Several discriminatory laws and policies contribute to the vulnerability of domestic workers in Malaysia. Firstly, Malaysia practices a restricted registration system that permits migrant workers to enter Malaysia on work permits that restrict them to be employed only by their sponsor employer.566 This is exacerbated by the fact that a migrant worker’s employment can be terminated, and the worker’s work permit cancelled, by the employer at any time.567 Without the permit, the migrant worker becomes immediately subject to deportation. Such a registration system restricting workers to the specific employer discriminates against migrant workers and generates conditions of vulnerability, especially for domestic workers. As the South East Asia National Human Rights institutions Forum (SEANF) noted, registration systems restricting workers to only the employer who

554 Responses to CEDAW Questions at 17 (cited in note 14).
555 Ibid.
556 Ibid.
557 Malaysia’s UPR,37, (cited in note 10).
558 United States State Department’s Country Reports on for 2011: Malaysia (cited in note 305).
559 CRC Concluding Observations, 84, (cited in note 18).
560 Malaysia’s UPR, 37 (cited in note 10).
561 Undocumented Children in Sabah Vulnerable to Statelessness (cited in note 500).
562 Malaysia’s UPR,37, (cited in note 10).
563 Ibid.
564 CEDAW Concluding Comments, 25-6 (cited in note 15).
567 Robertson Jr., Migrant Workers in Malaysia (cited in note 566).
brought them into the country may also ‘fuel irregular migration because migrant workers with grievances (and facing debts from recruitment fees) will flee into the underground economy when they are not permitted to change their employer.\textsuperscript{568}

(ii) Mandatory Health Checks and Deportation

Secondly, migrant workers are subject to mandatory health checks while in Malaysia. If the worker is found with one of the communicable diseases on the government’s exclusion list (such as TB, HIV/AIDS, etc.) or is found to be pregnant, he/she is automatically excludable and will be deported without treatment or medical assistance.\textsuperscript{569} This has disproportionate impact on domestic migrant workers who have been abused or sexually assaulted as it causes them to fear obtaining help in case they are deported.\textsuperscript{570} Furthermore, since migrant workers are not allowed to marry,\textsuperscript{571} a domestic worker found to be pregnant even through consensual sex has no option of marrying her partner but will instead be deported and separated from her partner. These policies violate the migrant women’s right to health (to treatment and the confidentiality of results), as well as their reproductive rights (to have a family, children).\textsuperscript{573} It should be noted that Malaysia practices a single entry policy, which does not allow migrant workers to enter the country with their spouse/partner.\textsuperscript{573}

(iii) Lack of Wage and Other Protection

Thirdly, Malaysia has resisted introducing a minimum wage for domestic workers. In the absence of government regulations, employment agencies and employers typically set domestic workers’ salaries based on their country of origin instead of their education and experience.\textsuperscript{574}


\textsuperscript{569} NGO Shadow Report, art. 12, (cited in note 13).

\textsuperscript{570} Ibid.

\textsuperscript{571} Ibid.

\textsuperscript{572} NGO Shadow Report (cited in note 13) (on article 12).

\textsuperscript{573} SEANF Migrant Workers Paper (cited in note 568)


The extent to which domestic workers are protected from discriminatory practices depends primarily on the ability of their source countries to negotiate for better terms with the Malaysian government. Indonesian and Cambodian domestic workers often work for monthly wages of 400 to 600 ringgit (approximately US$133 to 200).\textsuperscript{575} Filipino domestic workers are the best protected, with the highest salary and guaranteed rest days. Filipina domestic workers in Malaysia earn the highest salary, at US$400 a month, because of requirements imposed by the Philippines government.\textsuperscript{576}

Following Indonesia’s moratorium on sending maids to Malaysia, the two countries have now agreed, among other safeguards, that the minimum wage for Indonesian maids would be set between RM600 and RM700.\textsuperscript{577}

(iv) Abuse of Power

There have been complaints that the police and RELA employ questionable tactics to harass, extort and abuse migrants during raids and immigration checks. RELA’s approach is particularly problematic, consisting of crude profiling based on apparent race or ethnicity, and a general attitude of ‘arrest now, investigate later’. There are also reports that these largely untrained RELA agents frequently subject the people they arrest to humiliation, physical abuse, theft and extortion.\textsuperscript{578}

On 17 March 2007, the Malaysian Bar Council passed a motion at its Annual General Meeting, calling for the repeal of the legislation that established RELA and extended the powers of RELA officers to, amongst other things, enforce immigration law.\textsuperscript{579} This has received support from human rights groups who take the view that the involvement of poorly trained volunteer RELA officers who are paid to secure arrests in the enforcement

\textsuperscript{575} Human Rights Watch, They Deceived Us at Every Step,(cited in note 27); Malaysia MoU Fails to Provide Needed Safeguards for Migrant Workers (cited in note 574).

\textsuperscript{576} Malaysia MoU Fails to Provide Needed Safeguards forMigrant Workers (cited in note 574).


\textsuperscript{578} Amnesty International, Abused and Abandoned: Refugees Denied Rights in Malaysia (cited in note 85).

\textsuperscript{579} The Malaysian Bar, Motion for the End of the State of Emergency and an End to Law Enforcement by the Untrained and Armed People’s Volunteer Corps (RELA) (Mar 17, 2007), online at:http://www.mfasia.org/efa/Statements/F95-MalaysiaBarResolution.html (accessed Jan 25, 2012).
of immigration law is highly questionable.\textsuperscript{580} The fact that those powers can be exercised without a warrant violates due process of law, and the conduct of RELA officers in raids on migrant communities is of extreme concern.\textsuperscript{581} Despite assurances from the Director General of Immigration that RELA’s immigration enforcement role would end in 2009, NGOs and the UNHCR confirmed that they are still operating in that role.\textsuperscript{582}

**Undocumented/Stateless Street Children**

The CRC Committee expressed concern at the absence of a legal framework in Malaysia for the protection of refugee and asylum-seeking children.\textsuperscript{583} In particular, the Committee regretted that Malaysia has not acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Optional Protocol, nor to the 1954 Convention relating to the Status of Stateless Persons or to the 1961 Convention on the Reduction of Statelessness.\textsuperscript{584} The Committee is particularly concerned that the implementation of the current provisions of the Immigration Act 1959/63 (Act 155) has resulted in detaining asylum-seeking and refuge children and their families at immigration detention centres, prosecuting them for immigration-related offences and subsequently imprison and/or deporting them.\textsuperscript{585}

Malaysia made representations during the UPR process that it is improving its legislative framework and has instituted administrative arrangements to provide assistance and protection to persons claiming refugee status and/or asylum seekers in possession of identification documents issued by the UNHCR.\textsuperscript{586} Malaysia also stated that it has established a Technical Committee to coordinate implementation of recommendations of the CRC Committee, including the protection of the rights of children of minority groups, indigenous peoples and migrant workers.\textsuperscript{587}

Malaysia’s policy responses to the problem of undocumented/stateless street children do not appear to be informed by standards set by CRC or the recommendations from the CRC Committee. Instead, the policy responses appear to be motivated by public order concerns and a domestic outlook. For instance, Malaysia launched a nation-wide amnesty program called the 6P Program (Program Penyelesaian Menyeluruh Pekerja Asing dan Pendatang Asing Tanpa Izin or Illegal Immigrant Comprehensive Settlement Program) in 2011, which could have positive impact on the status of undocumented/stateless children.\textsuperscript{588}

The six-step program involves registration, legalization, amnesty, monitoring, enforcement and deportation. Those required to register include foreign nationals who entered the country illegally and are now working and living in Malaysia, foreign nationals who have overstayed, foreign nationals who have abused their entry permit, or have falsified passes or travel documents and foreign nationals who have violated their permits.\textsuperscript{589} Children of illegal immigrants are also required to register under the program.\textsuperscript{585} Under the program, registered workers may be allowed to stay if they wish to do so and if the ministry determines that there is a need in the sector they work in.\textsuperscript{581} More than 2.3 million foreign workers and undocumented workers reportedly registered under the program.\textsuperscript{592} However, there is, as yet, no disaggregated data on how many illegal/undocumented women and children registered, and no information on actions taken to further resolve the problem of statelessness amongst some of these children.

Furthermore, the government may aggravate the predicament of undocumented/stateless children by requiring the National Registration Department to issue red birth certificates to children born to foreigners in


\textsuperscript{581} Ibid.


\textsuperscript{583} CRC Concluding Observations, 82, (cited in note 18).


\textsuperscript{585} CRC Concluding Observations, 82, (cited in note 18).


Jaclyn Ling-Chien Neo


\textsuperscript{590} Azril Annuar, *6P Programme to Register Illegal Immigrants* (cited in note 589).

\textsuperscript{591} Soalan-soalan Lazim Program 6P (cited in note 588)

\textsuperscript{592} More the [sic] 2.3m foreigners register under 6P programme(Malaysian Insider Dec 1, 2011), online at:http://www.themalaysianinsider.com/malaysia/article/more-the-2.3m-foreigners-register-under-6p-programme/(accessed Jan 24, 2012).
This distinguishes them from Malaysian babies who will receive green-collared birth certificates. The government states that this is to ensure that such ‘foreign’ babies do not automatically gain Malaysian citizenship. This policy is in response to public discontent with illegal immigration in Sabah.

There have nonetheless been some positive measures undertaken by the government. For instance, NUR SALAM is a children activity centre established in collaboration between the Department of Welfare’s Pusat Aktiviti Kanak-Kanak (PAKK) and Yayasan Salam. It provides programs for all children in and around the Chow Kit area. Furthermore, the Education Ministry has plans to set up a school offering free education to homeless children in the Chow Kit area. The school, called Jalinan Qaseh Guidance Centre, would offer training in basic skills such as reading, writing and mathematics at the primary school level.

### 3. Implementation, Monitoring and Enforcement

#### a. Monitoring Mechanisms

The reports do not study mechanisms that monitor public authorities and private organizations and individuals in their implementation and observance of laws protecting female migrant workers and migrant children. In relation to domestic workers, the reports also do not identify any accreditation and monitoring system to ensure respect of rights and good practices among recruitment agencies.

Neither is there a system in place for monitoring of workplaces of migrant women. The monitoring process is piecemeal and depends largely on complaints of abuse made to the police department, as well as to the respective embassies.

#### b. Complaints Process

The Bar Council has stated that redress for criminal offences perpetrated against migrants is unlikely as the possibility of arrest of a migrant complainant when lodging a complaint is high. The police department has publicly stated that it would investigate crimes regardless of whether the complainant is a migrant worker. However, this may not apply to undocumented migrant workers. In relation to complaints of domestic worker abuse, the police department has stated that whenever a domestic worker makes a complaint, the standard procedure is to inform the respective embassy, rescue the victim (if necessary), and ensure that the victim is sheltered. The police would also inform the maid agency and notify Interpol about the case and the whereabouts of the victim. As stated above, SUHAKAM provides a possible recourse for domestic migrant victims.

#### c. Protection and Rehabilitation

In its UPR responses, Malaysia stated that it has introduced guidelines on the requirements for employers for the recruitment of foreign domestic workers on the treatment and protection of the rights of foreign domestic workers. The Malaysian government only recently agreed to greater protection for Indonesian domestic workers after the two governments signed a protocol on 30 May 2011 to amend several provisions in the 2006 Memorandum of Understanding for the employment of domestic workers. The amendments included making it a requirement for an employer to have a working contract with the domestic worker personally, fixing the cost of recruiting Indonesian maid at RM4,511, guaranteeing one day rest day per week and allowing domestic workers to keep their own passport.

The CRC Committee stated that in light of articles 3 and 22 and other relevant provisions of the Convention, and taking into account the Committee's General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6), Malaysia should take the following measures:

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594 Hiew King Cheu, New Born Non-Malaysian be Given Red Birth Certificates (cited in note 593).


596 Education for Chow Kit Kids (cited in note 501).


598 Pandiyan, Only a Small Percentage of Domestics are Abused (cited in note 473).

599 Ibid.

600 Ibid.


a) Take urgent measures not to detain children in connection with immigration proceedings unless it is necessary to protect their best interests- and then for the shortest time possible, and establish a screening process to ensure that groups with special needs, such as refugees and asylum-seekers, including their children, are rapidly identified;


c) Develop a legislative framework for the protection of asylum-seeking and refugee children, particularly unaccompanied children, in line with international standards;

d) In the absence of a national law on refugees, amend the Immigration Act 1959/63 (Act 155), or at least make use of the exception foreseen under Section 55 of the Immigration Act, with a view to legalizing the status of asylum-seekers and refugees in Malaysia;

e) If detention is necessary in a particular, exceptional case, take all measures necessary to make this as short as possible and provide for special protection and assistance measures for refugee and asylum-seeking children and their families while in detention, in line with relevant international standards.603

d. Prevention Measures

The Ministry of Human Resources has put in place a compulsory half-day seminar on workers’ rights for foreign domestic workers and their employers.604 Furthermore, there is now a requirement that a portion of a domestic worker’s salary must be placed into a bank account in the employee’s name.605 This is aimed at reducing wage disputes.

The CRC Committee recommended that Malaysia take regional initiatives for negotiations with neighbouring countries in order to establish agreements on measures to deal with the high number of cross-border migrants and the various related problems in a constructive way and in full compliance with international human rights standards.606 The Committee also recommended that Malaysia ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to seek technical assistance from the International Organization for Migration (IOM).607

4. Role of Non-State Actors

a. Assistance to Victims

(i) Legal Assistance

The Women’s Aid Organization (WAO) and Tenaganita are two NGOs who have provided assistance to domestic migrant workers who have complained of abuse.608

WAO’s website states that it has put in place the following protocol to handle complaints of abuse by domestic workers:

a) filing complaints with the police, Welfare and Labour Departments

b) processing applications with the Immigration Department,

c) gathering medical reports, and other evidence of abuse,

d) assisting women in obtaining lawyers and initiating civil and criminal suits,

e) lobbying the media for case coverage and advocacy.609

Tenaganita has a Legal Aid Clinic that handles cases of employment violations (e.g. unpaid wages, wrongful dismissal, harassment), exploitation of workers etc.610 Yayasan Salam, an NGO working in the Chow Kit with the support of the Malaysian government, has helped some children obtain birth certificates so that they may register to attend government schools.611


605 Ibid.


607 Ibid.

608 For instance, Tenaganita stated in August 2010 that it rescued and handled 41 cases of Cambodian domestic workers who complained of discrimination and abuse. In all of the cases, the passports of the domestic workers were held by their employers, they were not given a single day-off for rest, and none of them had a contract signed directly with the employer. Irene Fernandez, Malaysian Employers and the Misery of Cambodian Maids, (Harakah Daily, Aug 12, 2011), online at http://en.harakahdaily.net/index.php/berita-utama/press-unedited/3328-malaysian-employers-and-the-misery-of-cambodian-maids.html(accessed Jan 24, 2012).

609 Women’s Aid Organization, Migrant Domestic Workers, online at: http://www.wao.org.my/Migrant+Domestic+Workers_54_5_1. html#prob(accessed Jun 24, 2012).


611 Doc: Treat children of sex workers like other kids (cited in note 547).
(ii) Shelters for Abused/Homeless Female Migrants
Tenaganita also runs a shelter to provide care, protection and rehabilitation to female victims of migration abuses and trafficking. WAO’s shelter also takes in domestic workers who have been abused or abandoned.

(iii) Community Assistance
Yayasan Salam helps street children and seeks to create a safer environment for these children.612 The organization collaborates with the Malaysian Department of Welfare to run a 24-hour Children Activity Centre where children are taught English and participate in activities such as drawing, singing and dancing.613 Yayasan Salam has plans to convert a three-storey office space into a hostel to house the children.614

b. Prevention Programs
Women’s organizations such as WAO and Tenaganita have been involved in campaigning for stronger legislative protection for domestic migrant workers. Tenaganita advised Cambodia to continue its moratorium on its citizens working as domestic workers in Malaysia.615 Measures advocated include obligating the Ministry of Human Resources and Labour Department to conduct arrival orientations for migrant domestic workers during which migrant workers can be provided with emergency telephone numbers and other resources for dealing with abuse.616 Domestic migrant workers should also be informed of their rights. At the same time, employers should undergo educational training or provided a guide outlining employers’ responsibilities, application processes and a list of offences and their penalties under law.617

The ILO Tripartite Action to Protect Migrant Workers from Labour Exploitation (the TRIANGLE project) collaborates with local constituents and partners in Malaysia to study local attitudes and promote local understanding of migrant workers. The broader project aims to strengthen the formulation and implementation of recruitment and labour protection policies and practices.618

A number of local NGOs and SUHAKAM are active on the issue of stateless children, doing research, conducting workshops, and running public awareness campaigns.619 In relation to street children, there are also creative initiatives to engage children in the Chow Kit area. ChowKit Kita620 was started by two individuals, Fahmi Reza and Lew Pik-Svon, as a community-mapping project by teens and for teens of Chow Kit. The aim is to engage children in the area so as to create a sense of belonging and self-empowerment.

c. Monitoring and Cooperation
In their representations to the UPR Working Group, the Migration Working Group and the Northern Network for Migrants and Refugees Jaringan Utara Migrasi dan Pelarian (MWG-JUMP) recommended that the Malaysian government extend an invitation, inter alia, to the Special Rapporteur on the Human Rights Situation of Migrants and the Working Group on Arbitrary Detention.621 MWG-JUMP noted that there have been numerous reports of excessive violence and abuse by the Immigration Department of the Ministry of Home Affairs and the Malaysian Volunteer Corps (RELA) created in 1972 to assist, maintain, and safeguard peace and security. Officers arrested asylum seekers, refugees and stateless persons, including pregnant women, children and babies, during Immigration-RELA operations and denied those without UNHCR documents access to the UNHCR while in detention.622 Some claimed that RELA officers destroyed their UNHCR documents at the point of arrest.623 MWG-JUMP expressed concern that RELA officers have been granted wide powers but are exempted from prosecution.624

612 Ibid.
614 Doc; Treat children of sex workers like other kids (cited in note 547).
616 WAO, Migrant Domestic Workers (cited in note 609).
617 Ibid.
619 United States State Department, Country Reports on for 2011: Malaysia (cited in note 305).
621 OHCHR Summary, 3, (cited in note 20).
622 MWG-JUMP Submission, 17, (cited in note 24); OHCHR Summary, 5, (cited in note 20).
623 Ibid.
624 Ibid.

Jaclyn Ling-Chien Neo
5. Progress Indicators and Challenges

Domestic Workers

The paper on migrant workers issued by the Southeast Asia National Human Rights Institutions Forum (SEANF) in 2010, emphasized that a human rights approach mediated through the core concept of ‘national treatment’ should form the foundation of ASEAN countries’ approach to migrant workers. ‘National treatment’ is non-discriminatory treatment that ensures migrant workers receive treatment no less favourable than the treatment accorded to nationals of the labour receiving state. Non-discrimination on the basis of nationality is foundational to protecting migrant workers from exploitation. SEANF recommended that the proposed regional ASEAN instrument for the protection and promotion of the rights of migrant workers must require ‘the elimination of all forms of discriminatory policies and practices against migrant workers and ensure[] that all aspects of laws and regulations on wages, labour, housing, social protection, access to grievance handling and legal procedures and judicial redress and other relevant anti-discrimination laws, are equally applied to all categories of migrants in adherence with the principle of ‘national treatment’. In addition, the SEANF recommended the ratification of IL Conventions 97 and 143, the two key ILO Conventions related to migration, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Refugees and Asylum-Seekers

Malaysia needs to re-haul its immigration system:

1. One of the first and most crucial steps is to provide refugees and asylum-seekers with formal legal status and establish a system of registration where they are issued with identity documents. These documents should come with access to relevant entitlements including the right not to be subjected to arbitrary arrest or detention.
2. Refugees and asylum-seekers should be given the formal right to work.

3. Refugees and asylum-seekers need to be protected from abuse and extortion.
4. Malaysia has to immediately cease all operations by RELA and to revoke their power and privileges.

Malaysia should ratify the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol, the major international instruments governing refugee protection. Furthermore, it should ratify the following international treaties to strengthen its commitment to international standards protecting and promoting the rights of refugees and asylum-seekers:

- International Covenant on Civil and Political Rights (ICCPR);
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- International Convention on the Elimination of All Forms of Racial Discrimination;
- International Covenant on Economic, Social and Cultural Rights (ICESCR);

Undocumented/Stateless/Street Children

The CRC Committee made the following recommendations to Malaysia:

a) Undertake a study on children living/working in the streets to identify the magnitude of this problem and based on the results of this study develop a comprehensive national strategy with the active participation of street children, NGOs and relevant professionals to address the situation of street children;

b) Ensure that children living in the streets are not unlawfully arrested and detained, protect them from police brutality and, where needed, secure their access to adequate legal services;

c) Ensure that street children are reached through trained street educators and counsellors and provided with adequate identity documents, nutrition, clothing and shelter as well as with social and health services and educational opportunities, including vocational and life skills training, in order to support their full development;

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625 SEANF Migrant Workers Paper at 14 (cited in note 568)
626 SEANF Migrant Workers Paper at 15 (cited in note 568)
627 SEANF Migrant Workers Paper at 16-7 (cited in note 568)
629 Ibid.
d) Provide street children with adequate recovery and social reintegration services for physical, sexual and substance abuse and promote reunification with their families, when it is in the best interests of the child;

e) Raise awareness about children living in the streets in order to change negative public attitudes about them; and

f) Collaborate with and support NGOs working with and for street children and seek technical assistance from, among others, UNICEF.630

The Committee also recommended that in the light of article 7 of the CRC, Malaysia ‘continue to implement an efficient and at all stages free-of-charge birth registration system, which covers its territory fully, and undertake awareness-raising campaigns to reach the most remote areas of its territory.’631 More specifically, the Committee recommended that Malaysia ‘improve the birth registration system of non-Malaysian children born in Malaysia, children of single mothers and children born in remote areas of the country.’632 Furthermore, it urged Malaysia to allow children without official documentation access basic services, such as health and education, while waiting to be properly registered.633

6. Recommendations for Further Study

More information on the number of stateless and street children in Malaysia is required. It is acknowledged that such data is difficult to collect due to the transient nature of these children's movements. Nonetheless, the lack of data not only makes it difficult to determine the appropriate policy responses, but also to determine the amount of resources necessary to ensure that these children are cared for.

There remains much confusion about the status of refugees and asylum seekers; there are reports that law enforcement officers treat them the same as illegal migrants. While Malaysia has sought to represent itself to the world as a liberal and progressive country committed to protecting the rights of refugees and asylum seekers,634 NGO reports suggest systemic and widespread violations of their rights.635 There have been increasing attention given and measures taken. Periodic evaluation of the efficacy of these measures is necessary to ensure that the problem is adequately addressed.

Furthermore, critical surveys and analysis of the social and personal conditions of employers who mistreat their domestic workers is necessary to ensure that prevention programs can be better designed to address the problem of domestic worker abuse.


632 Ibid.

633 Ibid.

634 Tun Razak, War on Human Trafficking Must Continue, (cited in note 451).

635 See e.g. Amnesty International, Abused and Abandoned: Refugees Denied Rights in Malaysia at 18 (cited in note 85); FIDH & SUARAM, Undocumented migrants and Refugees in Malaysia (cited in note 339).
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Violence, Exploitation, and Abuse and Discrimination in Migration Affecting Women and Children in ASEAN: A Baseline Study
# Table of Contents

## A. OVERVIEW

**593**

## B. VIOLENCE

**597**

1. Description of the Problem
   - a. Prevalence of Violence  
   - b. Root Causes of Violence and Aggravating Practices  
   - c. Impact of Violence  

2. De Jure State Responses
   - a. Bases of State Responsibility  
   - b. National Policies Against Violence  
   - c. Assessment of State Policies  

3. Implementation, Monitoring and Prevention
   - a. Implementing and Monitoring Mechanisms  
   - b. Complaints Process  
   - c. Protection and Rehabilitation  
   - d. Prevention Strategy  

4. Role of Non-State Actors
   - a. Assistance to Survivors  
   - b. Prevention Programs  
   - c. Monitoring and Cooperation  

5. Progress Indicators and Challenges  

6. Recommendations for Further Study  

## C. EXPLOITATION

**622**

1. Description of the Problem
   - a. Prevalence of Exploitation  
   - b. Root Causes of Exploitation and Aggravating Practices  
   - c. Impact of Exploitation  

2. De Jure State Responses
   - a. Bases of State Responsibility  
   - b. National Policies Against Exploitation  
   - c. Assessment of State Policies  

3. Implementation, Monitoring and Enforcement
   - a. Implementing and Monitoring Mechanisms  
   - b. Assistance to Survivors  
   - c. Protection and Rehabilitation  
   - d. Prevention Measures  

4. Role of Non-State Actors
   - a. Assistance to Survivors  
   - b. Prevention Programs  
   - c. Monitoring and Cooperation  

5. Progress Indicators and Challenges  

6. Recommendations for Further Study  

## D. ABUSE AND DISCRIMINATION IN MIGRATION

**643**

1. Description of the Problem
   - a. Prevalence of Abuse and Discrimination in Migration  
   - b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices  
   - c. Impact of Abuse and Discrimination in Migration  

2. De Jure State Responses
   - a. Bases of State Responsibility  
   - b. National Policies against Abuse and Discrimination in Migration  
   - c. Assessment of State Policies  

3. Implementation, Monitoring and Enforcement
   - a. Monitoring Mechanisms  
   - b. Complaints Process  
   - c. Protection and Rehabilitation  
   - d. Prevention Measure  

4. Role of Non-State Actors
   - a. Assistance to Victims  
   - b. Prevention Programs  
   - c. Monitoring and Cooperation  

5. Progress Indicators and Challenges  

6. Recommendations for Further Study  

## BIBLIOGRAPHY

**654**
Formal Name: Republic of the Union of Myanmar
Capital City: Naypyidaw

Source: CIA - The World Fact Book
### Population

|----------------------|--------------------------|-----------------------------|-------------------------------------------------------|

### Life expectancy

<table>
<thead>
<tr>
<th></th>
<th>Male: 62.91 years</th>
<th>Female: 67.71 years</th>
<th>Both sexes: 65.24 years (2012)</th>
</tr>
</thead>
</table>

### Age structure

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Male Percentage</th>
<th>Female Percentage</th>
<th>Both sexes Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-14 years</td>
<td>27.5%</td>
<td>27.5%</td>
<td>27.5% (male 7,560,859/female 7,278,652)</td>
</tr>
<tr>
<td>15-64 years</td>
<td>67.5%</td>
<td>67.5%</td>
<td>67.5% (male 18,099,707/female 18,342,696)</td>
</tr>
<tr>
<td>65-over</td>
<td>5%</td>
<td>5%</td>
<td>5% (male 1,184,291/female 1,533,599) (2011)</td>
</tr>
</tbody>
</table>

### Sex ratio

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Male(s)/Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>at birth</td>
<td>1.06</td>
</tr>
<tr>
<td>under 15 years</td>
<td>1.04</td>
</tr>
<tr>
<td>15-64 years</td>
<td>0.99</td>
</tr>
<tr>
<td>65 years and over</td>
<td>0.77</td>
</tr>
<tr>
<td>total population</td>
<td>0.99</td>
</tr>
</tbody>
</table>

### Religions

- Buddhist 89%
- Christian 4% (Baptist 3%, Roman Catholic 1%)
- Muslim 4%
- Animist 1%
- Other 2%

### Ethnic groups

- Burman 68%
- Shan 9%
- Karen 7%
- Rakhine 4%
- Chinese 3%
- Indian 2%
- Mon 2%
- Other 5%

### Functional literacy rate

<table>
<thead>
<tr>
<th></th>
<th>Male: 93.9%</th>
<th>Female: 86.4%</th>
<th>Both sexes: 89.9% (2006)</th>
</tr>
</thead>
</table>

### National poverty line

<table>
<thead>
<tr>
<th></th>
<th>376,151 kyats per adult per year (2010)</th>
</tr>
</thead>
</table>

### Percentage of population living below the national poverty line

<table>
<thead>
<tr>
<th></th>
<th>Approximately 25% (2010)</th>
</tr>
</thead>
</table>

### Gross Domestic Product per capita

<table>
<thead>
<tr>
<th></th>
<th>$1,300 (2011)</th>
</tr>
</thead>
</table>

### Net enrolment ratio in secondary schools

<table>
<thead>
<tr>
<th></th>
<th>Male: 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>50⁴</td>
</tr>
</tbody>
</table>

### Migration rate

<table>
<thead>
<tr>
<th></th>
<th>Net: -0.3 migrant(s)/1,000 population (2012)</th>
</tr>
</thead>
</table>

### Number of citizens working overseas

<table>
<thead>
<tr>
<th></th>
<th>Male:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td></td>
</tr>
<tr>
<td>Both sex: in estimation around 3 million⁵</td>
<td></td>
</tr>
</tbody>
</table>

### Number of foreign workers in country

<table>
<thead>
<tr>
<th></th>
<th>Male:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td></td>
</tr>
</tbody>
</table>

### Percentage of female-headed households

|                      | 20.8%⁶ |

---

3. Ibid.
| Labour force participation rate | Male: 85%  
Female: 63 %  
(2009) |
|---------------------------------|-----------------------------------|
| Unemployment rate               | Male: 1.5%  
Female: 1.9%  
Both Sex: 1.7%  
(2010)  
Both Sex: 5.7%  
(2010) |
| Proportion of unpaid family     | Male:  
Female:  |
| workers                         | 2.23 children born/woman  
(2012) |
| Fertility rate                  | 240 deaths/100,000 live births  
(2008) |
| Maternal mortality rate         | total: 47.74 deaths/1000 live births  
male: 54.51 deaths/1000 live births  
female: 40.57 deaths/1000 live births  
(2012) |
| Infant mortality rate           | 'Child means a person who has attained the age of 16 years'  
Chapter 1 section 2 (a)  
of Child Law 1993 |
| Legal definition of 'child'     | 18 years old  
(2009) |
| Age of maturity                 | 20 years for women and at puberty for men according to the customary law.  
Above 14 years according to the Buddhist Women Special Marriage and Succession Act of 1954.  
(2009) |
| Marriageable age                | 14 years old for female (According to the definition of 'with or without her consent, when she is under fourteen years.' Under the Penal Code 375 that defines 'rape.'  
(2009) |
| Age of criminal responsibility  | 7 years old  
(2009) |
| Minimum age of employment       | 13 years old  
(2009) |
| Minimum age for military        | 18 years old  
(2009) |
countries.  
8 Open unemployment rate (past six months) (that is defined as 'the percentage of the labour force aged 15 and above who do not work during the above time prior). IHLCA Project Technical Unit, 'Integrated Household Living Conditions Survey in Myanmar (2009-2010).  
9 CIA World Fact Book  
10 Under section 23 of the Parliamentary Election Act of 1948 (Act No. 65 of 1948), 'it is prescribed that every citizen who lives in the constituency and has attained 18 years of age has the right to be enlisted in the election list.' Committee on the Elimination of Discrimination against Women (CEDAW), Initial Report of States Parties (Myanmar); CEDAW/C/MMR/1, 25 June 1999.  
2004 Concluding Observations of the CRC Committee)  
A. OVERVIEW

This Baseline Study examines prevalence of violence, exploitation, and migration affecting women and children in Myanmar; their root causes and aggravating practices and their impact. It also studies the State's de jure responsibilities and national policies in this regard. Assessment is also made on relevant national policies, implementing and monitoring mechanisms, complaint process, protection and rehabilitation programs, and the State's prevention strategies. The Study also examines the role of non-state actors, their prevention programs, and how they monitor and cooperate with the State and other non-State actors in addressing violence, exploitation and the negative impacts of migration as they affect women and children in Myanmar.

This literature review is conducted based on sources from the UN organizations, government data, academic journals, NGOs' reports and the media. The following table gives an overview of the major sources that this Study has used.

|---------------------------------------------|-----------------|----------------------------------------|----------------------------------------|------------------|----------------------------------------|---------------------------------------------|

16 See detailed references of documents at footnotes and bibliography sections.
<table>
<thead>
<tr>
<th>Source Type</th>
<th>Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports of other Governments</td>
<td>Country reports on human rights practices: Burma (the US Department of State, 2009, 2010), Trafficking in Persons Report 2011;</td>
</tr>
<tr>
<td>Individuals</td>
<td>Risser, 2007; Than Myit Oo, 2011; Elizabeth Pender, 2009 (GenCap Experience); Gerard Smith, 2010; Chaw Chaw, n.d. etc.</td>
</tr>
</tbody>
</table>
This study mainly consults the Concluding Observations (CO) of the CEDAW and CRC Committees as these two treaty bodies are tasked to monitor the implementation of the State’s international de jure responsibilities to protect women and children. They provide an overview of the progress the State has made and the areas the State needs to improve in its effort of eliminating violence, exploitation and the negative impact of migrating affecting women and children. While the Government data on prevalence of such problems rarely exists, human rights reports and trafficking-related reports of the US Department of State, international and national human rights organizations, and shadow reports submitted to the CEDAW and CRC Committees provide detailed accounts of human rights violations of women and children.

To maintain a balance between a scarcity of the Government’s data and a large number of data provided by human rights organizations, the review also consults the other sources such as academic papers, articles; State reports submitted to the CEDAW and CRC Committees and the Human Rights Council under the Universal Periodic Reviews; reports conducted by the State and the UN in cooperation; reports of other UN human rights mechanisms such as Special Rapporteur on the situation of human rights in Myanmar and reports of the Secretary General on ‘children and armed conflict’ and ‘conflict related sexual violence’; and papers and articles of individual scholars.

While the majority of the sources are dated not later than 2005, three academic sources and one government related source are dated before 2005 since a recent study on the same issues is not available within the purview of this review. The State’s report to the CEDAW and CRC Committees and the Human Rights Council and some reports of other UN sources such as UNICEF and UNIAP provide the State’s policies and programs that are in planning process or under implementation to eliminate violence, exploitation and effects of migration on women and children.

Reports of INGOs and NGOs provide activities of non-state actors in Myanmar. This Study mainly consults the information provided by the Myanmar Information Management Unit (MIMU) that provides the information of which INGOs and NGOs are working in what areas and in what places in Myanmar. The number of local groups that are working on various issues at grass roots level is reportedly increasing. Some of them are also working on the issue of violence and exploitation of women and children. In spite the fact that this review could not identify all of them given the lack of official database on their activities, the growing number of such organizations is quite.

This review also uses information provided by the media such as Newspapers, Magazines and online database for the most current update on the issue since such information cannot be found in a report format yet. Especially the media reflects current developments in Myanmar, which has been undertaking a series of political, economic and administrative reforms since 2011 after decades of economic mismanagement, political instability and armed conflicts in ethnic border areas.17

Given this backdrop, this Study strives to capture the latest update on the issue of violence, exploitation and migration affecting women and children as much as possible. While this Study concerns existing literature that present the situation until this point in time, there is much hope that forthcoming literature might be able to present more data on improvement of the country’s human rights records, especially relating to women and children issues.

In Myanmar, women represent 51.54% of approximately the 55 million of population.18 The population of children under the age of 18 is approximately 37.87%.19

According to the existing literature, common forms of gender-based violence in Myanmar include domestic violence, especially related to spousal abuses; sexual harassment at work and in public; and rape, mainly in armed conflict affected areas.

18 2006 data: ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011’
Main concerns on violence against children include corporal punishment at home and school; vulnerability of children to sexual abuse, trafficking and worst forms of child labour; risk of degrading treatment or punishment and poor living condition in pre-trial detention of children in conflict with law; risk of statelessness and inadequate or lack of access to health care and education facilities of Rohingya children in Northern Rakhine State; and the negative impact of armed conflicts, forced evictions and relocation on internally displaced children.

The reports also indicate that there is a prevalence of exploitation of women and children, both at the international and national level. Internationally, women and children are reportedly trafficked mainly to China, Thailand and Malaysia. At national level, forms of exploitation include forced labour, child labour, child prostitution and child soldier recruitment. Migrant women and children are also reportedly subjected to various forms of abuse and discrimination, such as very low remuneration, hazard working conditions and fear of arrest and deportation especially in Thailand and Malaysia.

While gender based violence is much related to the traditional and cultural stereotypes of women, various forms of violence, exploitation, abuse and discrimination against women and children in different contexts are mainly rooted in armed conflicts, poverty and racial discrimination. To eliminate such human rights violations, the government has taken de jure responsibility through ratification of the four human rights treaties: the CEDAW Convention; the CRC Convention; the Optional Protocol to the CRC on the Sale of Children, Child prostitution and Child pornography and the Convention on the Rights of Persons with Disabilities (CRPD). To fight against trafficking, the State has acceded to the United Nations Convention against Transnational Crime and its Protocols. The State has also adopted national polices and enacted laws such as the Child Law, the Anti-Trafficking in Persons Law and the National Plans of Action for advancement of women and for children.

According to the State's reports, such organizations and Ministries as National Human Rights Commission,\textsuperscript{20} MMCWA, MWAF, the National Committee on the Rights of the Child, the Anti-Trafficking Unit (ATU) and the Anti-Trafficking Task Forces (ATTFs), the Ministry of Social Welfare and the Ministry of Home Affairs are identified as the implementation and monitoring bodies of the State's national policies against violence and exploitation of women and children.

In its implementation, protection and prevention strategies and activities, the State cooperates with the UN organizations, INGOs and NGOs that are working on women and children protection projects. The literature on activities of the UN, INGOs and NGOs imply that they have been mainly providing assistance and support to the State's programmes in a manner of cooperation rather than monitoring or influencing the State's polices and implementation, especially in sensitive issues such as gender-based violence in armed conflict affected areas. However, the UN organizations such as UNFPA and UNICEF have much contributed to drafting National Plan of Action for child protection in emergencies and National Plan of Action for the Advancement of Women (2011-2015). Regardless of some challenges and constraints, the UN country task force and the ILO Supplementary Understanding (SU) mechanisms have also shaped some progress in the State's national strategies and implementation programme in eradication of exploitation and abuse of women and children specifically forced labour and minor recruitment.

The Study indicates that the State has recently put more effort in solving problems of human rights violations faced by women and children in other countries especially in Thailand and Malaysia, including the formation of protection committees for Myanmar migrants. However, regarding national policies, implementation, monitoring, protection, prevention of abuses against of Myanmar migrants in various host countries, the information is still lacking. This is partly due to inadequate laws, policies and institutions to protect large numbers of Myanmar overseas workers, especially those who are unskilled.

Other challenges in the State's effort to eliminate violence, exploitation and the negative impact of migration affecting women and children include inadequate financial and human resources; corruption; the need to improve rule of law; the need to establish an independent and transparent judiciary system; and the need to strengthen institutions and build up capacity of those who are involved in protection and promotion of the rights of women and children. Hopefully, the reform process of the country will be able to encompass measures to overcome such barriers to a better future for the vulnerable women and children of Myanmar.

\textsuperscript{20} More about National Human Rights Commission, see B (3) (a).
B. VIOLENCE

1. Description Of The Problem

   a. Prevalence of Violence

\textbf{Introduction}

There is a lack of government data on violence against women and the CEDAW Committee pointed out that the State needs to exert effort to collect data on the extent of various forms of violence against women, its root causes and impact, disaggregated by age and ethnic groups.\textsuperscript{21} In the UNFPA report, it is also noted that lack of data amounts to the invisible nature of gender based violence (GBV) issue and ‘it has become normal for many gender gaps and inequalities to be overlooked by both national and international organizations working in Myanmar’s development sector.’\textsuperscript{22}

The Myanmar National Committee for Women’s Affairs (MNCWA) and the Myanmar Women’s Affairs Federation (MWAF) have done a few studies on the issue. However, the scopes of those studies were limited and there is a need for more in-depth research on GBV.\textsuperscript{23} The UN organizations in cooperation with the Government recently conducted two assessment studies on the impact of Cyclone Nargis on women and the report also includes GBV issues in the Cyclone affected areas.

Similarly, The US Department of State and the CRC Committee noted that accurate statistics on child abuse were not available.\textsuperscript{24} According to the government, the problem was not significant, although some international NGOs believed the problem was more widespread than the government acknowledged.\textsuperscript{25}


\textsuperscript{23} Ibid.

\textsuperscript{24} Committee on the Rights of the Child (CRC), ‘Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Union of Myanmar,’ CRC/C/MMR/CO/3-4, 3 February 2012, para. 59. (Hereafter ‘2012 Concluding Observations of the CRC Committee.’)


\textbf{Violence Against Women}

Violence against women prevails in various forms such as domestic violence, sexual harassment at work and in public across the country. According to some studies in Cyclone affected areas in Yangon and Ayeyarwady Division, it indicates the prevalence of GBV and there are also numerous NGO reports on rape cases in ethnic minority areas especially where there were armed conflicts.

Forms of gender based violence across the country:

\textbf{i) Domestic violence}

There is scant literature and reports on the extent of domestic violence, forms and its impact on women. However, the CEDAW Committee and the US State Department recognized a problem of widespread domestic violence including spousal abuse.\textsuperscript{26} Feedback from discussion workshops organized by women’s groups along Burma’s borders since 2004 also confirmed the problem.\textsuperscript{27}

According to a most recent report released by Palaung Women’s Organization (PWO), there is a high prevalence of domestic violence in the rural areas of northern Shan State where the vast majority of the Palaung population live. The study was conducted through interviews with 617 respondents consisting of both female and male from four townships in the area from November 2009 to March 2010.\textsuperscript{28} Ninety per cent of respondents have experienced or seen physical violence within families in their community.

According to academic research done in Myanmar in 2001,\textsuperscript{29} 27\% of a sample of 286 married women in the Chaunmayethazan Township of Mandalay, experienced physical assault and 69\% experienced psychological aggression in a one-year period.\textsuperscript{30} Although the study


\textsuperscript{29} Although this academic study on domestic violence in Myanmar is not a recent one, it is mentioned here since a recent similar academic study on the issue could not be found.

could not be generalized due to some limitations such as the overrepresentation of lower and middle class household women in the sample, it generally indicates the existence of the problem. The findings of the study were in accordance with those of the MNCWA that minor psychological aggression and physical assault were most frequently reported, whereas severe forms of psychological and physical abuse were less frequently reported.  

Although above-mentioned studies were mostly related to spousal abuse, there is no data on marital rape. It might possibly be due to the lack of awareness on the issue since there is no such law that penalizes marital rape in Myanmar. There is also no study on other types of domestic violence such as maid abuse although there are some anecdotes of such incidents.

ii) Sexual harassment at work and in public

Given the paucity of data, except for an academic study dated in 2002 and MWAF study dated in 2004, information in this section mainly contain anecdotes from ethnic human rights groups and media sources. At a consultation workshop held in preparation of the recent CEDAW shadow report by Women of Burma, women and girls interviewed revealed their experience relating to how they had been touched and groped sexually by men on crowded buses and other public places. Recently there have been increasing anecdotes of many women who experienced sexual harassment on the Yangon's bus networks and highways especially during the rush hours. Thanks to organizers of a campaign, 'whistle for help', some women raised their voices against such abuses happening for many years to many women. It is only during this current political situation that such kind of campaigns could be organized. The campaign aimed to raise community awareness and encourage women to raise their voice when they experience sexual harassment on buses and the community to give protection to those women. The campaign pamphlets said 'Please go and help the women who blow whistle and let's stop this unacceptable behaviour'.

According to a campaign committee member cited in the Myanmar Times, girls and women are usually too afraid or shy to report about experience. She said

Over the past 30 years I myself faced this awful event sometimes and I always thought it was my fault, and kept silent even though I hated it so much. I am now over 40 so …

From what she said, various implications can be withdrawn. Women survivors of sexual abuses kept silent because it might be the fact that there was a lack of effective mechanisms that can take action against it and give them protection or it might be the Myanmar culture that a good woman is supposed to be docile, submissive and not to be aggressive (See B.1.b and B. 3. C.)

The above-mentioned events suggest that there might be unreported cases of sexual harassment and rape cases. The US State Department 2010 report also made that point. According to a study by the Myanmar Women's Affairs Federation (MWAF) cited in a report of UNFPA Myanmar, it was revealed that in 17 states and divisions of Myanmar, there were 209 reported cases of sexual assault in 2001 and 338 cases in 2004 respectively. However, it was not clear as to context (home, work or public), causes, and impact. The UNFPA report noted that 'this study provided fascinating introductory information', but need more in-depth study as the CEDAW Committee suggested.

Regarding sexual violence at work, an academic study conducted in 2001 found out that there was widespread sexual harassment at workplace, mostly committed by a co-worker; and that even the less severe form of sexual harassment had the possibility to inflict negative impact on the survivors. The study used tailor sampling and

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31 Khin Win Shwe 2002 cited in Ibid.
32 See more detail in assessment of national law section, however marital rape is mentioned in a recent study conducted by the UN and the government (See also at Women’s Protection Technical Working Group, ‘Women’s Protection Assessments: Post Cyclone Nargis, Myanmar,’ May, 2010, accessed November 14, 2011, http://reliefweb.int/node/361181.)
35 Ibid.
36 Ibid.
37 Ibid.
39 The MWAF is regarded as one of the extension of government structures. (See at Concluding Observations of the CEDAW Committee, para. 16)
41 A recent similar academic study was not available yet due to the scarcity of data on GBV.
recruiting methods to maximize representativeness within the constraints of time and resources. Survey questionnaires were translated to Myanmar and four groups of female employees in Mandalay participated: 130 (48%) were university faculty; 38 (14%) were government employees; 71 (26%) were company employees; and 24 (9%) were nurses. According to a study of women workers from urban garment factories, there were cases of both physical and verbal sexual harassment of female workers by foreign males who were in superior positions in factories. The study said that such cases were left unreported due to fear of survivors that they might lose their jobs and dignity in the community.

iii) Gender based violence in Cyclone Nargis affected area

Concern over gender based violence in the Cyclone Nargis affected areas in Yangon and Ayeyarwady Division was raised in the concluding observation of the CEDAW Committee. Both initial and complementary assessments facilitated by Women's Protection Technical working group and the Ministry of Social Welfare, Relief and Resettlement, identify such issues as rape, emotional abuse, verbal abuse, sexual harassment, physical assault, domestic violence including marital rape, being forced into early marriage, sexual exploitation as security and safety problems faced by women and girls both before and after Nargis. The initial 2008 assessment was conducted immediately after Nargis in 16 townships in Yangon and Ayeyarwady Divisions. The sample size was 4,841 respondents; 50.1% were female and 49.9% were male. The complementary assessment was done after one and half years in two townships and one sub-township in Ayeyarwady Division with the sample size of 600. The methods applied include focus group discussions (FGD) and a one-on-one survey questionnaire.

iv) Gender based violence in ethnic minority areas

Rohingya Women

Numerous reports have mentioned about human rights violations faced by Rohingya minority in Rakhine state. According to the CEDAW Committee, Human Rights Watch (HRW), the Arakan Project, and the Irish Centre for Human Rights types of violence against Rohingya women include severe restrictions on their freedom of movement; restricted access to medical care, food and adequate housing; forced labour; and restrictions on marriages and pregnancies. Those reports of human rights violations appear to come from credible sources. For instance, the Irish Centre for Human Rights conducted numerous confidential meetings with individuals from several organizations working on the ground in North Arakan State and gathered multitude testimonies from individual members of the Rohingya minority in and around refugee camps in Bangladesh. In the government response to the recommendations contained in the concluding observations of the Committee following the examination of the combined 2nd and 3rd periodic report of Myanmar on 3 November 2008, it was mentioned how the government has provided access to health and education, and development in education, economic, social, and health sectors are low. According to a recent survey conducted by the United Nations Development Programme (UNDP) in cooperation with the Government’s Ministry of Planning and Economic Development, the United Nations Children’s Fund and the Swedish International Development Agency, Rakhine State was the second poorest with a rate of 43.5% per cent after Chin State with 73.3 per cent among 14 regions and States in Myanmar.


50 Irish Centre for Human Rights, ‘Crimes against Humanity in Western Burma’

51 See more detail in Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ‘Information provided in follow-up to the concluding observations of the Committee: Response by Myanmar to the recommendations contained in the concluding observations of the Committee following the examination of the combined second and third periodic report of Myanmar on 3 November 2008,’ CEDAW/C/MMR/CO/3/Add.3, 2 September 2011.

52 IHLCA Project Technical Unit, ‘Integrated Household Living
Ethnic Minority Women Affected by Armed Conflicts and Extractive Industry

According to ethnic women's rights and human rights groups and testimonies of women survivors at the International Tribunal on Crime against Women of Burma, the government armed forces committed rape against ethnic minority women in conflict affected areas. The US Department of State noted that some armed ethnic groups may also have committed conflict related abuses including torture, killing and rape. However the scale might not be as big as the government army. A recent RFA media broadcast mentioned about rape cases committed by soldiers of Kachin Independence Organization (KIO) in Kachin State. The survivors included 2 women and 2 girls of 15 years old.

A report of Kachin Women’s Association documented 15 cases of rape and sexual violence committed by the army soldiers, police security guards from Asia World Company involved in construction of the Myitsone Dam from 10 June to 9 August, 2011 in Northern Shan State and Kachin State. The survivors included 17 women between the ages of 20 to 50 years and 16 girls between the ages of 9 to 13 years. At least in 8 cases, survivors were subsequently killed. According to the latest report of the Secretary General on conflict and sexual violence, as many as 32 women and girls throughout Kachin State were allegedly raped by the Tatmadaw Kyi (government armed forces) between June and August 2011. The report said ‘according to the Government there were four cases of rape in Shan State and one case in Kachin State in 2011; punitive action has been taken against the perpetrators’.

Women’s League of Burma, in their shadow report submitted to the CEDAW Committee, mentioned that there were altogether 875 rape survivors including 161 girls under 18 years old from 1989 to 2006. Perpetrators were the army soldiers including high-ranking officers from commander to corporal level and some of them were State Peace and Development Council (SPDC) authority. According to those reports, there might be unreported rape cases due to inaccessibility and unwillingness of the survivors and the community members who feel shameful to talk about sexual abuse.

In those reports, it was noted that the incidents happened while the survivors were travelling outside their villages or on farms or even in their homes. In some cases, women were forced to work in army-owned rubber plantations or deployed to secure the areas around the development projects like constructing the Yadana gas pipeline during the day. During the night, they were forced to serve as sexual slaves. Cases of human rights violation including rape in the ethnic areas due to extractive industry like oil and gas projects can be seen more in various reports of Earthrights International.

On the other hand, the government has been rejecting such allegations of rape cases as mentioned in the government’s responses during the review process on Myanmar by the

Conditions Survey in Myanmar (2009-2010), 15.


56 Construction on the Myinmote dam has been temporarily stopped by the current government for 5 years.


58 Ibid., in some of the cases, while two or three girls and women are on their way home or on the farm, they were raped. However, this may have been recorded as a single case in some instances. That is why the number of survivors outnumbered the number of cases. (For more detail, see ibid.)


60 Ibid.

61 Women of Burma, ‘CEDAW Shadow report Burma,’ 70.


Working Group on the Universal Periodic Review (UPR) that 'the allegations of sexual violence against ethnic women and children are baseless'. The Second and third periodic reports of Myanmar on the implementation of CEDAW, the government mentioned that it conducted field investigations in response to allegations of 175 rape cases in the southern, eastern and northern parts of Shan State committed by army soldiers as reported by The Shan Human Rights Foundation (SHRF) and the Shan Woman’s Action Network (SWAN) and found out that ‘38 cases were old cases, 135 cases were unreal and only two cases were true. The two perpetrators, an army officer and one other rank, in the two cases were prosecuted and given ten-year sentence each and dismissed from the Army’.65

In the above two reports of the government, discrepancy can be noted that while the State’s UPR report denied the cases, the State’s CEDAW report has already admitted occurrence of such cases. However, it seems that the government’s investigation undermine the extent of problems that that have happened to the ethnic women by taking action against 2 cases out of 175 cases. While the act of investigation is welcoming, it is also questionable regarding the independent and transparent nature of investigation team, which consisted mainly of government officials.66 On the other hand, the UN entities such as the Special Rapporteur on the Situation of the human rights in Myanmar, the CEDAW Committee and the international human rights organizations such as Human Rights Watch raised their concern over sexual and other forms of violence against women and girls in ethnic areas including Shan, Kachin, Kayin, Chin, Mon, Karenni, Arakan, Palaung states and those areas where women are vulnerable and marginalized.67

Without genuine ceasefire and restoration of peace, safety of ethnic minority women is still at high risk. Even after peace has been restored, it will take some time to relieve the physical and psychological impact of atrocities suffered by rape survivors. Recent developments in peace negotiation process between the government and ethnic minority armed groups have earned a hope for a better future for women in ethnic minority areas.68 The report of the Secretary General on ‘conflict related sexual violence’ mentioned that ‘the new Government has recognized the negative effect which five decades of armed conflict has had on ethnic minorities and has committed itself to addressing their grievances as well as promoting and protecting human rights’.69 However, human rights violations directly related with the extractive industry in those areas and across the country have already endangered security of women’s lives, as mentioned in reports of Earth Rights International.70

Violence Against Children

In the most recent CRC Committee’s concluding observation released on 3 February 2012, it was mentioned that:

while noting that the 1993 Child Law contains various provisions on violence against children, the Committee remains concerned about the widespread violence against and abuse of against children …

Concern about violence against children is related to corporal punishment at home and in school; Children in poverty and vulnerable situations including children in street situations, children with disabilities, orphans, children in prison and children in conflict with law, children from ethnic and religious minority especially Rohingya children, displaced children affected by conflict, forced eviction and land confiscation.

i) Corporal punishment at home and school

One major concern regarding violence against children is related to corporal punishment at home and in school. The CRC committee raised its concern that corporal punishment continues to be socially and legally acceptable.71 Given a scarcity of data on the issue, the two studies done by the UNICEF are often cited as the

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66 See more at Ibid.
69 Security Council, ‘Conflict-related sexual violence, para. 41.
70 See supra note, 63.
71 2004 Concluding Observations of the CRC Committee, at paras. 38 and 49; 2012 Concluding Observations of the CRC Committee, para. 53.
most credible sources. However, there are anecdotes of corporal punishment at home or school or alternative care settings.

In an article in The Myanmar Times entitled ‘Corporal punishment ‘common practice’: author, anecdotes of children who were beaten up by parents or teachers are recorded, including an event where a student from a student hostel in Pyin Oo Lwin was even beaten to death by her teacher. According to a recent report of PWO, 58% of respondents claimed that physical violence and verbal aggression were used as disciplinary measures by parents in the Palaung rural areas of northern Shan State.

In a 2001 comparative study of 10,073 children, aged 9-17 years across East Asia and the Pacific by UNICEF and Research International Asia (Thailand) 40% of the children surveyed in Myanmar reported that their parents had beaten them; 12% revealed that it was difficult for them to talk to teachers because they were afraid of being beaten by the teachers. In a 2002 study by UNICEF, 17% of children surveyed in four peri-urban townships revealed that teachers beat them at school. Respondents included both primary and secondary schools and out of school children and face-to-face interviews and focus group discussions were used.

ii) Children in vulnerable situations: Street children, orphans, abandoned, sexually abused children and children in poverty

In its two concluding observations in response to the Second Periodic Report and the consolidated Third and Fourth Periodic Reports of the State, the CRC Committee raised its concern at the lack of reliable information on the number of street children in all townships and causes of the phenomenon. Children who are affected by poverty, broken families or affected by conflict or forced relocation might end up in the street situation. They are also exposed to various forms of exploitation including trafficking; worst forms of child labour and sexual abuse (see more detail in exploitation section). With lack of data on the issue and its root causes, an attempt to solve the problem cannot be effective.

The CRC Committee has been reminding the State about the importance of collecting data relating to domestic violence, including physical and sexual abuse and the neglect of children. According to a study conducted by the UN in coordination with the government in 2000 on the issue of sexually abused and exploited children, girl children who were trafficked or engaged in sex industry voluntarily at their young age came mainly from troubled families that were poor and uneducated. Before they entered the sex industry, some of them were raped by their stepfather or boyfriend or friend of a family member. And some of them just simply saw it as a way to ease their family's financial woes.

The CRC Committee mentioned that poverty rate is persistently high among children. Furthermore, the Committee is concerned about the significant income disparities between urban and rural areas and between regions. For instance, compared to the national average of 10% food poverty, the Eastern Shan State and the Chin State have 20% and 40% respectively in terms of food poverty. In addition, the Committee is concerned about ‘serious gaps in the supply of safe drinking water especially in schools and the rural areas and inadequate sanitation facilities, which affect the health and retention of children in school.’ According to the Committee, it is worrisome that there is the lack of information on the resource allocated to the implementation of the Poverty Alleviation Plan for 2011-2015. However, it might be possible that the with the on-going reform process in the country, resources allocated to social services might be increased and efforts to alleviate poverty might be more effective in future. (See more on implementation section).

73 Palaung Women’s Organization (PWO), ‘Voices for Change,’ 16.
75 UNICEF cited in Global Initiative to End All Corporal Punishment of Children.
76 ‘2004 Concluding Observations of the CRC Committee,’ para. 74 and 75; ‘2012 Concluding Observations of the CRC Committee,’ para. 87.
78 ‘2012 Concluding Observations of the CRC Committee,’ para. 59.
79 Although the study is dated before 2005, a recent similar study was not available or was not made publicly available on line. Relief and Resettlement of Myanmar The Department of Social Welfare of the Ministry of Social Welfare, and the United Nations Economic and Social Commission for Asia and the Pacific, ‘Sexually Abused and Sexually Exploited Children and Youth in Myanmar: A qualitative assessment of their health needs and available services in selected provinces,’ ST/ESCAP/2076, 2000.
80 ‘2012 Concluding Observations of the CRC Committee, para. 69
81 Supra note 79.
82 Ibid.
83 ‘2012 Concluding Observations of the CRC Committee,’ para. 69.
Due to poverty, conflict or natural disasters or various other reasons, children are deprived of a family environment. Although they are cared for at institutions administered by the Department of Social Welfare, the CRC Committee raised its concern over the inadequate living standard provided by these institutions (See B. 3. c.)

iii) Children affected by HIV/AIDS and children with disabilities

Children who live in poverty and who are vulnerable to sexual abuse and other forms of exploitation have more risk of being infected with HIV/AIDS and of being disabled due to malnutrition or other complications. For instance, according to the UNAIDS, in Myanmar, around 18% of female sex workers are infected with HIV.

According to the UN’s study mentioned earlier on the issue of sexually abused and exploited children, all the female sex workers who were under the age of 18 years became sex workers mainly due to poverty.

Even though the government has adopted priority strategies to respond to orphans and vulnerable children infected and affected by HIV, the CRC Committee raised its concern about inadequate resources in their implementation (See B. 3. c.) Regardless of the plan, lack of means for effective implementation can amount to negligent treatment. It is also similar in the case of children with disabilities especially, those from rural and remote areas.88

According to a survey of Human Rights Foundation of Mon Land, in one village alone in Ye township, Mon State, there are at least 10 to 15 disabled children out of a population of 6,000. According to the report, children in the eastern and southern border areas are vulnerable to landmines and malnutrition. They pointed out that disabled children in the region face discriminatory attitudes due to lack of community awareness and lack of social services including access to an inclusive education in spite of the government’s plan which has been concentrated mainly in cities.

iv) Children in prison and children in conflict with law

According to the State’s combined Third and Fourth Periodic Reports to the CRC Committee, a female prisoner is allowed to keep her child with her until the child reaches 4 years of age under normal circumstances, or up 6 years of age if necessary. Children can learn poems and basic language at pre-primary schools established in prisons. It also stated that Myanmar Maternal and Child Welfare Association (MMCW A) and the Department of Social Welfare provide necessary facilities to children who are born to female prisoners.

On the other hand, in the shadow report of the Child Rights Forum of Burma (CRFB) to the CRC Committee, former political prisoners recounted their experiences on how infants and young children with their mothers in prison were denied right to adequate health care, everyday stimuli and educational material for their social and psychological wellbeing, and nutritious food. Their mothers were also denied assistance during childbirth. The CRC Committee also mentioned its concern regarding this issue. However, it is hopeful that the current reform-minded government will improve the situation since there is already a policy to give protection to such children.

Children who are in conflict with the law are in vulnerable situations due to reportedly ill-treatment in prisons. The CRC Committee expressed its concern about a high number of children in pre-trial detention and the reports that they were physically punished.

Another category of children who are at risk of torture, inhumane or degrading treatment or punishment are child political prisoners. Since many political prisoners have been released, child political prisoners might have already been freed. However, a few political prisoners still

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85 '2012 Concluding Observations of the CRC Committee,’ para. 55


87 Supra note, 78.

88 '2012 Concluding Observations of the CRC Committee,’ at para 61.


91 ‘Myanmar’s Report to the CRC Committee,’ para. 119

92 Ibid.


94 ‘2012 Concluding Observations of the CRC Committee,’para. 21

95 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para 119

96 ‘2012 Concluding Observations of the CRC Committee,’ para. 90, 91

97 ‘2012 Concluding Observations of the CRC Committee,’ para. 51, 52.
remain in prisons. According to interviews with former child political prisoners who were detained between 1994 and 2007, they were subjected to unlawful arrest, detention and torture for their involvement in peaceful demonstrations, their membership in a high school union and their perceived association with rebel groups. As the government starts to open up, it is hoped that students’ right to freedom of association might not be restricted as in the previous regime. Hopefully, detention of children or any person for their political belief will be prevented.

v) Rohingya Children

Despite the process of reform in Myanmar, the situations of Rohingya children are still worrisome due to their statelessness and a subsequent lack of access to health and education. According to the shadow report of the Arakan project submitted to the CRC Committee, an estimated 40,000 Rohingya children are reportedly unregistered and more than 60% of children aged between 5 and 17 have never enrolled in school. The Rohingya community has an estimated illiteracy rate of 80%. As government authorization is required for marriage, Rohingya women who become pregnant without official marriage authorisation often resort to illegal abortions, resulting in many maternal deaths. Some reportedly deliver the baby secretly in Bangladesh or abandon their babies there. Even for legally married couples, as the result of ‘two-child policy’, third or fourth children are left unregistered or registered with another legally married couple. According to the latest report of the Special Rapporteur, the border security force, the Nasaka, has not issued marriage permissions since August 2011.

Whether children are registered or unregistered, they are stateless under the 1982 citizenship law. Lack of citizenship consequently renders them vulnerable to various forms of discrimination including travel restrictions and contempt and discriminatory treatment of the local Rakhine and Burmese. As the result, they have been reportedly denied their basic rights of access to nutritious food, health care, education, survival and development.103

vi) Children affected by conflict

In spite of recent ceasefire efforts and agreements between the government and the respective ethnic rebel groups, the sufferings of children from the impact of prolong conflicts in ethnic areas have been extensively reported. Children were reportedly subjected to serious abuses, such as recruitment of child soldiers, rape, and indiscriminate use of anti-personnel landmines by both the government armed forces and non-state armed ethnic groups.104 Citing Karen Human Rights Group (KHRG) reports, CRFB said that there were 32 incidents of children ranging from the age of 2 months old to 17 years old injured, killed or subjected to violence by soldiers of the armed forces in Karen State and East Bago Region from March 2006 to April 2010. Civilians including children were killed at ‘shoot on sight areas’ due to such circumstances as indiscriminate fire on villages, hiding sites, farm field huts and fields; deliberate destruction of civilian settlements including schools and hospitals and torture of persons suspected of having links with or supporting opposition forces. Several organizations including the Free Burma Rangers, Women and Child Rights Project (WCRP), KHRG and Back Pack Health Worker Team (BPHWT) documented cases of child landmine survivors. WCRP reported 7 cases of children killed or maimed caused by undetected landmines used by all parties in conflict in civilian areas in Mon state between 2007 and 2009. According to the report the secretary general on children and armed conflict:

There were a number of media reports in 2010 of children being killed or maimed during skirmishes involving the Tatmadaw, DKBA, KNLA, KA or Mon Pyi Thit, or by landmines and unexploded ordnance. In a verified case, on 31 March 2010, two boys under the age of 10


100 Chris. Lewa, ‘North Arakan.’

101 Ibid.


106 Ibid.

107 Ibid.
One impact of conflicts suffered by children in rural areas and ethnic regions is limited access to education and health care due to inadequate provision of such facilities or destruction of the existing facilities.109

According to the US Department of State, the mortality rate of children-IDPs in conflict areas was significantly higher than in the rest of the country.110 Similarly, CRFB points out that infant mortality and under-5 mortality rate are higher, at 73 per 1,000 births and 138 per 1000 live births, in internally displaced communities of eastern Burma based on BPHWT’s recently published figures. Whereas, according to BPHWT, infant mortality rate and under 5 mortality rate at the country level are at 54 per 1,000 births and 71 per 1,000 live births.111 According to the government’s third and fourth combined report to the CRC Committee, infant mortality rate is 49.7 per 1,000 live births and under-5 mortality rate is 66.1 per 1,000 live births in 2003.112

There have been a number of academic articles on limited maternal health services and inadequate health assistance to the IDP population including land mines victims in eastern Myanmar.113 The CRC Committee also expressed its concern over the very high number of IDP children and families and their limited access to clean water, inadequate sanitation, food, shelter, health and education.114

As mentioned earlier, conflict related abuses suffered by children and women should end with the ceasefire agreements. However, even after the conflicts ended and ever-lasting peace has been restored, as Karen Human Rights Group (KHRG) suggested, human rights abuses directly related to increase in industrial, business or development projects might have worsen.115

vii) Children affected by forced evictions and relocation

For the purpose of extractive industry and large-scale development projects, families have been forcefully evicted from their homes and it has negative impact on children regarding access to clean water, sanitation, food, shelter, health and education. The CRC Committee expressed its deep concern on the issue and urged the government to end forced evictions and to guarantee the rights and well-being of those internally displaced children.116

The Earth Rights International has been doing field research in the areas where extractive industry projects are under construction and recorded human rights violations including extensive land confiscation, forced relocation and a subsequent loss of livelihood (See also ‘prevailence of exploitation’ at section C.I.(a). The Special Rapporteur also raised his concern for the people in ethnic regions such as Rakhine State, Kayah State, Kachin State, Kayin Kachin where massive extractive industry were on completion or under construction or under planning process.117


112 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011;para 148.


116 ‘2012 Concluding Observations of the CRC Committee,’ at paras. 77 and 78.

117 Ibid, para. 64 -69.
b. Root Causes of Violence and Aggravating Practices

Various forms of gender-based violence against women in Myanmar are rooted in cultural factors. Infiltration of Brahmin culture in Myanmar society can be seen in some societal stereotypes and attitudes that relegate women to a subordinate position. In Brahmin culture, women are regarded as the inferior sex and their gender-specific bodily functions (menstruation and childbirth) are identified as dangerous and polluting to male purity.118

Even though Myanmar does not have some extreme forms of gender discrimination119 such as female infanticide and honour killings as in some other Asian countries,120 traditional and cultural norms are imposed on women,121 fostering and perpetuating gender stereotypical attitudes and male domination in all walks of life in Myanmar society—regardless of religion or ethnic origin.

Two ethical values i.e. 'Shame' (Hiri) and 'Fear' (Oattapa) are equally applied to men and women. People are reminded to be shamef ul and afraid of committing such kind of actions. However, when these values are interpreted regarding women's behaviour, influence of the 'Brahmin culture' can be seen and women are expected to be 'good' by being modest, submissive and obedient in serving her husband and relatives.122

For instance, having sex outside marriage is traditionally regarded as shameful and brings disgrace on the woman and her family. It is seen as the social stigma and consequently damages a woman's dignity and reputation. This is reflected in the cases of women who feel ashamed to report sexual harassment and rape cases, and consequently fosters 'a culture of silence.'123 The CEDAW Committee noted that 'a culture of silence' fosters 'impunity' due to unreported and underreported cases124 and it is exacerbated by weakness in law enforcement and access of survivors to justice.125 Such impunity has increased sexual violence against women in ethnic areas, especially conflict related crimes committed by the members of armed forces.126

Furthermore, it was noted that military expansion in the ethnic areas whether in war zones or non-conflict areas has reportedly exacerbated the situation.127 Sexual violence against women and girls was allegedly used as a strategy to 1) punish local communities accused of supporting rebels; 2) to humiliate and demoralize ethnic resistance forces; and 3) to establish control over lands and resources of the ethnic peoples.128 In a summary report of 24 stakeholders' submissions to the Universal Periodic Review by the Office of the High Commissioner for Human Rights and the Special Rapporteur's report to the Human Rights Council, concern was raised over the culture of impunity and practice of widespread and systematic use of rape.129 In addition, in some ethnic areas, 'a culture of male domination, fear and violence' is supposedly normalized in militarized societies. It seems to be handed down as a legacy of long term armed conflicts.130

Aside from end of armed conflicts and restoration of peace, other factors such as law enforcement and access to justice need to be improved.131

In non-conflict areas such as in Northern Rakhine State, gender-based violence on minority Muslim women...
is reportedly compounded by the practice of racial discrimination and ‘highly conservative traditions and a restrictive interpretation of religious norms, which contribute to the suppression of women’s and girls’ rights.’

All these factors seem to be reinforced by poverty and economic crisis, as found out in the study of PWO. According to the study, families suffered from economic crisis in the Palaung areas due to the State’s monopoly of the local’s livelihood (tea industry) and a subsequent increase in opium cultivation and addiction. It said, ‘[m]ales resort to physical violence as a means of expressing their anger and frustration with their situation.’

It seems that poverty and financial difficulties are the common factors that have increased domestic violence especially between man and wife in other parts of the country as well. According to a study conducted by the Myanmar National Working Committee for Women’s Affairs (MNWCWA) and an academic study in 2002, the commonest causes of domestic violence are inadequate financial provision for the family, excessive and habitual drinking, disharmony with in-laws in the extended families, and adultery. Even though these available data are quite old, according to the PWO’s study, which was a recent one, they are valid until today.

Root Causes and Aggravating Practices of Violence Against Children

It seems culturally acceptable that parents or teachers beat a child with the purpose of admonition for the benefit of the child. This is also stated in the Child Law as such. According to the government, it is under review process to amend the clause to end the practice of corporal punishment. In spite of that, as what Aung Hein Kyaw, one of the country’s first writers to publish a book about parenting, told the *Myanmar Times*, violence against children particularly physical abuse, is ‘common practice’ and ‘many schools and institutions still use canes to inflict punishment’ regardless of the government directives that corporal punishment should not be used at schools.

Although study on the root causes of such practice at homes in Myanmar families has not been done, some anecdotes said that parents under financial stress and ignorance tend to use corporal punishment. Moreover, poverty itself becomes a form of negligence and maltreatment when it is widespread and disproportionately affects children’s health, education and development. Thant Myint Oo portrayed the extent of poverty and its impact on children as follows: ‘a third of all Burma’s 60 million people are living on $1 a day or less, and at least as many were living on only a little more. Millions were malnourished and millions of children were stunted in their growth.’

c. Impact of Violence

Generally it can be concluded that violence against women and children has negative impact on survivors both physically and mentally based on the available studies in this review. According to Palaung Women Organization (PWO), as a result of prolonged physical and mental abuses, some women survivors of domestic violence suffered from physical and psychological disorder.

Domestic violence also destroyed stability of family unit and it has negative impact on children. Children suffered from depression and shame of the social stigma of family problems. As the result, some dropped out of schools and run away from the family. It perpetuates a culture of violence in the mindset of those children who are exposed to domestic violence in their daily life.

Similarly, a study on sexual harassment at workplace found that ‘gender harassment was associated with a variety of negative outcomes (psychological, physical

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132 ‘2008 Concluding Observations of the CEDAW Committee,’ para. 22 and 42; Irish Center for Human Rights, ‘Crimes against Humanity in Western Burma.’
133 PWO, ‘Voices for Change,’ 5
135 See Article 66 (d) of the Child Law (1993).
136 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 272.
138 Global Initiative to End all Corporal Punishment of Children, ‘Myanmar.’
141 Palaung Women’s Organization (PWO), ‘Voices for Change,’ 6, 30. See also Nilar Kyu, and Atsuko Kanai, ‘Prevalence, antecedent causes and consequences of domestic violence in Myanmar,’
142 Palaung Women’s Organization (PWO), ‘Voices for Change,’ 6 and 30.
and work related). According to anecdotes of women who were subjected to sexual harassment on public buses, they mostly suffered psychological problems such as fear, shame, regret and confusion about the incident happened to them.

Out of many reports on rapes cases in conflict affected areas, a few studies have documented its impact on survivors and one of them is the study of Women’s League of Chin Land. According to its 2007 report that recorded testimonies of 38 rape cases of Chin women, both physical and mental effects were revealed; one suffered deep psychological trauma such as crying constantly; one got pregnant and died in childbirth; one was contracted with sexual disease transmission including HIV, AIDS and one was subjected to blame, discrimination and moved away from the native place to avoid social stigma and became refugees.

Regarding discrimination against Rohingya women in Rakhine State, specifically the requirement of marriage authorization, has resulted in damaging women’s reproductive health, such as abortions and maternal death, in addition to barriers in access to health care due to restrictions of movement.

A profound negative impact of various forms of violence against children has been reported by CRFB in its CRC shadow report, ‘The plight of children under military rule in Burma.’ Children’s physical growth and intellectual development has been negatively affected and especially conflict-related damages are egregious resulting in death of children in some cases. Human Rights Education Institute of Burma (HREIB) stated effect of rape on young girls in its report:

Physically, girls may be subject to uncontrolled bleeding, internal injury, sexually transmitted infections and gynaecological complications. Psychologically, child victims may endure nightmares, loss of sense of self-worth, paranoia, and intimacy issues as they mature into adulthood. Counselling is extremely limited and children who suffer from post-traumatic stress disorder and situational depression typically do not get the help that they desperately need.

In severe cases children have been unable to physically recover from the rape and have consequently died.

The survivors of sexual violence were also subject to being stigmatized by their communities and, consequently, some girls and their families were forced to leave their homes and communities. Some often found it difficult to marry due to their stigmatized identities and in some cases, those young expecting mothers had to deal with unwanted pregnancies.

CRFB also detailed suffering of IDP children such as lack of health services, malnutrition and being deprived of education. Asian Research Center also did a study on the impact of armed conflict on Burmese children in Thailand. The study found out that children suffered varying degrees of distress due to exposure of killings of family members, and relatives and separation from families as they run away from conflicts and live in refugee camps. They were also subjected to the fear of being arrest and forced back across the border due to their illegal status in Thailand.

2. De Jure State Responses
   a. Bases of State Responsibility

International Treaty Mechanism

<table>
<thead>
<tr>
<th>Treaties</th>
<th>Ratification</th>
</tr>
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<tbody>
<tr>
<td>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)</td>
<td>22 July 1997</td>
</tr>
<tr>
<td>The Convention on the Rights of Persons with Disabilities</td>
<td>07 Dec 2011</td>
</tr>
</tbody>
</table>

143 Nilar Kyu, and Atsuko Kanai, ‘The Prevalence, Antecedents and Consequences of Sexual Harassment in the Myanmar Workplace.’
144 Cherry Thein, ‘Whistle Campaign a Hit on City Buses,’
146 Ibid.
147 Chris Lewa, ‘North Arakan.’
148 CRFB, ‘CRC Shadow Report Burma.’
150 Ibid.

Regional Declarations

2004 Declaration on the Elimination of Violence against Women in the ASEAN Region
1988 Declaration of the Advancement of Women in ASEAN Region
1993 Vienna Declaration and Programme of Action
1995 Beijing Platform for Action
1997 ASEAN Vision 2020

In its concluding observation, CEDAW committee encouraged the State to take measures to eliminate violence against women and to include information on such measures and their progress and results. It also recommended that the State party should take due account of Security Council Resolutions 1325 (2000) on women and peace and security and 1820 (2008) on sexual violence in armed conflict. The State was encouraged to put in place an action plan for the full implementation of those resolutions, taking into account article 2, article 4, paragraph 1, articles 5, 7 and 8 of the Convention. The CRC Committee also encouraged the State to ratify the following:

2) Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment;
3) Rome Statute on the International Criminal Court;
4) Convention on Cluster Munitions;
5) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime;
6) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;
7) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have indiscriminate Effects (with Protocols I, II and III);

b. National Policies against Violence

National Policies Related To Preventing Violence against Women

Laws On Violence against Women
Section 375 and 376 of the Criminal Law ('Rape' and 'Punishment for rape')
Section 319 to 338 of the Criminal Law ('Of Hurt')
Section 509 of the Criminal Law ('Word, gesture or act intended to insult the modesty of a woman')

National Policies related to preventing Violence against Children
National Child Health Strategic Plan (2010-2014)
National Plan of Action (2003-2015) named 'Education for all'
National Strategic Plan for Adolescent Health (2006-2010)
National Plan of Action for Persons with Disabilities 2010-2012

Laws On Violence against Children
The Child Law (1993, revised 1999)

153 '2008 Concluding Observations of the CEDAW Committee,' para. 25.
154 Ibid.
155 '2012 Concluding Observations of the CRC Committee,' para. 52, 58, 82 and 84.
c. Assessment of State Policies

Violence Against Women

Rape

The US Department of State noted that by law, rape is penalized and law enforcement is crucial. In its assessment of the penal law against rape, it states that:

If the victim is under 14 years of age, the act is considered rape with or without consent. In such cases the maximum sentence is two years’ imprisonment when the victim is between ages 12 and 14, and 10 years’ to life imprisonment when the victim is under 12. Spousal rape is not a crime unless the wife is under 14.156

The law provides circumstances where consent cannot be presumed:

… when her consent has been obtained by putting her in fear of death or hurt; with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.157

Domestic Violence

There are no special laws and provisions specifically against domestic violence or spousal abuse (including spousal rape).158 However, there are laws that penalize offences that cause bodily harm against another person. The prison terms range from one year to life, in addition to possible fines.159 In cases where women sustained injuries and filed a report, police generally take action, although police in general are reluctant to act in domestic violence cases.160 The CEDAW committee urges the State to ensure that all forms of violence against women including, domestic violence and sexual abuses constitute a criminal offence.161

Sexual Harassment

According to the assessment of the US Department of State 2009 human rights report, sexual harassment is prohibited by the penal code and the penalty is fine or up to one year’s imprisonment. It was also noted that information on the prevalence of the problem is unavailable because these crimes were largely unreported.162 It seems that the US Department of State refers to the Penal Code 509 although there is no usage of ‘sexual harassment’ in its provisions, it says:

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be beards, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.163

Polygamy

CEDAW Committee noted that polygamy is discouraged but not prohibited by law.164 Although Myanmar Buddhist men customarily married more than one wife, ‘recent Myanmar societies feel that a man should marry only one woman.”165 Nilar Kyu described how the society discourages polygamy:

Parents and relatives would not allow their daughters, sisters, or nieces to marry men who are already married. Myanmar women are also afraid to become a second wife. Becoming a second wife may be likely to happen when married men who wish to have more than one wife try to hide their true marital status. When the women learn the truth about their marital status, they feel sadness or complain, which may lead to conflicts and violence.166

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156 US Department of State, ‘2009 Human Rights Report: Burma’; Penal Code, 376, Chapter XVI.
157 Penal Code, 375, Chapter XVI.
159 The Penal Code. 319 to 338, Chapter XVI.
161 ‘2008 Concluding Observations of the CEDAW Committee,’ para. 23.
163 Penal Code, 509, Chapter XXII.
166 Ibid.
CEDAW urges the State party to amend civil, religious and customary laws that discriminate women in relation to marriage and family relations and other discriminatory customary practices especially in ethnic communities in order to be compatible with the Convention.\footnote{167}

**Discrimination**

According to the CEDAW committee, the 2008 Constitution does not effectively guarantee substantive equality in accordance with the definition of discrimination mentioned in article 1 of the CEDAW convention. In spite of the fact that the Chapter 8 of the 2008 Constitution formally indicates sex as a ground of discrimination in the appointment of government posts, it adds that ‘nothing in this section shall prevent appointment of men to the positions that are naturally suitable for men only.’\footnote{168} The Committee pointed out how the Constitution includes discriminatory provisions:

The Constitution also includes provisions guaranteeing that the Tatmadaw (military), which may consist mainly of men, will be entitled to one fourth of the seats in each house of the legislature (110 out of 440 seats). The Committee is further concerned that the Constitution includes repeated references to women as mothers, which may reinforce the stereotype that a woman's primary role is that of a mother and that women are in need of protection.\footnote{169}

The committee urged the State to incorporate provisions of the CEDAW into the constitution and other appropriate legislation and amend the definition of discrimination to be in accordance with article 1 of the Convention.\footnote{170}

**Violence Against Children**

**Corporal punishment**

By law, corporal punishment is permitted in the home, schools and alternative care settings.

Article 66 (d) of the Child Law (1993, revised 1999) prohibits ‘wilful maltreatment of a child, with the exception of the type of admonition by a parent, teacher or a person having the right to control the child, which is for the benefit of the child.’\footnote{171} However, according to the government, this clause is to be amended.\footnote{172}

Article 89 of the Penal Code, states that, with certain provisos, that

… nothing which is done in good faith for the benefit of a person under twelve years of age xxx, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person.\footnote{173}

Under article 45 of the Child Law, corporal punishment is prohibited as a sentence for crimes by children below the age of 16 years; and under Rule 100 of the Rules of the Child Law (2001) for children aged 16-17.\footnote{174} ‘There is no provision for judicial corporal punishment in the Penal Code. However, corporal punishment is lawful as a disciplinary measure in prisons under the Prisons Act (articles 46, 47, 50, 51 and 53), including children under the age of 16.’\footnote{175}

Although there are government directives that prohibit corporal punishment at school, it does not seem to be implemented effectively and the Committee raised its concern about that.\footnote{176} The CRC Committee encouraged the State to repeal provisions of the Child Law and the Penal Code that authorize corporal punishment and prohibit corporal punishment in all settings, including the family, penal institutions, and alternative care settings in accordance with the Committee’s general Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.\footnote{177}

\begin{itemize}
  \item 167 ‘2008 Concluding Observations of the CEDAW Committee,’ para. 46 and 47.
  \item 168 Ibid., para. 10.
  \item 169 Ibid.
  \item 170 Ibid., para. 8 and 9.
  \item 171 ‘Article 66 of the Child Law (1993, revised 1999).’
  \item 172 ‘Myanmar's Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 272.
  \item 174 Article 45 of the Child Law cited in Ibid.
  \item 175 Article 46, 47, 50, 53, Chapter XI of the Prison Act cited in Ibid.
  \item 176 ‘2004 Concluding Observations of the CRC Committee’ at paras 38 and 39. ‘2012 Concluding Observations of the CRC Committee,’ para. 54.
  \item 177 Ibid.
\end{itemize}
Children in Conflict with Law

Persons below the age of 16 years and youth at the time of the commission of the crime for which death penalty was prescribed are not be sentenced with the death penalty, 178 however, children between 16 and 18 years are treated as adults under the penal law. 179 The CRC Committee recommended Myanmar to recognize that all persons below the age of 18 are entitled to special protection and specific rights as enshrined in the Convention. 180

Although the issuance in October 2010 of the Protocols on Child Friendly Police Investigations is a progress, the fact that the minimum age for criminal responsibility is age 7 is a concern. 181 It is far too low than the international standard and the CRC Committee recommend that the State party raise the age of criminal responsibility to an internationally acceptable age, and in no case, below the age of 12 years. 182 The Committee raised its concern over the lack of a provision in the Child Law to ensure legal assistance to the Juvenile offenders and the legal sanctions imposed on children who commit statutory offences such as begging. 183

While in detention, Child Law section 52(a) provides that a child or youth should not to be kept together with adult prisoners. 184 Child law 3 (f) gives provisions that a separate trial of a juvenile offence shall be enable; this takes account of the age of juvenile person and desirability of promoting their rehabilitation. 185

Children in Vulnerable Situations

According to the CRC Committee, the State needs to undertake the necessary changes in legislation and policies to incorporate the principles of non-discrimination to ensure the rights of 'children in vulnerable and disadvantaged situations such as children from ethnic and religious minority groups (including Rohingya children), children from remote and border areas, internally displaced children, children in street situations, children affected by HIV/AIDS, children with disabilities, orphans and children in situation of poverty. 186

Furthermore, the Committee recommends that the State needs to address gaps in the current citizenship legislation, which lead to Statelessness of children born within the country's territory or to nationals of the country living abroad. 187 Discriminatory provisions such as different categories of citizenship and indication of ethnic origin on identity cards need to be removed. 188

Overall Assessment on Policies and Legislations to Protect Children from Violence, Abuse and Neglect.

The CRC Committee recommends that the State needs to provide adequate legal provisions and regulations to protect all children victims and/or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation and trafficking; in accordance with the Convention and the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council Resolution 2005/20 of 22 July 2005). 189 The state needs to develop a national comprehensive strategy to prevent and address all forms of violence against children in accordance with the United Nations study on violence against children (A/61/299), and the outcome and recommendations of the Regional Consultations for South Asia (held in Islamabad, 19-20 May 2005). 190 While the CRC Committee takes note of the efforts undertaken by the State party to amend the Child Law (1993), provisions and principles of the Convention still need to be incorporated into the domestic law.191

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180 Ibid., para. 26.
181 '2012 Concluding Observations of the CRC Committee', para. 90.
182 '2004 Concluding Observations of the CRC Committee', para. 76 and 78; '2012 Concluding Observations of the CRC Committee', para. 90.
183 '2004 Concluding Observations of the CRC Committee', para. 76.
185 Child Law Section 3(f) in Ibid., para. 39.
186 '2012 Concluding Observations of the CRC Committee', para. 35.
187 Ibid., para. 41 and 42.
188 Ibid.
189 Ibid., para. 92.
190 Ibid., para. 60.
191 '2004 Concluding Observations of the CRC Committee', para. 7.; '2012 Concluding Observations of the CRC Committee', para. 9 and 10.
3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

Myanmar National Human Rights Commission

There have been some criticisms regarding the establishment of Myanmar National Human Rights Commission (MNHRC) on 5 September 2011. The CRC Committee raised its concern based on such factors as 'the absence of a law establishing the Commission; the status of the members of the Commission, who are government and former government officials; the current financial resources of the Commission that do not ensure its independence and efficiency'. Recently, the parliament has decided not to allocate budget to the MNHRC on the ground that its formation 'does not conform to the constitutions and existing laws.'

Myanmar National Committee for Women's Affairs (MNCWA); Myanmar National Working Committee for Women's Affairs (MNWCWA) and Myanmar Women's Affairs Federation (MWAF) have been established as the National Mechanism to implement the 12 tasks set down by the Fourth World Conference for the advancement of women. The Myanmar Women's Affairs Federation (MWAF) was formed in 2003 in order to implement the policy of the MNCWA at the grass-roots level. The president and the general secretary of MWAF are members of MNCWA. MWAF is partly funded by the Government and also gets funds from some small-scale business, fund-raising ceremonies and activities from well-wishers and volunteers. Human resources of MWAF are mainly voluntary members from the various Ministries.

While the CEDAW committee took note of the activities of MNCWA and MWAF, the committee was concerned about the high prevalence of violence against women and girls, and expressed its regret for the lack of information on mechanisms and remedies available to survivors of sexual violence as well as measures to bring perpetrators to justice. Human Rights Council and the General Assembly also urged the State to undertake a full, transparent, effective, impartial and independent investigation into all cases of human rights violation including rape.

The National Committee on the Rights of the Child

The National Committee on the Rights of the Child (NCRC) was formed on 30 March 1993 and its working committee was established on 17 June 1997. It was reactivated recently after being inactive for a long period. State, Regions, District and Township level committees were also set up for the same purpose. Voluntary social welfare officers were assigned in 10 States and Regions. However, it seems that there is still a concern regarding its sustainability, its mandate and the resources allocated to it. In addition, effective and systematic collaboration among the different ministries is still lacking in the implementation of activities related to the Convention. Only a small number of operational bodies have been established at township level and the decentralization process is not yet in place in all states, divisions and districts.

b. Complaints Process

Myanmar National Human Rights Commission (MNHRC)

MNHRC has received 1,000 complaints since its establishment in September 2011. According to the Chairman of the MNHRC, 'a lot of issues have been reported such as land disputes, alleged malpractices in the health sector and complaints about government...

193 '2012 Concluding Observations of the CRC Committee,' para. 15.
196 CEDAW, 'Responses to the List of Issues and Questions with Regard to the Consideration of the Combined Second and Third Periodic Report: Myanmar,' para. 15.
197 '2008 Concluding Observations of the CEDAW Committee,' para. 20 and 22.
198 Ibid., para. 24.
200 '2012 Concluding Observations of the CRC Committee,' para. 11.
201 Human Rights Council, 'National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Myanmar,' para. 46.
202 '2012 Concluding Observations of the CRC Committee,' para. 11.
203 Ibid.
There is rare information on whether those complaints were solved or not, and it seems too early to make an evaluation on the performance of the MNHRC. According to the Chairman, they could not do investigations on alleged human rights violations in conflict areas due to sensitivity during the transitional period and peace negotiation process of the country.

MNHRC's complaint process is supposed to give access to justice to survivors of human rights violations. The MNHRC stated that 'any citizen may send complaint to the Commission' when his or her fundamental rights in the Constitution of the Republic of the Union of Myanmar are violated. It stated that the citizens had to mention the necessary facts so that the commission could deal with the complaint effectively. Matters should not have been brought before, or be under, or have been finally decided by a court. The Commission would investigate the cases and contact the concerned person, company or government department. The Commission would tell them to change if they need to change and if they didn't listen, the Commission would send a letter to the president advising him to take action.

*The Myanmar Women's Affairs Federation (MWAF)*

Complaints about gender-based discrimination can be lodged with the MWAF. Groups at the Central, State, Division and District levels screen the letters of complaint and forward them to the department concerned for necessary action. According to the follow up report of Myanmar to the Committee's concluding observations, the concerned authorities receive the complaints and investigate the cases and take action against offenders according to the law. It stated that in 2010, from 1 January to 31 August, the Ministry of Home Affairs received 503 complaints:

Among them 101 complaints which are not correct are abolished and 199 complaints were taken into action. 203 complaints are still being investigated. According to investigation and complaints by women survivors, it is found that (7) Military officers, 99 other ranks who committed sexual abuse have been accused and they are given severe punishment by Military Act.

The report mentions that in some cases, MWAF provides free legal assistance and advice to complainants. It seems that the complaint process is also free of charge to complainants, but it is not clear whether MWAF have sufficient resources in terms of finance and personnel to provide such kind of services. Information is lacking regarding whether MWAF is staffed with adequate gender experts in carrying out counselling services. There is also no information provided regarding whether MWAF can afford protection to persons filing complaints.

Although the CEDAW committee recognizes that complaints about gender-based discrimination can be lodged with the MWAF, it is concerned about the lack of more comprehensive and effective legal system in receiving complaints especially from ethnic women and access to justice. There is also no information on accessibility of women survivors of abuse to the MWAF and the reliability of the MWAF complaint mechanism.

According to Women's Protection Technical Working group survey report on Post Nargis Cyclone assessment, out of 600 respondents, only about 9% or 6.7% of the respondents said that survivors of violence could go for help to the MWAF or police. Meanwhile the majority consider mothers (25%) and community leaders (50%) as the main people who provide support for survivors of violence. According to the result, MWAF's complaint mechanism seems less accessible to survivors of violence in those areas. However, the study lacks the information on why it seems so.

Even though the CEDAW shadow report by Women of Burma does not give a comprehensive assessment on MWAF's complaint mechanism, a testimony of one domestic abuse survivor seems to indicate that MWAF might need to improve.
be staffed more by gender experts. A 32-year-old woman from Phar Saung Township, Karenni State who ran away from her abusive husband said that she did not want to take her case to the MWAF. She had seen many incidents of domestic violence faced by women in her area and the MWAF members were allegedly not supportive. Sometimes the blame was reportedly put on women who were battered and those women were treated as 'bad'.

The CEDAW Committee said the State needs to provide 'a more comprehensive and effective legal system for receiving complaints, especially from women of ethnic groups' so that women survivors of violence have effective access to justice.

**Complaint Mechanism for Children**

According to the third and fourth periodic reports submitted by Myanmar to the CRC Committee, children can make a complaint in accordance with the Child Law. Regarding the protection of children from abuse and neglect, section 13(c) of the Child Law prescribes that a child shall be given the opportunity to make a complaint, be heard and defend him or herself in the relevant government department, organization or court either personally or through a representative in accordance with the Law in respect of his rights.

The National Committee on the Rights of the Child (NCRC) is the body to pursue complaints on acts committed against children. Child survivors of military recruitment and forced labour can make a complaint at ILO complaints mechanism for the elimination of forced labour.

**Protection and Rehabilitation of Women Survivors of Violence**

The MWAF had 59 counselling centers in 2005, 77 in 2006, and 71 in 2007 throughout the country for women suffering from violence. In 2008, 60 counselling centers were operated and counselling services were given to altogether 416 women affected by domestic violence. A report stated that domestic violence cases were often handled by the counselling centers, reported to the MWAF and transmitted to the appropriate units. Of the several thousand cases brought to the attention of the MWAF every year during the period 2005 to 2007, approximately half had been referred to the departments concerned for legal action.

However, the information does not include what kinds of cases were provided with free legal assistance and how many were successfully prosecuted. Furthermore, there is no information on types of support and advice. According to the CEDAW Committee's remark, survivors of sexual violence were forced to report to the police immediately prior to seeking health care, and women survivors were less likely to seek psychological, medical and legal support. The CRC Committee suggested the State adopt measures for ensuring women and girl survivors of sexual violence have access to justice, and recovery and reintegration programmes.

**Protection and Rehabilitation of Children Survivors of Violence**

**Children in Vulnerable Situations**

The Department of Social Welfare (DSW) is providing essential social care and protection to children who are in need of special protection, such as orphans, street children, abused children, working children, and handicapped children. The staffs of the institutions and those who are involved in taking care of children have been given awareness-training courses on prohibition of all kinds of child abuse.

According to the UNICEF, young juveniles are being provided with basic education courses and...
vocational training by the youth correctional and rehabilitation centers under the Department of Prison. 227 From 2006 to 2010, 1,074 convicted juvenile offenders have been given education classes ranging from kindergarten to Grade 9. 228 The institutionalized children who have completed one year and behaved well during the period are reintegrated into their families. Probation officers make field visits to wards, townships, families and relatives of the children and reintegration process for them is carried out. 229

However, the CRC Committee and a 2006 report of UNICEF found that children with various problems and needs, such as children with disabilities, survivors of abuse and exploitation, those affected by HIV/AIDS, and those with behavioural problem and street children, are placed together in one place. 230 The 2006 UNICEF report pointed out the limited capacity of the staff and a lack of professional social workers, both in public and private institutions. The situation seems to have not improved yet. 231

Protection, safety, health and wellbeing of children in these residential care facilities do not meet the criteria laid out in the Minimum Standards of Care for Children in Residential Care Facilities. Majority of children living in residential care facilities in private institutions have one or both parents alive and over half of all children were brought to the facilities by their parents or relatives. UNICEF points out that such practice is not in line with the United Nations Guidelines for the Alternative Care of Children which state that ‘the removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary for the shortest possible duration and take into account the views and best interest of the child.’ 232

The CRC Committee also raised its concern about ‘the increase in the number of children in residential care facilities and lack of regulation of private and religious organizations that run residential institutions for children,’ 233 It also said that there were reported cases of physical abuse of children in residential institutions and encouraged the State to ensure private run residential institutions are registered and provide quality of care and to adopt measures to de-institutionalize and reintegrate children into their communities. 234

Children in Conflict with Law

According to the third and fourth periodic reports of Myanmar submitted to the CRC Committee, juvenile courts have been established in Yangon and Mandalay and juvenile offences were tried separately in accordance with Section 3 (f) of the Child Law, with the objective of reforming the character of such children. 235 The judges in other townships have been entrusted with special powers to try juvenile cases. The numbers of cases tried by juvenile courts up to 2001–2006 are 69,646 cases in total. 236 According to the CRC Committee, in spite of such progress in the administration of juvenile justice, there are areas needed to improve to ensure protection of children in contact with law. This include the system and situation of pre-trial detention; preventing abuse and ill-treatment of those children; ensuring adequate human, technical and financial resources to establish specialized juvenile courts in all regions; and ensuring juvenile justice administrative system is in accordance with the Convention and with other relevant standards. 237

Children in ethnic minority areas

In its third and fourth periodic reports to the CRC Committee, the State mentioned development programs undertaken by the Ministry of Progress for Border Areas and National Races and Development Affairs, including educational and health facilities for children in ethnic minority regions. 238 However, according to the assessment of the CRC Committee, the State needs to improve its programs for marginalized children in ethnic minority areas. 239 The State needs to remove barriers in

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229 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 125.


232 Ibid.

233 ‘2012 Concluding Observations of the CRC Committee,’ para. 55, 56.

234 Ibid.

235 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 258.

236 Ibid.

237 ‘2012 Concluding Observations of the CRC Committee,’ para. 91, 92.

238 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 319-330.

239 ‘2012 Concluding Observations of the CRC Committee,’ para. 93, 94.
realizing its programs to protect the rights of children. For instance, many Rohingya children in Northern Rakhine State do not have access to birth registry system. This is in spite of the establishment of Modified Vital Registration System (MVRS) to register a large number of children born of parents who were unable to obtain marriage authorization in the northern Rakhine State and the plan to conduct a nation-wide population census in 2014. Difficulty of access to the registry system is mainly associated with bureaucratic inefficiencies such as corruption, in addition to the remaining existence of the practice of aiming to reduce the number of Rohingya children through the marriage restriction order in that area.

**Children Affected by Conflict**

Information on sufficient protection and rehabilitation programs for children affected by the conflict, in particular child combatants, unaccompanied internally displaced persons and refugees, returnees and landmine survivors, is still missing in the State’s report. The Committee recommended the State party to develop a comprehensive system of psychosocial support and other assistance to these children in collaboration with NGOs and international organizations while ensuring their privacy. Measures to be taken include reintegration of the affected children into the education system, including through non-formal education program and the restoration of school buildings and facilities and the provision of water, sanitation and electricity in conflict-affected areas.

**d. Prevention Strategy**

**Preventive Measures to Protect from Violence Against Women**

The working group formed at the grass-root level under the MWAF conducted educational talks on violence against women as preventive measure. In 2008, MWAF provided 4051 educational talks on violence. The MNCWA has disseminated the concluding observations to members of MNCWA, respective ministries, departments and NGOs for follow up actions.

Due to lack of data on the extent of various forms of gender-based violence, it is difficult to evaluate the outcome of those educational talks. The CEDAW Committee encouraged the State to adopt comprehensive education program through formal and non-formal ways to eradicate gender based stereotypes, discriminatory attitudes and practices in all areas of the country including the rural and remote areas. The judiciary and law enforcement officials at all levels need to be trained on the provisions of the Convention and related domestic legislation.

**Prevention of Violence Against Children**

Ministry of Social Welfare, Relief and Resettlement in partnership with UNICEF, local and international NGOs have been conducting awareness programmes on the CRC and child protection at the national, state, divisional and township levels. The message of the CRC has been discussed with departmental officials, members from social organizations and community members through training programs, mass media, and workshops. The National Committee on the Rights of the Child, the Department of Social Welfare and UNICEF have published and distributed the message of the CRC and the Child Law through brochures, posters, hand-outs and calendars. According to the national report to the Human Rights Council under UPR process, Human Rights Education lessons are taught at primary, middle, high school and university levels.

However, according to the assessment of the CRC Committee, awareness programs need to be systematic, sustained, widespread, participatory, and reach out to all walks of life in the country. Effective advocacy programs need to be developed to influence policies and programs and to mobilize communities. For that purpose, a comprehensive data collection and analysis need to be made regarding assessment of the situation of children

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240 Ibid., para. 43, 44.
241 Ibid.
242 See more detail at ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011.’
243 ‘2012 Concluding Observations of the CRC Committee,’ at paras. 67, ‘2012 Concluding Observations of the CRC Committee,’ para. 84, 83.
244 CEDAW, ‘Information provided in follow-up to the concluding observations of the Committee: Response by Myanmar,’ para. 15.
245 CEDAW, ‘Responses to the List of Issues and Questions with Regard to the Consideration of the Combined Second and Third Periodic Report: Myanmar,’ para. 8, 9.
250 ‘2012 Concluding Observations of the CRC Committee,’ at paras. 25-28, 53.
disaggregated by age, sex, geographic location, ethnicity and socio-economic background; and assessment of progress achieved in the realization of child rights. Furthermore, the involvement and participation of the whole society, including children, need to be ensured in the design and implementation of preventive strategies against violence and other forms of abuse. In addition, as the CRC Committee and the CRFB suggested, deeply rooted socio-economic factors that incur violence against children need to be removed and a comprehensive data analysis will help in doing so.

4. Role of Non-State Actors
   a. Assistance to Survivors

Assistance to women survivors of violence

According to the advisor of the Gender Standby Capacity Project (GenCap) to Myanmar, due to the sensitive political nature of the gender-based violence (GBV) issue, before Nargis hit and until the beginning of 2009, GBV prevention strategies and holistic service programs for the violence survivors ran by both national and international partners, rarely existed. It was less likely that women impacted by GBV would come forward to seek for support due to barriers.

According to the information compiled by Myanmar Information Management Unit (MIMU) about the Women and Children Protection Projects under Implementation by Sub-sector at State/Region Level, there is no record of organizations currently working on ‘sexual and gender based violence sub-sector’ at State/Region Level. According to the MIMU information, a local NGO, Thingaha, is working on GBV at village level in Ayeyawady Region. However, information on its program is not available. Even though it is not included in the MIMU information, Norwegian Church Aid is also working on gender-based violence in Myanmar.

According to the evaluation report at the end of the UNFPA Second program of Assistance to Myanmar 2007-2011 (CP2), UNFPA focused on gender equality in response to gender issues emerged from cyclone Nargis, including Reproductive Health (RH) services, community-based interventions on women's empowerment. The program included assisting services, research and advocacy related to women's protection issues such as GBV.

UNFPA and the members of the RH/HIV technical working group implemented Minimum Initial Service Package (MISP) for Reproductive Health in Crisis Situations in the Nargis affected areas to prevent and respond to sexual violence. They distributed RH Kits throughout the affected area and gave hundreds of trainings on the MISP, GBV, gender and psychosocial care to over 3,000 people throughout the country.

The UNFPA and donors supported the post Nargis community projects that helped create women-friendly spaces. These spaces provided ‘a previously unavailable avenue to address GBV issues’ and responded to the urgent livelihood needs of some of the vulnerable women in a post Nargis context. They also provided microfinance assistance to women. Psychosocial counselling was provided to women to help overcome their traumatic experiences and depression during and after Nargis.

According to the government’s follow-up report to the concluding observations of the CEDAW Committee, INGOs such as UNHCR, UNFPA, UNICEF, WHO, AFC Malteser, AZG and Care Myanmar are working in Rakhine Region for the development of Rohingya women including access to health and education.
**Assistance to Children Survivors**

According to the information compiled by the MIMU about ‘the Women and Children Protection Projects under Implementation by Sub-sector at State/Region Level’, local NGOs and INGOs like UNICEF, World Vision, Save the Children and Karuna Myanmar Social Services (KMSS) are currently working on the following sub-sectors regarding child protection: carrying out awareness raising protection issues; child friendly spaces; awareness raising child protection-child rights, human trafficking; community based protection groups; people with disabilities; and registering separated unaccompanied children. No organizations were mentioned working on sub-sectors of family tracing; human rights monitoring and protection of internally displaced people. However, recently, the UN organizations such as the World Food Program and UNICEF were allowed to give assistance to IDP in Kachin Region. On those border areas, community based organizations such as Karen Department of Health and Welfare (KDHW), and the Backpack Health Worker Teams (BPHWT) have been providing health care assistance to internally displaced people for some years.

In response to street children in Myanmar, World Vision has been providing drop-in centers and hostels along with community-based prevention programmes in 4 key locations outside Yangon and Mandalay.

According to the country program report of the UNICEF, these programs have been carried out:

1) Providing education, vocational training and recreation activities for vulnerable children and youth, including street children and working children;

2) Providing technical assistance to further improve the juvenile justice system and protect children in conflict with the law pursuant to the Convention on the Rights of the Child and other international standards;

3) Strengthening communities and institutional caregivers capacity to assist children deprived of parental care; and working with partners and communities to facilitate the return, protection and reintegration of displaced, trafficked and exploited children and women.

In response to cyclones Nargis and Giri, organizations like UNICEF, World Vision and Save the Children provided emergency strategies including strengthening mechanisms for the protection of separated and unaccompanied children; family tracing and reintegration; support for vulnerable children; provision of psychosocial support through child friendly spaces and the strengthening of community support mechanisms to protect children.

Private and religious institutions are also providing residential care systems for vulnerable children. However, as mentioned earlier, the recent findings indicate that these residential care facilities fall short of Minimum Standards of Care for Children in Residential Care Facilities.

**b. Prevention Programs**

**Prevention of Violence Against Women**

UNFPA leads policy dialogue and advocacy on developing the National Plan of Action for Advancement of Women 2011–2015. UNFPA supports capacity building of the staff of the Department of Social Welfare (DSW) on gender equality concepts and provision of gender awareness training to women and girls at DSW institutions. As part of the advocacy work, through the GTG, UNFPA developed and published a Gender Briefing Kit in 2010 to provide a better understanding on the meaning of gender equality in a culturally sensitive way both in Myanmar and in the global context.

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261 Supra note., 273.
262 Supra note., 120.
263 See more detail in supra note. 117.
265 In response to cyclones Nargis and Giri, organizations like UNICEF, World Vision and Save the Children provided emergency strategies including strengthening mechanisms for the protection of separated and unaccompanied children; family tracing and reintegration; support for vulnerable children; provision of psychosocial support through child friendly spaces and the strengthening of community support mechanisms to protect children.
266 Private and religious institutions are also providing residential care systems for vulnerable children. However, as mentioned earlier, the recent findings indicate that these residential care facilities fall short of Minimum Standards of Care for Children in Residential Care Facilities.
267 Supra text accompanying supra note 247.
Local organizations like Thingaha, Gender and Development Initiative and the NGO Gender Group are working on awareness-raising campaigns. Since 2008, NGO GG commemorates the 16 Days Activism till now and organized Men's Forum on Violence, White Ribbon Day, and Competition on Impromptu speech. Given more favourable environment to organize civil society groups in this transition period, some activists organized ‘a whistle for help’ campaign to protect women from sexual harassment on public buses.

Prevention of Violence Against Children

UNICEF has been raising awareness among community members and community-based organizations about means of preventing abuse, exploitation, trafficking and neglect. UNICEF has also produced documents related to child protection such as the ‘Training Manual on Child Protection’ and the ‘Training manual on Awareness Building on Child Abuse, Neglect and Exploitation for Key Community Members.’ Organizations such as Association Francois-Xavier Bagnoud (AFXB), UNICEF, World Vision and Save the Children are also carrying out awareness raising of child protection issues in Ayeyarwadi, Chin, Kachin, Mandalay, Mon, Shan North, Yangon.

c. Monitoring and Cooperation

NGOs and the government have increased their cooperation in the area of gender and child protection issues in response to Nargis, even though such coordination programs have already existed before the Nargis. The women protection sub cluster (WPSC) system was implemented with the focus on issues that include gender-based violence. The sub cluster was implemented with the cooperation of UN agencies, INGOs, NGOs and representatives from the Department of Social Welfare (DSW) and the Myanmar Women’s Affairs Federation (MWAF). In June 2009, the sub cluster on protection of women was transformed into a Women’s Protection Technical Working Group (WP TWG). The UN Country Team’s Gender Theme Group (GTG) was re-established.

The Ministry of Social Welfare Relief and Resettlement (MSWRR) developed a draft National Plan of Action for the Advancement of Women 2011-2015 in accordance with CEDAW and the 12 areas of the Beijing Platform for Action. This was achieved with the support and advice of the Women’s Protection Technical Working Group (WP TWG) and the Gender Theme Group (GTG) led by UNFPA. 12 Ministries, UN agencies and NGOs were involved.

In 2010, UNFPA and DSW conducted three awareness-raising workshops on CEDAW and gender in Southern Shan State, Mandalay Division and Yangon Division for 140 senior officers of the DSW and other relevant Departments. The GTG supported gender training within UN agencies to ensure gender mainstreaming in developing the UN strategic framework and national strategic plans. The GTG plans to assist the particular Ministries in implementing the draft National Plan of Action for the Advancement of Women.

In its country programme document 2011-2015, UNICEF enumerated its achievements in cooperation with the government and other stakeholders in child protection issue during 2006 to 2010:

Minimum standards on care, such as the protection of children in residential care and of working children, have been developed in partnership with relevant Ministries. Once issued as directives, these standards could provide an additional protective framework. Two separate juvenile courts were established in Yangon and Mandalay to try juvenile cases in 20 townships in Yangon City Development Area and 5 townships in Mandalay City Development Area.

A UN Country Team monitoring and reporting mechanism on children affected by armed conflict has been operational since June 2007 and is in regular contact with the relevant government departments on prevention of recruitment of minors. Thus far twelve training sections have been conducted on international humanitarian law and Myanmar child law for military officers.
UNICEF and NGO partners have assisted in reintegration of more than 300 children released, including those released under ILO’s forced labour mechanism. Discussions are underway towards signing of a national action plan. In collaboration with the Department of Social Welfare, UNICEF took a leadership role in establishing an Inter-Agency Working Group for Social Protection of Children, which provides a platform for discussing issues and strategies for reducing socio-economic vulnerabilities and risks to children and their families.280

UNICEF co-led the Protection of Children and Women Cluster with Save the Children and entered into a new partnership with Department of Relief and Resettlement, and the General Administration Department during the emergency response following cyclone Nargis. Emergency interventions paved the way to expand a range of child protection activities and geographic coverage leading to greater collaboration and coordination amongst key government and NGO partners at the national and sub-national levels. The first National Plan of Action for child protection in emergencies was drafted, which guided a national child protection system, with improved policies, regulations and services. 281

UNICEF has been closely working with the Department of Social Welfare as well as other organizations like Save the Children; World Vision; Enfants du Monde (EMDH); Association Francois Xavier Bagnoud (AFXB); Myanmar Red Cross Society; Rattana Metta (a Buddhist organisation); National Young Women Christian Association; Yangon Kayin Women Baptist Association; Myanmar Nurses Association; Catholic Bishop Conference of Myanmar and the Myanmar Council of Churches. One of the key achievements of the cluster work in cooperation with partners included establishment of a database on separated and unaccompanied children, which was essential for family tracing and reunification.282

5. Progress Indicators and Challenges

Progress Indicators

As noted by the CEDAW and CRC Committees, there is lack of a comprehensive data on the outcome and impact of the government’s policies and programs in reducing gender-based violence and violence against children. Even if there might be some internal reports making impact assessments on specific programs by NGOs, such kind of reports were not accessible yet during the preparation of this Study. No information is available as to whether there is decrease or increase in the number of incidence of violence against women and children.

According to the government’s follow-up report to the concluding observations of the CEDAW Committee, in 2010 from 1st Jan to 31 August, 7 Military officers, 99 other ranks who committed sexual abuse have been accused and they were given severe punishment by Military Act.283 It is a progress that military personnel who have committed rape were prosecuted even though the number is likely far lower than the number of perpetrators. Such government official data also validates incidents of rape cases that were denied by the government as mere accusations from the opposition groups.284

Challenges

The establishment of a number of agencies and organizations that focus on women’s issues is welcoming; however, there have been some restrictions and hindrances in effectively implementing programs pertaining to women’s issues.285 Key barriers include 1) insufficient budget allocations from the State despite their policymaking, coordinating and implementation responsibilities; 2) making them up exclusively of voluntary members; and 3) lack of information on their mutual relationships.286 The CEDAW Committee raised its concern regarding inadequate knowledge of women’s rights and gender equality issue in all branches of the Government and among the law enforcement authorities at all levels.287

Similarly, while the development of the National Plan of Action for Children is welcoming, key barriers in effectively implementing programs under the National Plan are insufficient allocation of human and financial resources and corruption.288

280 Ibid.
282 Ibid.
283 CEDAW, ‘Information provided in follow-up to the concluding observations of the Committee,’ para.12.
285 ‘2008 Concluding Observations of the CEDAW Committee,’ para.16.
286 Ibid., para. 16.
287 Ibid., para. 12.
Other areas of concern raised by the CRC Committee included lack of sufficient coordination of the various sectoral plans of actions, such as the National Child Health Strategic Plan (2010-2014), the National Strategic Plan for Adolescent Health, and the National Plan of Action (2003-2015) ‘Education for all’ with the National Plan of Action for Children; inadequate dissemination of the National Plan and lack of proper mechanism to monitor its implementation.289

6.  Recommendations for Further Study

A summary of what is not known

1. Accurate statistics on various forms of child abuse, root causes and impact were not available.
2. Data on the extent of various forms of violence against women and its root causes and impact, disaggregated by age and ethnic groups, as the CEDAW committee pointed out.
3. Lack of data on prosecutions and convictions of perpetrators of various forms of sexual violence against women.
4. Lack of sufficient information on mechanisms and remedies available to survivors of sexual violence as well as measures to bring perpetrators to justice.
5. Insufficient information on the protection and rehabilitation of children affected by the conflict, in particular child combatants, unaccompanied internally displaced children, refugees, returnees and landmine survivors.
6. No assessment data on how far progress has been made in the State’s policies and programs, what are the weaknesses, strengths and challenges.

Areas of controversy

Two main areas of controversy regarding violence against women and children are rape cases in ethnic minority areas and discrimination and maltreatment against Rohingya women290 and children291 in Northern Area of Rakhine State. Discrepancies are between the reports of the Government and those of the national and international human rights organizations, the UN entities such as the CEDAW and CRC Committees and the Special Rapporteur on the situation of human rights in Myanmar.

Recommended areas for data collection and further research

A comprehensive data collection and an in depth analysis need to be made on various forms of violence against women, root causes and impact, disaggregated by age and ethnic groups and assessment on the State’s policies and programs in the elimination of violence against women.

A comprehensive data collection and an in-depth analysis need to be made regarding assessment of the situation of children disaggregated by age, sex, geographic location, ethnicity and socio-economic background; and assessment of progress achieved in the realization of child rights.292

C.  EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

From data of the UN organizations, ILO, Human Rights Watch, the US State Department and other human rights organizations, prevalence of exploitation of women and children in Myanmar can be seen both at the national and international level.293 At the international level, exploitation is mainly related to trafficking of both women and children. At the national level, it mainly concerns forced labour, land confiscation, child labour, child prostitution, and child soldier recruitment.

Exploitation of Women and Children from Myanmar at International Level

Table 1 and 2 give a general overview of the pattern of international trafficking of women and children from Myanmar, including source regions in Myanmar, destination countries, and sectors where trafficked persons are exploited. According to Myanmar Anti-

290 See supra notes accompanying supra texts, 49-52.
291 See supra notes accompanying supra texts, 100-104.
trafficking Unit (as cited by UNIAP), there were a total number of 155 trafficking cases involving forced marriage (85 cases), forced prostitution (19 cases), forced labour (13 cases), and child trafficking (8 cases) in 2009. In those cases, China is the main destination countries followed by Thailand and some other countries such as Malaysia, South Korea and Macau. According to Kachin Women’s Association Thailand (KWAT), 163 women and girls mainly from Kachin State and northern Shan State were trafficked to China between 2004 and mid-2007. Majority of the trafficked persons, including girls as young as 14, were sold to marry Chinese men from eastern provinces. Thant Myint-U also mentioned about trafficking of women from Myanmar to China in his book, ‘Where China meets India.’

According to another ethnic women’s organization, Palaung Women’s Organization (PWO), there were altogether 72 cases of actual and suspected human trafficking mainly to China between March 1999 and February 2011. Those trafficked included 95 females and 15 males, aged between 3 months and 33 years old. They are mainly from the Palaung area of Northern Shan State.

In some cases, those trafficked were tricked into believing they were getting a good job. In other cases, they voluntarily migrated with the expectation of having a better life. However, due to unscrupulous smugglers and brokers, they end up in being exploited at destination countries to pay off debt bondages they are charged as service fees in crossing the borders. Reports of the US Department of States, Solidarity Centre and Human Rights Watch mentioned about the vulnerabilities of ‘voluntary’ migration that can lead to ‘involuntary’ servitude. A study conducted by the Institute of Population and Social Research (IPSR) from the Mahidol University depicts similar situations of women, girls and boys from Myanmar in Thailand. While some of them were trafficked into Thailand, some of them voluntarily crossed the border to look for a job and they had to face various forms of exploitation, including forced labour and rape.

296 Thant Myint-U, Where China Meets India, 110-111.
299 Mahidol Migration Center (MMC), Snap Shot Stories from Invisible Victims of Trafficking in Thailand. Salaya: Institute for Population and Social Research, Mahidol University 2011.
### Table 1. International Trafficking of Women and Children from Myanmar:
Sources, destination and sectors involved

<table>
<thead>
<tr>
<th>Source regions of women and children survivors of trafficking(^{300})</th>
<th>Destination countries(^{301})</th>
<th>Sectors where trafficked survivors are exploited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yangon Division, Mandalay Division, Northern Shan State, Kachin State, Bago Division, Mon State, Magway Division, Kayin State, Bago (West) and Ayeyarwaddy</td>
<td>Predominant destination in 2009 84.4% of survivors assisted by MATU trafficked to China, 9.8% of those to Thailand Destination countries in general Malaysia, South Korea, Macau</td>
<td>Sex industry, factories, plantations, domestic work, fishing boats in Thailand Forced marriage in China In Thailand and Malaysia, trafficked children are forced to do begging, hawk in streets, work in agriculture and small-scale industries</td>
</tr>
</tbody>
</table>

Sources: UNIAP, Asia Regional Trafficking in Persons Project (ARTIP), the U.S. Department of States\(^{302}\)

### Table 2. International Trafficking of Women and Children from Myanmar:
Means, patterns, transit points and routes to transit points

<table>
<thead>
<tr>
<th>Means and patterns employed by traffickers</th>
<th>Transit points</th>
<th>Routes to transit points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffickers and organized criminal groups generally based in destination countries but may be linked to recruiters, brokers, carriers or others (including relatives) in Myanmar Brokers operate at the transport points and also at the village level recruiters who are known and trusted by the family of survivors persuade potential survivors by giving promises of high paying employment Some girls trafficked into China are taken by means of deception, but increasingly they are informed of marrying Chinese men without being informed of possible difficulties and left with few options</td>
<td>Myanmar to Thailand  • From Kengtung and Tachileik in Myanmar to Mae Sai, Thailand  • From Myawaddy in Myanmar to Mae Sot, Thailand  • From Kawthaung in Myanmar to Ranong, Thailand  • From Thanbyuzayat, Myanmar through the Three Pagodas Pass to Bangkok via Sangkhlaburi and Kanchanaburi  • Sometimes from these points through to Malaysia  • Myanmar to China  • From Muse, Myanmar to Rulli, Yunnan Province, China  • From Lweje, Myanmar to Jeng Feng and Rulli, Yunnan  • Province, China</td>
<td>From central dry zones areas (Mandalay, Sagaing and Magway) and Delta areas in Myanmar to Mae Sot in Thailand via Kawkreik and Myawaddy From Yangon and the surrounding areas in Myanmar to Mae Sot via Hpa-an and then Myawaddy</td>
</tr>
</tbody>
</table>

Sources: UNIAP, Asia Regional Trafficking in Persons Project (ARTIP), the U.S. Department of States\(^{303}\)

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\(^{300}\) Central Body for Suppression of Trafficking in Persons cited in UNIAP, ‘Mekong Region.’

\(^{301}\) 2009 data of MATU cited in Ibid.


Exploitation of Women and Children from Myanmar at National Level

Forced Labour and Land confiscation

Forced labour has been known as a widespread form of labour exploitation in Myanmar for many years especially in the ethnic regions and rural areas. Forced labour mainly stems from two major events in the country: conflict related activities[304] and development projects activities.[305] As mentioned earlier, although forced labour can be terminated with the end of conflicts, there is still threat of expansion of massive infrastructure projects and extractive industry that usually do not take into consideration of the wellbeing of the indigenous people.

Conflict related forms of forced labour mainly concern being forced to carry military supplies as porters or sweep for landmines or build roads.[306] The CRC Committee expressed its deep concern about the use of forced labour of children ‘in support of military garrisons or military operations and of non-State armed groups, in activities such as portering, sentry or guard duty and camp security fence construction, in particular in ethnic or religious minority regions.’[307]

According to the CRFB, civilian porters from villages and from detention centers including children reportedly were forced to work in harsh conditions by the military. They were allegedly deprived of adequate food and medical assistance and often beaten and killed in the case of failing to perform the task.[308]

According to a study conducted in Chin State,[309] cited in US Department of State, 92% of over 600 households surveyed mentioned at least one episode of a household member subjected to forced labour.[310] Most of the incidents were reportedly committed by the military. The civilian representatives of the military or Village Peace and Development Council were responsible for some cases. Burmese police and Chin ethnic forces were reportedly responsible for a minority of cases. According to Chin Human Rights Organization (CHRO) cited in the CRFB, children under 18 were among people from 16 different villages in the Cikha Township who were forced to work on repairing the road between Cikha and Tonzang towns under the order of the State Peace and Development Council Tactical 1 Commander of that time in late 2006 and 2007.[311]

Women and Child Rights Project (WCRP) also found that villagers were allegedly forced to work for the military throughout Mon State in building army barracks, police stations, roads, state schools, clearing land, breaking and carrying rocks and other tasks. Most of the time, villagers had to send one of their children as adults had to go to their regular job to get income for their family.[312]

Recent reports of the Special Rapporteur on the situation of human rights in Myanmar also raised his concern on the reported cases of forced labour and property confiscation committed by both the military and non-state armed groups in conflict affected areas especially Kachin, Shan and Kayin States.[313] They also raised concern over the reported cases of land confiscation, forced relocation, forced labour, natural resource exploitation due to infrastructure projects and large-scale energy related projects.[314]

The Special Rapporteur in his report dated September, 2010 said that the ILO complaint mechanism for forced labour had received 451 complaints since February 2007.[315] According to the recent news, the ILO’s branch in


308 Radio Free Asia, the Irrawaddy, CHRO, WCRP, Karen Human Rights Group (KHRG) and Assistance Association for Political Prisoners of Burma (AAPP) cited in CRFB, 20-21.


312 See more detail in WCRP cited in Ibid., 19-20.


Yangon said 506 complaints have been received related to forced labour since the beginning of 2010 and it is more than double the number seen during the previous three years.\footnote{\textit{Burma to Stamp Out Forced Labour ‘by 2015’}; \textit{Democratic Voice of Burma (DVB)}, 19 March 2012, accessed March 19, 2012, http://www.dvb.no/news/burma-to-stamp-out-forced-labour-by-2015/20899.} According to the ILO, the increase in complaints is mainly related to ‘awareness-raising activities’ that increase peoples’ awareness of their rights and made complaints accordingly. The ILO said forced labour complaints they had received were mainly caused by two reasons: ‘a lack of proper funding for projects demanded from rural authorities;’ and ‘the main problem involved adults and youngsters pressed into working for the army.’\footnote{\textit{US Department of State}, ‘2010 Country Reports on Human rights Practices: Burma.’} According to the 2011 Trafficking in Persons Report of the US Department of States, the trend of the complaints received by the ILO during the year ‘indicated a trend of forced farming, accompanied by threats of fines, loss of farmers’ land, and imprisonment for those refusing to comply.’\footnote{\textit{US Department of State}, ‘Trafficking in Persons Report 2011: Burma.’} US department of State noted that local government authorities committed such kind of exploitation for the benefit of the military, defence-owned commercial interests, and large private corporations.\footnote{\textit{Energy Insecurity, }; \textit{ERI}, ‘The Human Cost of Energy’, \textit{ERI}, ‘The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy’; 2011, accessed January 10, 2012, http://www.earthrights.org/sites/default/files/documents/the-burma-china-pipelines.pdf.}

Numerous reports of Earth Rights International (ERI) have also documented forced labour and land confiscation cases committed by corporations in collusion with the military.\footnote{\textit{Ibid.}} For instance, according to ERI’s documentation, in many incidents, villagers within the Yadana pipeline corridor were reportedly forced to porter goods for soldiers, provide security for the pipeline, or forced to construct military buildings, or forced to provide sentry duty to guard the structures against their will, sometimes directly over the Yadana pipeline or related infrastructure.\footnote{\textit{Ibid.}} According to a recent report of the ERI in 2011, villagers from villages in Rakine State and Magway Region that lie in the path of ‘Burma-China pipelines’ that were under construction had lost their farmlands with little compensation or no compensations in some cases.\footnote{\textit{Ibid.}}

Labour Exploitation Committed by Private Enterprises

Private enterprises such as garment factories, shoe factories, rural agriculture and informal sector are said to have exploited labour of workers by not providing enough salaries, requiring workers to work long hours without overtime payment in poor working conditions. In some cases, workers were dismissed for being absent from work for more than three days due to sickness.\footnote{\textit{US Department of State}, ‘2009 Human Rights Report: Burma.’} Although protests were very rare under heavy-handed rule of the former military regime, nowadays, people tend to practice staging protests for being violated their fundamental rights. Recently, according to the media, over 2000 workers from a shoe factory in Myanmar held a strike for demanding their salaries that their employer cut for holidays in January and also for increasing their low salaries.\footnote{\textit{Moe Kyaw}, ‘Factory Workers Hold Rare Strike’, \textit{Radio Free Asia}, February 6, 2012, accessed March 1, 2012, http://www.rfa.org/english/news/burma/strike-02062012145257.html.} A number of strikes also took place demanding wage increases or other benefits at privately owned factories in Yangon industrial zones in 2010.\footnote{\textit{Ibid.}} The newly enacted labour organization law was recently enforced and workers are said to have rights to organize unions and stage protests.\footnote{\textit{Ibid.}} (See C. 2. b.)

Child Labour and Child Prostitution

According to a recent survey conducted by the UNDP and the government, Child labour participation rate (ages 10-14) between the poor and non-poor is at 18% and 10% respectively.\footnote{\textit{Ibid.}} The study suggested special attention is needed on this incidence, given the much higher rates of child (aged 10-14) labour force participation among the poor. This raises questions about the possible intergenerational transmission of poverty and poverty traps, as proved by low enrolment rates for those poor working children at 11.6%.\footnote{\textit{Ibid.}}

Child labour can be seen in such sectors as food-processing, street-vending, refuse collecting, light-manufacturing industries, restaurants, teashops, family agricultural activities, and large-scale development projects in the...
extractive and energy industries. The CRC Committee raised its concern about the dangerous and hazardous working conditions of those sectors and the persistent economic exploitation of children, including low wages and working the same hours as adults, the absence of systematic labour inspections. Children in vulnerable situations such as homeless children, street children, children affected by armed conflicts or disasters have a high risk of being exploited. US Department of State cited a case submitted to ILO in which 100 boys ages 13 to 15 were reportedly forced to work at a horticultural plantation and held in a barrack at night.

Young girls are also vulnerable to be trafficked into sex industry. Some of them are also reportedly engaged in sex work voluntarily for their survival. Young teenage girl prostitutes were reportedly found in Yangon and Mandalay. In most cases, internal trafficking of women and girls occurred from poor agricultural and urban centers to areas such as trucking routes, mining areas, military bases, industrial areas and borders with Thailand and China where prostitution flourished. Sex workers are said to be highly vulnerable to sexual exploitation due to lack of their legal status and cultural and social sensitivities. According to a qualitative study conducted by the Center for International Health, Curtin University of Technology in 2002, at that time, the number of sex workers was approximately between 5,000 and 10,000 and 100 brothels in Yangon. According to the study, nearly one third of the 39 female sex worker respondents reported 'previous imprisonment for offenses related to sex work as well as fear of harassment, sexual exploitation, violence and gang rape.' The study also found that they were also highly vulnerable to HIV infection.

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**Child Soldier Recruitment**

Another concerned area for child labour exploitation is regarding child soldier recruitment. Although the international community notes the efforts of the government to prevent and halt the recruitment and use of child soldiers, they have also raised their concern about the reports of continuation of child soldier recruitment both by the military and the non-State actors. According to the report of the Secretary-General, the armed wings of ethnic minority groups such as Democratic Karen Buddhist Army (DKBA), Karen National Union/ Karen National Liberation Army (KNLA), Karen National Progressive Party/ Karenni Army (KA), Shan State Army-South (SSA-S) and Shan National Population Liberation Organization, the United Wa State Army (UWSA) also committed underage recruitment.

The CRC Committee notes that there are proximately thousands of underage soldiers in Myanmar. ILO mentioned that they received 194 complaints for recruitment of child soldiers in 2010 and it was more than two-fold over 2009.

According to the Secretary-General's report, lower rank or field level officers in the armed forces, particularly Tatmadaw Kyi, mainly committed child recruitment since they were ordered to recruit more soldiers to replace desertions of men in the army. Mostly the recruitment occurred in areas close to recruitment centers in the Yangon and Mandalay Divisions, but also at the township and village level. Soldiers reportedly paid

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330 '2012 Concluding Observations of the CRC Committee,' para 69.


333 Ibid.


336 Ibid.


340 '2012 Concluding Observations of the CRC Committee,' para. 81.

341 US Department of State,‘Trafficking in Persons Report 2011: Burma.’ The report doesn’t mention whether increase in number is due to increase in incident or increased awareness of the ILO complaint mechanism.


civilians and brokers and they also used deceit, intimidation, coercion through village administration, threats with imprisonment, abduction and violence. Children of urban poor, orphans, and children on the streets and in railway stations and young novice monks were mainly targeted. Subsequent to cyclone Giri in 2010, there were reports of underage recruitment in cyclone-affected areas.

b. Root Causes of Exploitation and Aggravating Practices

Nexus of Forced Labour, Forced Migration and Trafficking

Decade-long armed conflicts on border areas, political instability and economic mismanagement of the former regime serve as main driving forces behind cross-border trafficking and internal trafficking, including forced labour, and underage recruitment as human rights organizations such as CRFB, ICSW, PWO, KWAT and the US Department of State have asserted. Poor economic conditions and human rights violations forced many to seek employment in neighbouring countries through both legal and illegal means where they are vulnerable to trafficking as mentioned by the CRFB and Pearson regarding the link between forced migration, exploitation and trafficking.

A trafficking report of PWO has depicted such situation. According to the report, the increased militarization in the region has reportedly caused forced labour, child soldier recruitment, arbitrary taxation, large scale confiscation of land – mainly farms and tea plantations for army camps and military plantations. Local people were allegedly forced to sell their tea to military supported companies at very low prices. Falling prices coupled with high inflation and the lack of alternative earning opportunities aggravated the situation. As a result, there was an increase in the incidence of trafficking in recent years. Majority of the survivors were young women who were in search of work for the survival of themselves and their families.

Aside for the above-mentioned, the current trend of increased infrastructure projects and extractive undertakings have resulted to loss of farmlands and livelihoods, especially in rural and ethnic areas. Consequently, people are more vulnerable to forced migration, trafficking, and labour exploitation in hazardous working conditions and negative environmental impacts.

The Special Rapporteur on the situation of human rights in Myanmar expressed its concern over the negative impact of such projects compounded by lack of consultation with local people and lack of rules and regulations that protect environment and the wellbeing of local people.

Similarly, the CRC Committee raised the same issue on the absence of a legislative framework regulating the prevention of, protection against and reparation of the adverse impacts of activities by private and state owned companies, mainly in the extractive and large-scale energy-related sectors. The Committee is concerned about the negative impacts of such activities, including child labour exploitation, compounded by lack of enforcement of labour laws and Child Law, in addition to the deep rooted socio-economic factors that push children into the workforce.

Aggravating Factors

Instead of targeting at root causes, some policy directives put to restrict the movement of young people with the purpose of halting trafficking appear to have exacerbated the situation. For instance, according to the CRFB, since 1997, a directive of the SPDC Regional Commander has forbidden unaccompanied young women between 16 and 25 in Eastern Shan State to travel to the Thai border. Issuing passports was also made difficult and costly for women. The CRFB pointed out that such policy directives have just increased the problem. Lack of legal ID cards

346 US Department of State, 'Trafficking in Persons Report 2011: Burma.'
349 PWO, 'Stolen Lives.'
350 Ibid., see also at the prevalence section above.
352 See reports of Earth Rights International, supra note, 63.
353 UN General Assembly, 'Report of the Special Rapporteur,' 16 September 2011, para. 68.
354 '2012 Concluding Observations of the CRC Committee,' para. 86. 355 Ibid.
or travel documents, proper knowledge about their destinations, and limited survival and language skills have rendered young women vulnerable to the increased reliance on unscrupulous brokers and being tricked into trafficking.356 The US Department of State also noted that lack of identification documents and restriction of movement of certain ethnic minority groups including Rohingyas, make them more vulnerable to trafficking.357

One aggravating factor that pushes children in an exploited situation is that for some decades, the government has failed to allocate significant resources to protect the rights and welfare of children as the US State Department noted.358 As mentioned in the earlier section, although the government is increasing its expenditure on education and health, the long-term absence of adequate budget on social services during the past decades have already affected children and their parents. Destitute parents with lack of means of earning enough income to send their children to school and without social protection mechanisms, had to take their children out of school to work in factories and teashops or to beg or place them in orphanages. As a result, an increasing number of children with few or no skills have been working in the informal economy or in the street and exposed to drugs and pretty crime, risk of arrest, trafficking for sex, labour exploitation, and HIV/AIDS.359

Those children are also more vulnerable to underage recruitment.360 Based on the 2009 report of the Secretary General, it seems that there was confusion in the army regarding contradicting instructions to find new recruits while being told not to recruit children at the same time.361 The order to find new recruits appears to be much concerned with a high desertion of armed forces. According to Karen Human Rights Groups (KHRG) cited in the CRFB,362 recruitment officers might have been compelled to ensure regular enlistment of new recruits to cover desertsions and maintain an estimated 350,000 to 400,000 strong military. A similar situation might be relevant to non-state armed groups as well. However, the issue seems to be more visible with the armed forces given the size and expansion of the military during the past decades.

c. Impact of Exploitation

Forced Labour and Forced Eviction

In his report on human rights situation of Myanmar, the Special Rapporteur stated that ‘violations of land and housing rights result in poverty, displacement and ruined livelihoods, but also the destruction of cultures and traditional knowledge’.363 It can be called ‘a vicious circle’ for those who survived forced labour and forced eviction either due to armed conflicts related activities or extractive industry. Their economic and social rights were violated and they were left in a desperate situation to flee forced labour and poverty. Consequently they were vulnerable to trafficking and exploitation in trying to seek work for their survival. In such scenario, it can be seen that they are in a situation of ‘double exploitation’ in their own country and in perhaps other people’s countries. To cite the CRFB and Pearson as mentioned earlier, it is again the linkage between forced migration, exploitation and trafficking.364

Some survivors of forced labour might have suffered physical and psychological trauma due to the reportedly abusive and hazardous conditions they had to face while portering and sweeping landmines for the army; some have allegedly lost their lives.365 According to a research conducted by the University of New England, Armidale, Australia on the Thai-Burma border in the Sangkhlaburi District in Thailand, ‘many stories of extraordinary suffering’ were heard from the migrant communities at the study sites relating to the effects of forced labour, forced eviction and other conflict related atrocities.366 The research also found various health problems widespread in the poor migrant communities such as tuberculosis, malaria, parasitic diseases, and respiratory and gastro-intestinal conditions.367

356 CRFB, ’CRC Shadow Report Burma.’
357 US Department of State, ’Trafficking in Persons Report 2011: Burma.’
359 Ibid.
363 UN General Assembly, ’Report of the Special Rapporteur,’ 16 September 2011, at para 64, see also at the ’prevalence section.’
367 Ibid., 43 and 44.
Survivors of Trafficking

Trafficked persons face psychological and physical trauma. The US Department of State says that trafficked women and girls faced sexual and physical abuse by their traffickers, poor nutrition, and unsanitary conditions. As the result, they were contracted with diseases, including tuberculosis and HIV/AIDS. According to a woman survivor who was sold as a sex slave, 'her experiences have left scars on her that will never heal. She was raped and may have contracted HIV.'

Sometimes, discriminatory attitudes of the community have also compounded sufferings of trafficked survivors. According to the KWAT, girl trafficked survivors who manage to get back to home face the community's discrimination and lack of understanding. A similar finding was found by the PWO that documented how local community members assume that trafficked women have been doing sex work. Family members do not want them to be back to home since their daughters bring 'shame' on the family. As the result, it is difficult for the survivors to return to a 'normal' life. They are often traumatized and isolated with loss of trust in others, even their relatives.

As a result of stigma, women are also unwilling to seek medical help for sexually transmitted diseases contracted after being trafficked. Even if they can overcome their shame, it is difficult for them to afford the cost of medical treatment. For people with HIV, the stigma is even worse, and some communities will not accept them back to live in their village.

Child Labour and Child Soldier Recruitment

Child Rights Committee raised its concern over economic exploitation and sexual exploitation of children at young ages and its negative impacts on their health, education and development. According to the recent study of the UNDP and the government, enrolment rates for child labour participants (aged 10-14) is significantly lower than other non labour participants at 11.6% and 78.3% respectively. It indicates that children in the labour force lack access to education and consequently, are likely to be trapped in a poverty circle.

The negative impact on child soldiers is worrying. Experiences they faced were quite atrocious, according to the narratives of former child soldiers in a report of the CRFB. Their tasks included combating, portering, scouting, spying, guarding camps and cooking and they were reportedly subjected to 'beatings, abuse, ill-treatment, inadequate diet and the arbitrary deduction of salaries.' They were also allegedly forced to 'commit crimes against civilians accused of supporting rebel groups.' Their attempts to escape were also faced with arrest and imprisonment and in some cases, were reportedly beaten to death as a punishment. Given a paucity of data on the negative impact of their direct involvement in armed conflicts, a comprehensive study is required to make an analysis of impact on those children and consequently provide them with effective rehabilitation and reintegration strategies.

2. De Jure State Responses

a. Bases of State Responsibility

The following table shows Myanmar's ratifications of International Treaties against trafficking in persons:

<table>
<thead>
<tr>
<th>The United Nations Convention against Transnational Crime and its Protocols</th>
<th>Date of Accession (a)</th>
<th>Reservation</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Nations Convention against Transnational Organized Crime</td>
<td>30 March 2004(a)</td>
<td>Articles 16, 35</td>
</tr>
<tr>
<td>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children</td>
<td>30 March 2004(a)</td>
<td>Article 20</td>
</tr>
</tbody>
</table>

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369 Mahidol Migration Center (MMC), Snap Shot Stories,' 43.
372 '2012 Concluding Observations of the CRC Committee,' para. 21 and 85.
374 Ibid.
376 Ibid.
377 Ibid.
The United Nations Human Rights Treaties

<table>
<thead>
<tr>
<th>Treaty</th>
<th>Date</th>
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* Accession (a)
2. Myanmar made reservations on obligations to refer disputes relating to the interpretation or application of respective convention or protocol to the International Court of Justice.  

International Non-Treaty Instruments against trafficking in persons

1. Guidelines on the Protection of Child Survivors of Trafficking (UNICEF Trafficking Guidelines) the application of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to survivors of trafficking and persons at risk of being trafficked
2. United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking
3. 1993 Vienna Declaration and Program of Action
4. 1995 Beijing Platform for Action
5. 1996 Declaration and Agenda for Action
7. 2001 Global Commitment adopted at the World Congress against Commercial Sexual Exploitation of Children
8. 2007 Global Initiative to Fight Trafficking (GIFT)
9. Regional Non-Treaty Instruments against trafficking in persons
10. 1985 ASEAN Foreign Ministers Joint Statement on the Problem of Drug Abuse and Trafficking
11. 1993 ASEAN Plan of Action for Children
12. 1997 ASEAN Declaration on Transnational Crime
13. 1997 ASEAN Vision 2020
14. 1998 Manila Declaration on the Prevention and Control of Transnational Crime
15. 2001 Declaration on the Commitments for Children in ASEAN
16. 2002 Joint Declaration of ASEAN and China on Cooperation in Non-Traditional Security Issues
17. 2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children 2004 ASEAN Security Community Plan of Action
18. 2004 ASEAN Socio-Cultural Community (ASCC) Plan of Action
19. 2007 ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons
20. 2010 Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children
21. 2010 Southeast Asia National Human Rights Institutions Forum (SEANF) Memorandum of Understanding Against Trafficking of Women and Children

Regional Legal Cooperation And Memorandum Of Understanding Against Trafficking

Regional Legal Cooperation

Ratification of Association of South East Asian Nations (ASEAN) Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (AMLAT) (2006)

Regional Memorandum of Understanding (MOU)

MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region (COMMIT) (2004)

Bilateral MOU

1. MOU between Myanmar and China on Cooperation to Combat Trafficking in Persons (2009)
3. MOU between Myanmar and Thailand on Cooperation to Combat Trafficking in Persons (2008)

378 For legal cooperation measures against trafficking, see also at ASEAN; ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases.’ 2010.
The AMLAT provides the legal basis for ASEAN countries to undertake mutual legal assistance for transnational offences.\(^{380}\)

ILO Conventions against forced labour \(^{381}\)

<table>
<thead>
<tr>
<th>Convention</th>
<th>Ratification Status</th>
<th>Date</th>
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<tbody>
<tr>
<td>Eight ILO fundamental conventions(^{382})</td>
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<tr>
<td>Forced Labour Convention, 1930 (no. 29)</td>
<td>Ratified</td>
<td>4 Mar1955</td>
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<tr>
<td>Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)</td>
<td>Ratified</td>
<td>4 Mar1955</td>
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<tr>
<td>the Abolition of Forced Labour Convention, 1957 (no. 105)</td>
<td>Not Yet (NY)</td>
<td></td>
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<tr>
<td>Worst Forms of Child Labour Convention, 1999 (no. 182)</td>
<td>NY</td>
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<tr>
<td>Minimum age convention, 1973 (no. 138)</td>
<td>NY</td>
<td></td>
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<tr>
<td>Discrimination (Employment and Occupation) Convention, 1958 (no.111)</td>
<td>NY</td>
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<tr>
<td>Equal Remuneration Convention, 1951 (no.100)</td>
<td>NY</td>
<td></td>
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<tr>
<td>Right to Organise and Collective Bargaining Convention, 1949 (No. 98).(^{383})</td>
<td>NY</td>
<td></td>
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<tr>
<td>Other Conventions related to labour rights protection(^{384})</td>
<td></td>
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<tr>
<td>C1 Hours of Work (Industry) Convention, 1919</td>
<td>ratified</td>
<td>14 Jul 1921</td>
</tr>
<tr>
<td>C6 Night Work of Young Persons (Industry) Convention, 1919</td>
<td>ratified</td>
<td>14 Jul 1921</td>
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<tr>
<td>C11 Right of Association (Agriculture) Convention, 1921</td>
<td>ratified</td>
<td>11 May1923</td>
</tr>
<tr>
<td>C14 Weekly Rest (Industry) Convention, 1921</td>
<td>ratified</td>
<td>11 May1923</td>
</tr>
<tr>
<td>C15 Minimum Age (Trimmers and Stokers) Convention, 1921</td>
<td>ratified</td>
<td>20 Nov 1922</td>
</tr>
<tr>
<td>C17 Workmen’s Compensation (Accidents) Convention, 1925</td>
<td>ratified</td>
<td>16 Feb 1956</td>
</tr>
<tr>
<td>C18 Workmen’s Compensation (Occupational Diseases) Convention, 1925</td>
<td>ratified</td>
<td>30 Sep1927</td>
</tr>
<tr>
<td>C19 Equality of Treatment (Accident Compensation) Convention, 1925</td>
<td>ratified</td>
<td>30 Sep1927</td>
</tr>
<tr>
<td>C26 Minimum Wage-Fixing Machinery Convention, 1928</td>
<td>minimum</td>
<td>21 May1954</td>
</tr>
<tr>
<td>C42 Workmen’s Compensation (Occupational Diseases) Convention (Revised), 1934</td>
<td>ratified</td>
<td>17 May1957</td>
</tr>
<tr>
<td>C52 Holidays with Pay Convention, 1936</td>
<td>ratified</td>
<td>21 May1954</td>
</tr>
<tr>
<td>C63 Convention concerning Statistics of Wages and Hours of Work, 1938</td>
<td>ratified</td>
<td>24 Nov1961</td>
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</tbody>
</table>

According to ILO Declaration Annual Review 2010-2011 cited in International Organization of Employers (IOE), the Government of Myanmar stated that the new States Constitution adopted in May 2008 reflects the Government’s intention to ratify C. 105 and ILO should cooperate with Myanmar in ratifying all ILO fundamental Conventions.\(^{385}\)

Even though ILO members states have not ratified the Convention, they will be required for the first time in 2001 to report on their situation with regard to respect for the principle of the abolition of the worst forms of child labour (182) and the efforts they have made to this end.

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381 As of March, 2012.


385 IOE, ‘Country Baselines.’
under the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998. They will be given opportunity to request technical assistance from ILO. CRC committee also urged Myanmar to consider ratifying and implementing the ILO Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) and to continue cooperation with ILO for the elimination of forced labour.

International instrument to protect children in armed conflicts

The CRC Committee and the report of the Secretary General on children and armed conflict in Myanmar encouraged the government to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and to align national legislation and practice accordingly. Under UN Security Resolution 1612, governments and non-state armed groups have responsibility to report on the status of children in armed conflicts. Unfortunately, however, Myanmar has not ratified the long-awaited joint action plan under Security Council resolution 1612 (2005) (on children in armed conflict).

b. National Policies against Exploitation

Law and Policies Against Trafficking and Sexual Exploitation

1) Anti Trafficking in Persons Law (2005)
2) Control of Money Laundering Law in 2002
3) Mutual Assistance in Criminal Matters Law in 2004
4) Five-Year National Plan of Action to combat Human Trafficking (2007-2011)
5) Constitution of the Republic of the Union of Myanmar Section 358 (The Union prohibits the enslaving and trafficking in persons)
6) Section 65 (a), 66 (a) (b) (f) of Child Law against sexual exploitation
7) Section 372 of the Criminal Law (Selling minors for purpose of prostitution); Section 373 of the Criminal Law (buying minors for purpose of prostitution)
8) Section 371 of the Criminal Law (Habitual dealing in as slaves)
9) Section 370 of the Criminal Law (Buying or disposing of any person as a slave)
10) The Mutual Assistance in Criminal Matters Law is for cooperation in judicial matters in the region, which are related to the Anti-Trafficking in Persons Law.
11) Sources: UPR state report, CRC/C/MMR/3-4, ASEAN 'Update and Supplement to the 2006 Study'

Law and Policies Against Forced Labour and Labour Exploitation

1) Section 374 of the Criminal Law (Unlawful Compulsory Labour)
3) Employment Restriction Act, 1959
4) Employment Statistics Act, 1948
5) Employment and Training Act, 1950
6) Factories Act, 1951
7) Minimum Wages Act, 1949
8) Payment of Wages Act, 1936
9) Shops and Establishments Act, 1951
10) Social Security Act, 1954
11) The Leave and Holidays Act, 1951
12) Trade Disputes Act, 1929
13) Workmen’s Compensation Act, 1923
15) Policies against underage recruitment
16) Recruitment of children under 18 into the military is illegal under Military instruction 1/131/ye 1 (ka) dated 2 Oct 1997 and the War Office Council Directives No. 13/73, 8/74 and 8/75.

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387 ‘2004 Concluding Observations of the CRC Committee,’ para. 69; ‘2012 Concluding Observations of the CRC Committee,’ para. 86.
388 ‘2012 Concluding Observations of the CRC Committee,’ at para 82; Security Council, ‘Report of the Secretary-General, 1 June 2009,’ para. 72.
389 UN General Assembly, ‘Promotion and Protection of Human Rights Situations and Reports of Special Rapporteurs and Representatives: Situation of Human Rights in Myanmar/A/65/368, 15 September 2010, para. 79.
390 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 288.
391 Reports cited in sources has not identified preventive, protective and curative legislation.
392 IOE, ‘Country Baselines.
c. Assessment of State Policies

Anti-Trafficking Related Laws

According to the UNIAP and IOM reports, national anti-trafficking laws of several countries including Myanmar comply with the UN Trafficking Protocol. They cover all aspects of trafficking, including trafficking in men, women and children, domestic and international trafficking, and trafficking for all forms of exploitation.\(^{(394)}\)

Under Section 24 of the Anti-Trafficking in Persons Law, the penalty for trafficking in persons especially women, children and youth is ranges 10 years to life sentence and may also be liable for a fine. Under Section 25, the penalty for trafficking in persons other than women, children and youth is 5 to 10 years, and may also be liable to a fine.\(^{(395)}\) Under Section 26, fraudulent adoption and marriage for the purpose of committing trafficking in persons and ‘causing obtaining unlawfully the necessary documentary evidence documents or seal for enabling a trafficked survivor to depart from the country or enter into the country’ can be punished with a minimum of 3 to 7 years and may also be liable to a fine. Under Section 27, making use of a trafficked survivor with the purpose of pornography is an offence with a penalty of 5 years to 10 years, and may also be liable to a fine.\(^{(396)}\)

The Anti-trafficking Law also gives provisions regarding protecting dignity, physical and mental security of women, children and youth trafficked survivors (section 11 and 12). Section 16 provides special protection of women, children and youth survivors and necessary assistance.\(^{(397)}\)

However, according to UNIAP, under section 13(a) (b) of the Anti-Trafficking in Persons Law (2005) in Myanmar, limited protection is offered to specific categories of survivors from prosecution.\(^{(398)}\) The combined second and third periodic reports of the State to the CEDAW committee mentioned that the Law ‘shall determine whether or not it is appropriate to take action against the trafficked victims for any other offence arising as direct consequences from trafficking in persons’.\(^{(399)}\) Since prostitution is illegal in Myanmar and punishment is 1-5 years, with liability of a fine,\(^{(400)}\) trafficking survivors who were forced into the sex industry, might possibly be subjected to prosecution. Such limited protection of survivors from prosecution of trafficking related offences might possibly discourage survivors in the prosecution of their exploiters. UNIAP stated that ‘the criminalisation of victims of trafficking for status related offences (most typically, illegal work and illegal migration) continues to be a problem in some GMS countries.’\(^{(401)}\) The CRC Committee also raised its concern about the alleged prosecution of children engaged in prostitution and encouraged the State to ‘ensure that victims of sexual abuse and exploitation are not criminalized.’\(^{(402)}\)

Regarding laws related to anti-trafficking in person law, under clause (2), subsection (a), section 5 of the Control of Money Laundering Law, 2003, the law applies to the offences of ‘illegally converting, transferring, concealing, obliterating or disguising of money and property obtained from the commission of trafficking in and smuggling of women and children’. Under subsection (c), section 22 of the Narcotic Drugs and Psychotropic Substances Law, making use of the child who has not completed the age of 16 years in the commission of the offence, is liable to a maximum punishment provided for such offence.\(^{(403)}\)

Laws Against Child Prostitution

Child prostitution is prohibited under section 372 and 373 of the Penal Code with imprisonment ‘of either description for a term which may extend to 10 years, and shall also be liable to a fine.’\(^{(404)}\) Section 65 (a), 66 (a) (b) (f) of the Child Law also put some penalties for offenses related to child prostitution and child pornography.\(^{(405)}\)

Although section 16 (a) of the Child Law prescribes that ‘in order that every child shall not be subjected to arbitrary infringement of his honour, personal freedom and security, relevant Government departments and organizations shall provide protection and care in accordance with the Law.’\(^{(406)}\) the CRC Committee noted that provisions in the Child Law


\(^{395}\) ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 286.

\(^{396}\) Ibid., para. 277.

\(^{397}\) Ibid., para. 102,103 and 104.


\(^{399}\) CEDAW, ‘Second and Third Periodic Reports of the State Party,’ para. 83, subsection e.


\(^{402}\) ‘2012 Concluding Observations of the CRC Committee,’ para. 87.

\(^{403}\) ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 98 and 99.

\(^{404}\) Ibid., para. 96 and 97.

\(^{405}\) Ibid., 271, 276.

\(^{406}\) Section 16 (a) of the Child Law (1993).
regarding the protection of children survivors of commercial and sexual exploitation is inadequate and recommended that the State should amend the Child Law to protect children from commercial and sexual exploitation.\footnote{407}

\textbf{Laws Related to Child Marriage}

According to the customary law, the legal age of marriage is 20 years for women and at puberty for boys.\footnote{408} However, the Buddhist Women Special Marriage and Succession Act allow Buddhist girls above 14 years to marry non-Buddhist men depending on parental consent.\footnote{409} The CRC Committee raised its concern that there is no minimum legal age of marriage for boys and the marriage age for girls with parental consent is as young as 14.\footnote{410}

\textbf{Policies Related to Birth Registration, Nationality and Adoption}

According to the third and fourth periodic report of the State to the CRC Committee, as stipulated under the section 9 of the citizenship law, birth registration is made accessible to every child and Modified Vital Registration System (MVRS) has been implemented in urban and rural Areas of the entire country.\footnote{411} On the other hand, the CRC Committee noted that there are a large number of children including Rohingya children who are unregistered due to unawareness or lack of effective implementation.\footnote{412} (See also B.2.b). Consequently, children of some ethnic minority groups including Rohingya children are vulnerable to exploitation.\footnote{413}

In Myanmar, the Child Law and the 1939 ‘Registration of Kittima Adoptions Act’ allow adoption with regulations that protect children’s interests and also prevent exploitation and trafficking.\footnote{414} However, the CRC Committee raised its two main concerns: ‘ensuring that provisions on adoption conform fully to the principles and provisions of the Convention’; and ‘the absence of a thorough agreed monitoring system of adoptions’.\footnote{415}

\section{3. Implementation, Monitoring and Enforcement}

\textbf{a. Implementing and Monitoring Mechanisms}

\textbf{Cross Border Trafficking}

The Central Body for the Suppression of Trafficking in Persons mandated under the Anti Trafficking in Persons Law (2005), was established in 2006 and chaired by the Minister for Home Affairs. The Body consisted of the Deputy Attorney General as Deputy Chairman, the Deputy Minister of Home Affairs, the Deputy Minister of Social Welfare, Relief and Resettlement, the Director General of Myanmar Police Force as Secretary and heads of relevant Government Departments and Organizations, representatives from the Non-Governmental Organizations and relevant experts as members.\footnote{416}

The Anti-Trafficking Unit (ATU)\footnote{417} at the central level and the Anti-Trafficking Task Forces (ATTFs) at the provincial level, located in 22 townships are special units for prosecution. The human resources for prosecution include the Myanmar Police Force members, prosecutors and judges. According to the UNIAP report published in 2010, special courts dedicated to hearing trafficking cases were to be established that year.\footnote{418} The vast majority of the investigators of ATU and ATTFs have undertaken specialist human trafficking training.\footnote{420} The establishment of a number of Border Liaison Offices (BLOs) at the China and Myanmar border areas facilitates informal police cooperation. Some positive results have been recorded regarding the conduct of a small number of joint investigations, exchanges of intelligence and faster repatriation of survivors.\footnote{421} Myanmar is also involved in the regular meeting of the heads of the specialist police anti-trafficking units throughout ASEAN under the

\footnote{407}2012 Concluding Observations of the CRC Committee,' para. 57 and 58.
\footnote{408}Social Institutions and Gender Index (SIGI), 'Gender Equality and Social Institutions in Myanmar.'
\footnote{409}Ibid.
\footnote{410}2012 Concluding Observations of the CRC Committee,' para. 26; '2012 Concluding Observations of the CRC Committee,' para. 33 and 34.
\footnote{411}Myanmar’s Third and Fourth Periodic Reports to the CRC Committee,' 2011, para., 55 and 62.
\footnote{412}2012 Concluding Observations of the CRC Committee,' para. 43.
\footnote{413}See Chris Lewa, ‘North Arakan.’
\footnote{414}Myanmar’s Third and Fourth Periodic Reports to the CRC Committee,' 2011, para. 133 and 134.
\footnote{415}2004 Concluding Observations of the CRC Committee,' para. 47.
\footnote{416}ASEAN, ‘Update and Supplement to the 2006 Study: ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Survivors,’ 2008; Myanmar’s Third and Fourth Periodic Reports to the CRC Committee,' 2011, para. 292.
\footnote{417}ATU was formed in 2004 by the Department against Transnational Crimes (DTC) of the Myanmar Police Force, in collaboration with ARCPPT Project implemented under the agreement signed between the Governments of Australia and Myanmar. (\textit{Ibid.}, para. 298)
\footnote{418}UNIAP, 'Mekong Region Country Datasheet,' Gerard Smith,' The Criminal Justice.'
\footnote{419}The information on whether they were established or not cannot be confirmed yet in the available reports.
\footnote{420}Gerard Smith, 'The Criminal Justice.'
Internal Trafficking: Forced Labour and Labour Exploitation in Private Sectors

Under the Supplementary Understanding (SU) mechanism, the government is monitoring forced labour cases in cooperation with ILO. Upon receipt of an allegation, the Liaison Officer first makes an objective assessment of the case and then submits it to the Government Ministerial Working Group, chaired by the Deputy Minister for Labour for further investigations. The WG is headed by the Director General of the Department of Labour and comprised of officials from related departments. Upon receipt of a complaint the WG instruct enquiry team to investigate the case and recommend appropriate action to seek for legal redress for the survivor and punishment for the perpetrator. Throughout the process, the liaison officer is reportedly accorded a close contact with the Government to ensure appropriate enquiry tactics and resultant decisions commensurate with the crime.

ILO submitted 354 cases of forced labour complaints to the government for action in 2010. 161 cases were resolved while 159 cases were pending resolution and 34 cases were closed with an ‘unsatisfactory outcome’. Regarding workers’ labour rights’ violations in private sectors, according to the State's report to the Human Rights Council under the Universal Periodic Review, the Ministry of Labour is the responsible body to ensure labour rights. The report said that signing an employment contract is practiced to prevent disputes between the employer and the employee. When a dispute arises, it is settled through a tripartite mechanism consisting of the Township Workers’ Supervisory Committee with an official from the Ministry of Labour as its secretary, the employer or his or her manager and the employee. In future, it is expected that with the enforcement of the new Labour Organization Law, labour disputes and strikes might be prevented through 'social dialogue, creation of relationships between employees and employers,' before resorting to strikes as the last tool.

However, in the State report to the Human Rights Council, the role of the Ministry of Labour is portrayed merely as that of a negotiator between workers and employers when there are disputes and strikes organized by the workers. No information is mentioned regarding systematic labour inspection mechanisms that monitor employers especially in private sector to ensure the existing Labour Laws are being practised. The US Department of State, the CRC Committee and the CEDW Committee noted

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422 Ibid., ASEAN, 'Update and Supplement to the 2006 study,' 14.
423 UNIAP, 'Mekong datasheet,' 21.
424 The US Department of State, 'Trafficking in Persons Report 2011: Burma.'
425 Ibid.
426 Ibid.
428 '2008 Concluding Observations of the CEDAW Committee,' KWAT, 'Eastward Bound.'
429 KWAT, 'Eastward Bound.'
430 See also Human Rights Council, 'National Report,' para. 59.
432 US Department of State, 'Trafficking in Persons Report 2011: Burma.'
lack of such mechanisms.435

**Internal Trafficking: Child Soldier Recruitment**

The State’s UPR report mentioned that the Committee for the Prevention against Recruitment of Minors for Military Service was established in 2004. In 2007, the Work Committee, the Monitoring and Reporting Task Force and the Reintegration and Rehabilitation Task Force were formed.436

According to the UN observations and the experience of ILO, from late 2009 onwards, the four main recruitment units in Yangon appeared to be applying a more rigorous screening mechanism and rejected underage recruits whereas other more remote or less rigorous centres reportedly accepted those rejected underage recruits in a number of cases.437 However, one progress of the government mechanism on recruitment monitoring process is recognized in the report of the Secretary General that:

It was brought to the United Nations notice that the Directorate for Military Strength in Nay Pyi Taw holds a database of children rejected by recruitment units and who are not included in the lists of released children shared with the task force. This measure has been put in place to ensure that underage recruits rejected in one unit are not brought elsewhere for recruitment.438

Although the government has made some progress in cooperation with the UN country task force on monitoring and reporting and putting some stringent measures in some recruitment units, the Secretary General and the Special Rapporteur noted that the discharge of children from the army was mainly based on reactive approach in response to complaints rather than a more systematic proactive approach.439

Similarly, according to the 2009 report of the Secretary General, although the Government’s Working Group for the elimination of forced labour dealt expeditiously with a specific ILO complaint with firm evidence such as clear identification of details and specific location of the recruit, the government did not take proactive action to investigate and seek out children in the army even when released children confirm the presence of other children in their units. The report urged the government to have a substantive discussion on a cooperative, expanded working procedure to supplement the existing ILO mechanism with a more developed and open monitoring function.440

The government accepts the principle that underage recruits should not be charged with desertion and those who were charged should be discharged from prison on the basis of their illegal recruitment and until April 2011, 7 imprisoned underage recruits have been released from prison. In spite of that, reports of the arrests of young ‘deserters’ have continued.441 The report of the Secretary General noted the lack of the government’s proactive approach in this regard to identify such ‘deserters’ currently imprisoned and discharge them accordingly. The government also need to grant access by the UN country task force on monitoring and reporting to non-state armed groups and military training centers and operation units of the army.442

In spite of such weakness in the government’s effort in eliminating child soldiers recruitment, it is hopeful that in future, the government’s mechanisms can be enhanced in cooperation with the UN country task force after signing the pending plan of action to prevent the underage recruitment of children into the armed forces. According to a recent report of the Special Rapporteur, the plan of action was almost ready for signing.443

**Internal Trafficking: Child Labour and Child Prostitution**

The earlier section has mentioned how the government needs to adopt an effective labour inspection mechanism to investigate and prosecute violations of the Child Law and the Labour laws. Regarding measures against sexual exploitation, according to the State’s report to the CRC Committee, ‘police officials have been trained and

assigned to different states and divisions to surveillance tourists from abusing and exploiting children and tourism related crimes while ensuring their safety.444 While noting the effort the government is making to prevent sexual exploitation including a plan to organize a special police force for child protection, the CRC Committee stated the need to ensure the adequate measures to take in holding perpetrators of child sale, trafficking and abduction accountable for their offences given the persistence of sexual exploitation of children in the country particularly in urban areas for the purpose of prostitution.445

b. Complaints Process446

Cross Border Trafficking

The Myanmar Women's Affairs Federation (MWAF) receives complaints from women survivors of violence and trafficking and these complaints can be referred to the authorities concerned for taking action. (See also B. 3. b.)

Internal Trafficking Complaint Mechanism: Forced Labour; Child Soldier Recruitment

Under a Supplementary Understanding (SU) between the Government and ILO, Myanmar resident citizens can lodge complaints alleging the use of forced labour. According to the ILO Yangon, ‘this complaints mechanism is designed to allow genuine survivors of forced labour, with the assistance of the ILO Liaison Officer, an opportunity to seek redress and/or remedies from the government authorities in full confidence that no retaliatory action will be taken against them.447

It states that if circumstances are appropriate, survivors should make an initial complaint through their Local Government Representative at village, township or district level or make enquiry at the local recruiting centre. However, in such circumstances as local authorities are the alleged perpetrators or survivors feel unhappy at the response they receive, they can contact the ILO Liaison Officer to make their complaint. A third party can also make a complaint to the ILO for survivors.

Under the SU, complainants, survivors and other persons associated with the submission of a complaint are protected from harassment, prosecution or any other form of reprisal or retaliation. The Liaison Officer is granted a free and confidential access to the survivors, the complainant(s), his/her representative(s) or any other relevant person(s) to verify that no such retaliatory action has been taken against them.448

On the other hand, in reality, the SU does not seem to be able to protect survivors and complainants of forced labour. The 2011 report of the US Department of States mentioned that in a prominent case, local authorities made politically motivated harassment, including lengthy interrogations, of forced labour complainants. There was no intervention of central government in that case and it presumably discouraged additional forced labour complaints.449 'The ILO also made a similar comment on a gap between the ‘acceptance in principle and the practical situation on the ground’ and limitations that the ILO liaison officer had to face in conducting his field missions.450

Child Labour Exploitation and Child Prostitution

Regarding exploitation and abuse of children, as mentioned in the earlier sub-section of ‘Complaints Process’ under the section of ‘Violence against Children’, complaints can be lodged at National Committee on the Rights of the Child and also on National Human Rights Commission. (See B. 3. b.)

c. Protection and Rehabilitation

Cross Border Trafficking Survivors

According to the ASEAN report, the ATU and ATTFs have developed relationships and cooperation with survivor support agencies and as the result, the level of support provided to survivors has been improved.451 ATTF conduct survivor identification according to criteria for survivor identification established by the Central Body for the Suppression of Trafficking in Persons and the follow-up services accordingly.452

444 'Myanmar's Third and Fourth Periodic Reports to the CRC Committee, 2011,' para. 278.
445 '2012 Concluding Observations of the CRC Committee,' para. 88 and 89.
446 See also the section under ‘Complaint process’ of ‘Violence against women and children’ about explanations on complaint process of the recently formed national human rights commission.
447 ILO, 'Forced Labour Complaint Mechanism.'
448 Ibid.
449 See more details in US Department of State, '2011 Trafficking in Persons report.'
450 ILO, 'The Cost of Coercion: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work,' 2009. 73.
451 ASEAN, 'Update and Supplement to the 2006 Study,' 14.
452 UNIAP, 'Mekong Region Country Datasheet,' 'Myanmar's Third and Fourth Periodic Reports to the CRC Committee, 2011'
According to the State report to the CRC Committee, the Department of Social Welfare has been carrying out programmes on repatriation and rehabilitation in collaboration with the Myanmar Women’s Affairs Federation (MWAF), United Nations agencies such as UNICEF and the United Nations Inter-Agency Project on Human Trafficking (UNIAP), INGOs such as World Vision (Myanmar) and SC (United Kingdom). The report said that the Department was providing trafficked women and children with necessary health care, social counselling, formal education and vocational training. In addition, it said MWAF was also providing funds for investment, seeking jobs and reunification of the victims with their families and the follow-up services. The staffs from the Department of Social Welfare were also being given training on repatriating the trafficked women and children systematically.

Although the US State Department recognized the government’s effort to provide protection and rehabilitation, the department raised its concern about limited funding for survivors’ rehabilitation and subsequent substandard services. According to the Department, repatriated survivors had to stay in the government’s training centers for a minimum of two weeks, and if there were no guardians for the survivors to be taken care, survivors had to stay often longer in ‘these centers where they were confined contrary to international norms of victim protection’. Although NGOs were sometimes allowed to assist survivors in government shelters, the government did not still allow NGOs to operate shelters for trafficking survivors. Although survivors were encouraged to assist in the investigation process and accorded with the right to file civil suits against traffickers, accessibility of victims to legal assistance appeared to be constrained by lack of financial support of the government. According to the head of the police force’s Department against Transnational Crime cited in the Irrawaddy, ‘some human trafficking survivors in Burma have become traffickers themselves, due to insufficient support in rehabilitation or a lack of jobs.’

Protection of Children in Vulnerable Situation

See section ‘Children in vulnerable situations’ under ‘Protection and Rehabilitation’ section of ‘Violence against women and children.’

Child Soldier Rehabilitation

According to the State report to the Human Rights Council, programmes on disarmament, demobilization and reintegration (DDR) has been carried out since 2002 and 374 underage recruits were discharged and handed over to respective parents/guardians. The Secretary General’s report said, ‘in 2010, 184 children received reintegration support from UNICEF, Save the Children, World Vision and other child protection partners, in support of the Ministry of Social Welfare, Relief and Resettlement.’

It appeared that those protection activities of the government did not reach child soldiers in the non-state armed groups and the CRC Committee urged the State to extend them to non-State cease-fire groups. The State needs to take proactive approach to ‘identify all children within the ranks of the armed forces, register and demobilize them with full family tracing, reunification and reintegration support from UNICEF and other child protection partners.’

d. Prevention Measures

Prevention from Cross Border Trafficking

According to the government, Myanmar has made ‘significant efforts’ in terms of international, regional and bilateral cooperation measures against trafficking. Criminal justice officials from Myanmar participated in regional workshops and meetings on combating against trafficking in persons such as the 2007 ASEAN Workshop on Criminal Justice Response to Trafficking in Persons

453 ‘Myanmar’s Third and Fourth Periodic Reports to the CRC Committee, 2011,’ para. 304 (b)
454 Ibid., para. 295, 296 and 299.
456 UNIAP, ‘Mekong Region Country Data sheet,’ for government’s assistance program to survivors.
461 ‘2012 Concluding Observations of the CRC Committee,’ para. 82.
462 Ibid., 82 (c).
and in the drafting of the Practitioner Guidelines that emerged from the Workshop. A significant proportion of specialist investigators from Myanmar have completed the ASEAN Training Program on Trafficking in Persons for Specialist Investigators. The police in Lao PDR and Myanmar have conducted devolved training courses by using the ASEAN training materials for recently appointed investigators at the ATU/ATTFs over the past three years. In keeping with ASEAN’s approach, each course was individually customised for each of the six GMS countries. The ASEAN Training Program on Trafficking in Persons for Front Line Law Enforcement Officials (ASEAN FLO course) has strengthened frontline officials’ ability to: ‘recognise human trafficking when they are confronted with it; more accurately identify survivors; provide survivors with increased protection and support and enhance cooperation between frontline officials and specialist investigators.

The 2011 trafficking report of the US Department of State also noted the government’s awareness campaigns through billboards, flyers, and public talks during the reporting period and publishing of a brochure on trafficking in conjunction with ILO, and disseminating widely throughout the country. According to the government, the MWAF has been carrying out awareness-raising programmes on trafficking and disseminating ‘knowledge about the laws that protect women through media to all Myanmar women.’ The report also said that the MWAF has been lending micro credit loan to the poor women at the respective State and Region in addition to giving the psychosocial support for vulnerable women in Nargis affected area.

On the other hand, given the account of widespread prevalence of trafficking both internally and internationally, such preventive and awareness measure did not seem to reach women and children in remote ethnic areas. Lack of educational opportunities and language barriers in those areas compounded the situation as mentioned in the KAWAT’s report. According to the assessment of CRFB on such awareness programs, those initiatives did not reportedly reach out to all communities and did not focus on root causes of the problem.

**Prevention from Internal Trafficking**

According to the government, in cooperation with the ILO liaison officer, the ILO Working Group led by Deputy Minister for Labour comprising of the representatives from Supreme Court, Attorney General Office, Ministry of Foreign Affairs, Ministry of Home Affairs disseminate the Principles and Rights at work (PR) around the country. The Department of General Administration also collects statistics and other information relevant to the PR. According to the government, the Order No.1/99 and its Supplementing Order prohibiting the requisition of forced labour had been translated into many languages such as Kachin, Kayar, Kayin (Pole, Sakaw), Mon, Shan and Chin (Tetain, Hacha, Matubi, Mintub), and subsequently transmitted to the relevant states and divisions of the country.

It seems that these awareness programs have positive outcome. According to the ILO liaison officer, the increase in forced labour complaint in 2010 indicates increase in people’s awareness in their rights to make complaints to get access to redress and justice. In spite of that, as mentioned in the prevalence section, due to the increasing trend of investment, large scale extractive industry and infrastructure projects of foreign and local companies have been incurring exploitation of local people in the forms of forced labour and forced eviction. Such kind of human rights violations were allegedly committed by those companies with the complicity of local authorities.

According to the report of International Organization of Employers (IOE), the government has identified areas to cooperate with ILO such as:

1. Training courses should be provided by ILO for capacity enhancement of the responsible governmental institutions; collaboration between ILO and Myanmar for the ratification of Core Conventions needs to be continued; to facilitate the realization of the PR in Myanmar, ILO technical cooperation would be needed in the following...
areas: (1) awareness-raising, literacy and advocacy; (2) assessment in collaboration with the ILO of the difficulties identified and their implication for realizing the PR; and (3) sharing of experiences across countries/regions.477

In the area of prevention of child soldier recruitment, there appears some improvement in the government’s cooperation with the ILO. According to UN sources cited in the US State Department, access to military recruitment centers was increased during the year, and training courses were conducted for military and civilian officials.478 The government report to the Universal Periodic Review also mentioned that numerous education talks on prevention against recruitment of minors for military service were provided to regiments and military recruitment units from 2004 to 2010 in cooperation with the Committee in collaboration with ILO, International Committee of the Red Cross (ICRC), (UNICEF), and INGOs. In collaboration with ILO, UNICEF, Save the Children and World Vision, high-level officials from the Ministry of Defence and other ministries concerned attended workshop on prevention of under-age military recruitment in May 2010.479

Given the continuation of recruitments of minors, the knowledge received from awareness program still needs to be effectively put in practice to prohibit the practice of minor recruitment effectively. The CRC pointed out that disciplinary measures need to be strengthened, systematized, institutionalized so that everyone involved in child soldier recruitment are prosecuted by independent and impartial courts.480

4. Role of Non-State Actors

(See also B.4. for more information on which program areas INGOs and NGOs are working on at State and Regional Level).

a. Assistance to Survivors

UNIAP identified the following international and national non-governmental organizations as key anti-trafficking non state actors in Myanmar:

- UN Agencies and Projects such as United Nations Children's Fund (UNICEF); United Nations Office on Drugs and Crime (UNODC); United Nations Inter-Agency Project on Human Trafficking (UNIAP); United Nations Development Programme (UNDP); United Nations Population Fund (UNFPA); and International Labour Organization (ILO);
- NGOs such as Asia Regional Trafficking in Persons Project (ARTIP); World Vision Myanmar; Save the Children Myanmar; Association Francois-Xavier Bagnoud (AFXB); Myanmar Women's Affairs Federation; Myanmar Maternal and Child Welfare Association; Myanmar Council of Churches; Myanmar Baptist Convention; Young Men's Christian Association (YMCA); Young Women's Christian Association (YWCA) and Inter-governmental Organisations such as International Organization for Migration (IOM) and Japan International Cooperation Agency (JICA).481

In the earlier sections, a brief account on assistance programs of some organizations such as World vision and UNICEF to trafficking survivors and former child soldiers have been mentioned.

b. Prevention Programs

According to the US Department of State, international and local NGOs are offering poverty alleviation and educational programs designed to counter trafficking.482 As mentioned earlier, organizations such as ILO and UNICEF have been carrying out policy advocacy programs and dissemination sections preventing trafficking and forced labour.

c. Monitoring and Cooperation483

With the support of the Asia Regional Trafficking in Persons Project (ARTIP), the United Nations Inter-Agency Project on Human Trafficking (UNIAP), the United Nations Children's Fund (UNICEF), and the

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477 IOE, ‘Country Baselines.’
480 ‘2012 Concluding Observations of the CRC Committee,’ para. 82(a) and (d).
481 UNIAP, ‘Mekong Region Country Datasheets.’
482 US Department of State, ‘2009 Human Rights Report: Burma.’; See also more at previous section of ‘Prevention Strategy.’
483 See also cooperation and monitoring mechanism of ILO and Myanmar in the previous section of monitoring and implementation.
United Nations Office on Drugs and Crime (UNODC), cross-border enforcement cooperation with China was enhanced through Border Liaison Offices (BLOs). In 2009, the UNIAP, UNICEF, ARTIP, the International Organization for Migration (IOM), Save the Children, World Vision Myanmar, and Association Francois-Xavier Bagnoud (AFXB) contributed significantly to signing of the Memoranda of Understanding on anti-trafficking in persons between Myanmar and Thailand and Myanmar and China.

In the area of minor recruitment, a UN country task force on monitoring and reporting was established in 2007 and is cooperating with the government in preventing child soldier recruitment in spite of some constraints such as getting full access to recruitment centers, military camps and training centers.

According to the reports of the Secretary General and the Special Rapporteur on Human Rights Situations in Myanmar, progress has been made in the action plan negotiations between the government and the country task force on monitoring and reporting to end minor recruitment by the armed forces specifically, Tatmadaw Kyi, and the action plan was ready to be signed.

5. Progress Indicators and Challenges

As noted earlier, the government has made some progress in anti-trafficking activities especially regarding cross-border trafficking. ASEAN and the US Department of State noted the improvement in the capacity of the criminal justice system to differentiate human trafficking and human smuggling cases with the establishment and operation of the Central Body, together with increased training. According to the government, 173 cases of trafficking have been investigated, and 234 offenders were convicted in 2010. Four police officers, who were members of the Anti-Trafficking Task Force in Mawlamyaing taking money from Burmese attempting to gain employment overseas, were punished. One police captain was forced to retire; two police lieutenants were demoted and one policeman lost one year’s seniority. While the US State Department noted a degree of progress in fighting trafficking, it pointed out some barriers in such progress. Punishment on corrupted government officials in dealing with trafficking was still insufficient and some of the government statistics reportedly included cases of abduction for adoption, rather than human trafficking.

In the area of eradicating child soldier recruitment, some progress has been acknowledged. According to the government, actions have been taken against 108 military personnel as perpetrators of ineligible recruitments. The US Department of State also noted some progress in this area:

Authorities took unprecedented action against members of the military involved in child recruitment. An army captain was sentenced to one year of hard labour in a civilian prison for his role in child recruitment. Two enlisted soldiers were sentenced to shorter terms in a military prison, and two non-commissioned officers received stronger administrative punishments than were reported in the past.

Regardless of some progress the government has made in these areas, the U.S. State Department raised its concern about alleged complicity of government officials in forced labour cases and alleged harassing and detaining some forced labour complainants for making accusations against officials who had forced them into labour. It was compounded by lack of transparency in the justice system in which ‘police can be expected to self-limit investigations when well-connected individuals are involved in forced labour cases.’

As noted by the CRC Committee and US Department of State, challenges in fighting trafficking and other forms of exploitation, included corruption, lack of accountability of local government officials,

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484 See also World Vision Myanmar, ‘Strengthening Community to be a Better Environment for Children: Annual Report,’ 2009.
490 Ibid.
491 Ibid.
492 UN General Assembly, ‘Promotion and Protection of Human Rights Situations,’ 15 September 2010, para. 82.
496 Ibid.
497 Ibid; ‘2012 Concluding Observations of the CRC Committee.’
lack of rule of law and an independent judiciary.\footnote{US Department of State. 'Trafficking in Persons Report 2011: Burma.'}

As mentioned earlier, it is hopeful that the reform process might improve rule of law and strengthen the judiciary system in the future.

6. Recommendations for Further Study

A summary of what is not known

1) Government data on extent and types of internal trafficking, root causes, impact
2) Progress indicators in fighting against trafficking (number of conviction and assistance to trafficked victims and long term rehabilitation and integration)
3) Effectiveness in implementation of the State’s policies and programs to eliminate exploitation of women and children, especially mechanisms and measures put in place to ensure access of justice to survivors of exploitation

Areas of Controversy

The main area of controversy on the issue of exploitation of women and children is between the Government’s report and the 2011 Trafficking in Persons report of the U.S. Department of State. The US Department of State placed Myanmar at Tier 3 for not making significant efforts to comply with the minimum standards for the elimination of trafficking. Although the U.S. Department of State recognized the fact that the government has adopted some measures to address cross-border sex trafficking, it asserted that ‘the government has not demonstrated serious and sustained efforts to clamp down on military and local authorities who are themselves deriving economic benefit from forced labour practices.’\footnote{Central Body for Suppression of Trafficking in Persons, 'Response to Trafficking in Persons Report 2011.'}

The Central Body for Suppression of Trafficking in Persons, the Union Myanmar of Home Affairs, strongly rejected the 2011 TIP Report and stated that Myanmar has made ‘significant efforts and achievements’ in terms of international, regional and bilateral cooperation measures against trafficking.\footnote{Central Body for Suppression of Trafficking in Persons, 'Response to Trafficking in Persons Report 2011.'} However, in their response, the Central Body did not mention internal trafficking, such as forced labour issue and child soldier recruitment. Regardless of such shortfall, it is hopeful that the situation might be improved later since the Government has pledged to eliminate forced labour by 2015 and increase cooperation with the ILO and other national and international partners.\footnote{Democratic Voice of Burma (DVB), 'Burma to Stamp Out Forced Labour by 2015.'}

Recommended areas for data collection and further research

1) Collect data on incidents of various forms of forced labour and exploitation including land confiscation, forced farming and labour exploitation in private sectors; make an in-depth analysis on their root causes, impact
2) Analysis on the existing laws, policies and programs in eliminating exploitation of women and children; their weakness, strength and areas needed to be improved especially barriers in ensuring access of justice to survivors of various forms of exploitation
3) Analysis on impact of conflict on children especially former child soldiers and IDP children; assessment of programs on their rehabilitation and full reintegration into their communities
4) Analysis on impact of various forms of labour exploitation of children and assessment of policies and programs to prevent, protect and eliminate exploitation of children

D. ABUSE AND DISCRIMINATION IN MIGRATION

Given recent developments in Myanmar and the protection measures the government has recently adopted, the situation of migrant workers in neighbouring countries, especially in Thailand, seems to have improved. It is hopeful that with political stability and economic development in Myanmar, people will have more employment opportunities at home. According to the media, the Thai Real Estate Association (TREA) is currently facing severe labour shortage and has incurred delays in several housing construction plans because many Burmese construction workers returned to Myanmar during the flood devastation in Thailand in 2011. They never came back as they have found job opportunities in Myanmar.\footnote{Nuttaporn Chanchokpong, 'Special Report: Reforms in Myanmar causing labour shortage in Thailand,' \textit{National News Bureau of Thailand: Public Relations Department}, 21 March 2012, http://thainews.prd.go.th/en/news.php?id=255503210017.} This event suggests that host countries will have to change their policies to attract cheap migrant labour so that the problem of labour shortage can be solved. Consequently, it is very likely that they will relax their former harsh and draconian...
According to Caoette and others cited in Kabeer, the period from 15th June 2011 to 15th September 2011, out of over 900,000 registered migrants, over 600,000 are from Myanmar. In estimation, 20% of the migrant workforce consisted of children aged 15 to 17 years of age. Based on the 2006 data of National Coalition Government of the Union of Burma (NCGUB), approximately 200,000 Burmese children were living in Thailand and many of them were working. In estimation, 70% of migrant workers in factories in the Tak Province were women from Myanmar. Based on the 2006 data of National Coalition Government of the Union of Burma (NCGUB), approximately 200,000 Burmese children were living in Thailand and many of them were working.

1. Description of the Problem

   a. Prevalence of Abuse and Discrimination in Migration

Situation of Women and Children Migrants in Thailand

In Thailand, it is estimated that there are about 2 to 3 million documented and undocumented migrant workers employed by about 200,000 Thai or Foreign employers in ‘dirty’, ‘dangerous’, ‘difficult and demanding’ sectors, such as construction, factories, fishing, agriculture, domestic work, and other local industries such as animal husbandry and shops. According to registration from 15th June 2011 to 15th September 2011, out of over 900,000 registered migrants, over 600,000 are from Myanmar. According to Caoette and others cited in Kabeer, the percentage of female registered migrants in Thailand has grown from 30% in 1998 to 45% in 2005. In estimation, 70% of migrant workers in factories in the Tak Province were women from Myanmar. Based on the 2006 data of National Coalition Government of the Union of Burma (NCGUB), approximately 200,000 Burmese children were living in Thailand and many of them were working.

Both documented and undocumented migrants from Myanmar including women and children were reportedly subjected to various forms of abuses committed by local authorities, police and employers. Such abuses and maltreatment of migrant workers and impunity of human rights violators have been well documented. By means of quantitative surveys and qualitative in-depth interviews with migrants, employers and authorities concerned, various forms of abuses and discrimination recorded by above mentioned studies included the following:

1. difficulty in obtaining registration; raid of local authorities;
2. control of employers who withhold original work permit of the migrant; threat of deportation; long working hours with underpayment;
3. harsh working conditions;

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3. harsh working conditions;

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505 Naiya Kabeer, ‘Footloose’ Female Labour, 14.
506 CPPCR, ‘Feeling Small;’ 12.
4. lack of rest;
5. physical and verbal abuse;
6. sexual violence against women and girls;
7. denial of the employer to give compensation to the employee for work related injuries;
8. domestic servitude especially for women and young girls with a small salary and abusive and restrictive working conditions, lack of freedom of movement and communications;513 and
9. forcing the female employee to leave their job for becoming pregnant while working in the factory.514

Children were often subjected to the worst forms of labour by being exposed to hazardous chemicals in factories and agricultural areas and harsh working conditions in fishing boats.515 According to Aung, H pounding and Jessadachat, in 2010 alone, at least 25 cases were documented in which migrants, including two young children, were killed due to acts of suppression by the police and other security actors.516

According to a study of the Committee for Promotion and Protection of Child Rights (Burma) (CPPCR), migrant families were also subject to the control of landlords and neighbours. Some landlords charged them higher rental fee and some neighbours took away their properties. Some local communities complained about them to the police and scolded them if they make a noise. They were also subjected to threats by motorbike gangs.517

Children were also at risk of being statelessness. Until 23rd August 2008, those children born in Thailand of unregistered migrant parents were unable to receive identity registration from both Thailand and Myanmar. However, since 23rd August 2003, birth of all children in Thailand, regardless of their status, can be registered and a birth certificate can be obtained.518 In spite of that, there were still some barriers for unregistered parents to go to the Thai Municipal office to get birth registration for their children. They were unaware of importance of birth registration or were often reluctant to do so due to language barriers or fear of Thai authorities.519

In theory, undocumented migrants and their dependants could have access to Thai hospitals. According to the Thai Ministry of Health (MOH), medical services were provided to migrants on humanitarian grounds and the Mae Sot Hospital (MSH) would spend 50 million THB on healthcare for migrants in 2007.520 In spite of that, some migrants were reluctant to go to public hospitals due of fear of arrest and deportation.521

**Situation of Female Domestic Workers from Myanmar in Singapore**

Out of 170,000 foreign domestic workers in Singapore, Burmese maids occupied 6% of the work force and their earning were SGD 300 (equivalent to USD 208) as of February 2008.522 According to 2005 HRW report, well-being of foreign domestic workers in Singapore including those from Indonesia, Philippines, Sri Lanka and Burma, were dependent on the mercy of their employers. Except some fortunate maids, HRW’s study found out that in general, maids were subject to various forms of abuse and discrimination including poor working conditions, social isolation, and sexual abuse, physical and verbal abuse, exorbitant debts owed to employment agencies, prolonged confinement indoors, long working hours, no weekly rest days and low wages.523 However, according to the media, maids in Singapore will get weekly day off soon when the newly drafted legislation enter into force next year.524

**Situation of Migrants in Malaysia**

According to the estimation of Burma Workers’ Rights Protection Committee (WRPC) cited in NCGUB, about 500,000 legal and illegal Burmese migrant workers and refugees including women and children were residing in

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513 Studies have found out that the majority of domestic workers are prohibited to make contact with friends and family and using and receiving phone calls (Punpuing, 17; CPPCR, 69-70; Elaine Pearson et al. ‘The Mekong Challenge.’)
516 Soe Lin Aung, ‘Situating (In) Security.’
517 CPPCR, ‘Feeling Small,’ 37.
518 Ibid., 13.
519 Ibid., 39.
521 Ibid.
Malaysia as of December 2008. According to Xinhua, migrants from Myanmar accounted for the majority of 1.84 million migrant workers in Malaysia. Burmese migrant workers were found to work in restaurants, factories, rubber plantations, and construction sites.

The alleged maltreatment of Burmese migrants, refugees and asylum seekers including women and children has been recorded in reports of non-governmental organizations (NGOs), International NGOs, Malaysian print, television media and testimonies of Burmese refugees who have resettled in the United States. Thousands of Burmese reportedly lost their legal status because employers withheld passports or refused to pay their return airfare. Women workers were also subjected to sexual abuse committed by employers or co-workers.

All Burmese migrants regardless of their registration status and refugees who have registered with the UNHCR were subject to raid, torture and arrest by authorities and members of People’s Volunteer Corps (RELA). Human Rights Groups have recorded abuses committed by the RELA members including ‘beatings, canings, rape and theft.’ According to testimonies of escaped victims, after raid and arrest, they would be detained for indefinite periods in notorious detention centers or handed over to traffickers in Southern Thailand if they could not afford to arrange payment to the authorities. Women and girls would be sold to brothels, hotels or domestic servitude in Southern Thailand.

Through the media, some cases of labour exploitation of Burmese female migrant workers were reported. Employers of some restaurants in Dubai committed a breach of contractual agreement on salary and working hours and asked female workers each day to work two to three hours more than agreed time in the contract without overtime payment.

Chin Ethnic Migrants in India

Chin ethincs in western provinces of Myanmar crossed the border to India’s eastern states such as Mizoram in 2008, to escape from famine and work in farming, road construction, and other odd jobs in India. Female migrants were subject to the incidents of sexual and gender based violence and killing. The nationalist student group, the Yong Mizo Association, also subjected them to clampdown.

b. Root Causes of Abuse and Discrimination in Migration and Aggravating Practices

Since Myanmar is still transitioning into a democratic country, decades of military regime still have its impact on the issue of migration and other things. Until recently, civil armed conflicts, economic deterioration, and chronic unemployment had been push factors that made migrant workers work in exploitative situations out of desperation for survival. As Bosson expounded, harsh social and political realities have brought ‘this kind of population movement squarely into the field of forced migration, even though the immediate cause of leaving home can also be described in economic terms’ Given those underlying factors within the context of Myanmar, migrants were vulnerable to traffickers, and forced or bonded labour, and sexual

525 NCGUB, 'The Situation of Migrant Workers.'
526 'Roundup: Myanmar works for seeking jobs abroad for its people,' Xinhua News Agency, March 5, 2008.
527 WRPC and Irrawaddy cited in NCGUB, 'The Situation of Migrant Workers,' 1001.
530 RELA, a local group accorded with power to crush down illegal migrants, see more detail in NCGUB, 'the Situation of Migrant.'
531 Irrawaddy cited in NCGUB, 'The Situation of Migrant.'
532 United States Senate,'Trafficking and Extortion of Burmese Migrants.'
533 See also Wendy Carlisle, 'Claims of Refugee Trafficking in Malaysia, Australian Broadcasting Corporation, May 10, 2011; John Burton and Demetri Sevastopolu, 'Burmese refugees sold at brothel,' Financial Times, 23 April, 2009.
535 NCGUB, 'The Situation of Migrant,' 1008 and 1009.
536 SERC, 'A Comparative Picture of Migration,' 7; FTUB, 'The Mekong Challenge.'
537 Elaine Pearson et al., 'The Mekong Challenge,' xxiv.
538 Bosson cited in NCGUB, 'The Situation of Migrant.'; See also Mary J. Ditton and Leigh Lehane, 'Towards Realizing the Health-Related Millennium Development Goals, 45 (about brutal experiences they had to face back home).
exploitation. According to the CPPCR’s interview with children migrants in Thailand, they had to face danger on their attempt to cross the border. One child was sent to Thailand with a ‘carry’, a service that transports people to Thailand for a fee. Carrys can use unscrupulous means to bring children to the brothel or bar. For some children, during their journey on foot along the winding Daw Na mountain road in Myanmar, they had to pay bribes at checkpoints to be able to continue their journey.

The absence of labour protection laws is also one of the reasons that facilitate labour exploitation. In Singapore, there was no legal provision for foreign domestic workers that enable them to be entitled to weekly day off among other labour’s rights. Just recently the government drafted a new legislation that will provide weekly day off to domestic workers. The bill is still awaiting full approval from the parliament and it is expected to be passed and will come into force on 1 January 2013. Without the legal basis, for many years, as Kabeer said, female migrants were subjected to ‘the intersection of several axes of inequality, including gender, ethnic minority status and ambiguous legality’. Although in Singapore abusive employers were punished, a foreign domestic worker was in a disadvantaged position to make complaints against employers due to unequal power relationship with her employers who had the power to repatriate at any time during the contract.

In Thailand, most of the protections under the Labour Protection Act 1998 do not apply to workers in agriculture, domestic work and fishing boats (local or migrant) and it gives no incentives to employers to adhere to standard labour practices. Employers also were not aware of their responsibilities and obligations to migrant workers under Thai labour laws and under the migrant registration policy. It was compounded by their discriminatory attitudes that foreign migrants do not deserve the same rights as Thai workers. Even some government officials had such discriminatory attitudes on labour rights of migrant workers according to findings of an academic study.

Other underlying factor of abuses and discrimination in migration is concerned with governments’ draconian policies against illegal migrant workers. Both in Thailand and Malaysia, illegal migration is included as a matter of national security concern along with refugee inflows, drug trafficking, and illegal deforestation. In Malaysia, members of the RELA were given ‘the right to bear and use firearms, stop search and demand documents, arrest without a warrant, and enter premises without a warrant,’ out of suspicion of someone being illegal migrants or terrorists and any undesirable person. Under this warrant, the RELA members were given impunity for their violent actions against migrants and refugees.

However, under Malaysia’s immigration law, immigrants can be allowed a temporary stay and seek employment during their stay. During the first week of June 2011, an announcement was made that all foreign migrant workers needed to register for legal work permits starting from July 11. Since then, migrants noticed an increase in arrest and suppression on illegal migrants to push them to register. However, migrants became suspicious of the process due to exorbitant costs and lack of guarantees from Malaysia’s Ministry of Labour to protect the registered workers’ labour rights or to ensure that illegal migrants who came out and registered would not be deported back home or the Thailand border.

In Thailand, one of the measures taken to put control over the movement of migrant workers is demonstrated in provincial decrees in five provinces. Citing concerns for ‘national security’, ‘security of society’, or ‘safety of life and assets’, the decrees put the measures to violate basic rights of both documented and undocumented migrant workers, such as restriction on the use of mobile phones, motorcycles and cars.

With the purpose of meeting labour demand of Thailand’s growing industry, the government started to develop its immigration policy in 1992 by using the cabinet resolution under ad hoc type of policy formulation. From 1992 until recently in June, 2011, the registration process was

539 Nikolas Win Myint, ‘Migration and Trafficking.’
540 Kate Hodal, ‘Singapore’s maids to get a day off.’
541 Naila Kabeer, ‘Footloose’ Female Labour, 13.
542 HRW, ‘Maid to Order.’
544 Ibid.
545 Vasu Sriravathonbul, ‘Controlling Migrant Workers: Thailand’s Perspective,’ 159.
547 Irrawaddy cited in NCGUB, ‘The Situation of Migrant.’
548 Congressional Research Service cited the US senate, ‘Trafficking and Extortion of Burmese Migrants.’
550 HRW, ‘From the Tiger to the Crocodile.’
opened for couples of rounds. Every registration process had a chilling effect on undocumented works as it was designed to ‘prevent and suppress irregular migration (before, during and after registration) as mentioned in Cabinet resolution of 26 April 2011.\textsuperscript{552}

However, as mentioned in the introduction, with the latest updates in Myanmar and looming labour shortage in future for Thailand’s industries, it is very likely that the government might relax its harsh policies on undocumented migrants and streamline the registration process accordingly. The recent registration process was streamlined at one-stop service centers provided at 17 provinces, in spite of the fact that the process was still the same as the previous registration in the remaining provinces.\textsuperscript{553}

In the past, the migrant registration system was said to be daunting to migrant workers who lack knowledge in the highly complicated bureaucratic steps and Thai language skill. Most migrant workers had to rely on their employers or various cheating methods of brokers.\textsuperscript{554} Brokers or employers might over-charge them and in some cases, the migrant workers who wanted to be registered but were not recommended by their employers had to hire a Thai as a proxy employer through brokers with higher fees. The system also restricted migrant workers’ right to change employers and rendered migrant workers subjected towards the labour exploitation of employers who had inordinate control over their documentation status.\textsuperscript{555} Employers would not register their employees or reported to police with false accusation and ask for deportation order.

In addition to migration policies that facilitated abuse and discrimination in migration, other factors such as economic downturn put more strain on such abusive conditions. In Thailand, after the economic crisis, when the government wanted rice mills to switch away from their use of Burmese migrant labour to Thai workers, mill owners were ordered to use 50 kg bags to attract Thai workers while migrant workers were required to raise 100 kg rice bags.\textsuperscript{556}

Regarding child labour, an exacerbating factor that ignores or encourages exploitation of child’s labour is related to the attitudes of migrant families and Thai people. Without seeing the practice as a problem, employers and migrant families have used and abused child labour jeopardizing children's future educational opportunities and development.\textsuperscript{557}

Some racial stereotypical attitudes towards Burmese migrants might also have justified abuse and discrimination. Since Thailand has never been subjected to the European colony rule, to formulate Thai nationalist discourse as a unifying ideology (especially following the 1932 power transfer from the absolute monarch to civilian rule), the long-held mythology of a kingdom under siege of Burma in the 16\textsuperscript{th} century was revived in textbooks, and disseminated through plays, short stories, films and popular culture. The Burmese were portrayed as the colonial aggressors and Thai leaders who guarded against the colonial aggressors as liberators from the Burmese colonial forces.\textsuperscript{558} The portrayal of Burmese as the national enemies in Thai nationalist discourse had some precarious repercussions. The general public’s attitudes towards Burmese migrants, who consist of the majority of the migrant population in Thailand, have been indifferent at best and discriminatory at worst.\textsuperscript{559}

\section*{c. Impact of Abuse and Discrimination in Migration}

Impact of abuse and discrimination in migration within the context of Thailand has been reported in numerous reports mainly on health and education related issues.

\textbf{Health}

Lack of knowledge in reproductive health rights among female teenagers has increased teenage pregnancy and in 2007, 5.1\% of deliveries at Mae Tao Clinic (MTC) were by girls less than 18 years of age.\textsuperscript{560} Such factors as poverty, fear about the deportation of pregnant workers, difficulty in accessing health services, illegality of abortion in Thailand, social and economic pressure, work related pressure, have affected women. This was resulted in premature labour, delivering without a skilled birth attendance, delivering low birth weight babies, and resorting to unsafe abortion.\textsuperscript{561} As a result, the Thai Ministry of Health recorded that among migrant pregnant women, complications for abortions were 2.4 times higher than for the local population and HIV/AIDS prevalence rate among pregnant migrant

\begin{thebibliography}{99}
\bibitem{552} IOM, ‘Migration Information Note.’
\bibitem{553} Ibid.
\bibitem{554} HRW, ‘From the Tiger to the Crocodile.’
\bibitem{555} Ibid.
\bibitem{556} Wickramasakeracited in Naila Kabeer, ‘Footloose’ Female Labour,’ 13.
\bibitem{557} CPPCR, ‘Feeling Small,’ 67.
\bibitem{558} Soe Lin Aung, ‘Situating (In) Security.’
\bibitem{559} Ibid.
\bibitem{560} CPPCR, ‘Feeling Small,’ 50.
\bibitem{561} Ibid., 13.
\end{thebibliography}
women was higher at 4.3%, compared with 2% among pregnant Thai women.562

According to a study cited in Kabeer, 50% of all adult migrants interviewed lack basic knowledge of HIV/AIDS and the same study found out that 55% of infants had not been immunized.563 Children suffer from malnutrition, acute respiratory tract infection, malaria, diarrhoea, worms, deformities, skin diseases, and anaemia due to inadequate treatment and poverty in Burma and Thailand. The absence of care by parents who just neglect their children with pressure of work and making money for daily survival compounded the situation.564 A study conducted by the Shoklo Malaria Research Unit (SMRU) in Tak Province in Thailand found out that 'fear of arrest' was a reason unique to Burmese migrants in study for not having children immunized by their parents; other factors such as not remembering immunization appointments and needing to work can be seen as well. According to SMU, some parents from Myanmar said they were afraid that Thai police might arrest them on their way to the clinic or at the clinic.565 One effect of lack of access to health facilities for migrants was the rising danger of re-emerging previously controlled diseases such as lymphatic filariasis in Thailand via Shan migrant workers.566

Abuse and discrimination has not only affected children's physical health, but psychological wellbeing as well. Sometimes, it has also endangered children's lives due to an abusive environment where fighting was widespread in both verbal and/or physical nature, within families; between children; spouses; neighbours; student gangs; Burmese and Thai; and Burmese and Karen.567 Migrant children are also subjected to risk of being trafficked and recruited by gangs due to being out of school and on the streets.

Education

Although migrant children, in theory, have access to education, less than 16% of registered migrant children are in Thai's education system, according to

562 A UNDP study cited by Caouette et al. (2006) in Kabeer, ‘Footloose’ Female Labour.33
567 CPPCR, ‘Feeling Small,’ 13 and 47.

the Foundation for Rural Youth (FRY).568 As Proctor, Sanee and Taffesse pointed out, if greater numbers of unregistered migrant children were taken into consideration, the vast majority of migrant children still lack access to education specifically to the Thai state schools.569 Although the 2005 education policy gives rights to education to every child regardless of their legal status, hindrances in its effective implementation are much related to discriminatory attitudes towards migrant communities, among other barriers.570 In spite of the fact that there has been increased awareness regarding the rights of migrant children because of the civil societies’ advocacy program, some barriers still exist. These include limited educational budgets, linguistic and cultural differences and refusal of school management to accept migrant children, either due to lack of awareness of the government educational policy or discriminatory attitudes towards migrant communities in general. Due to fear of deportation, unregistered migrants dare not ask for access to government services, while registered migrants do not know their rights or even if they know, they might simply not be able to afford to send their children to school and rather send to work to contribute to the family income.571

Majority of children who lack the Thai formal education system go to migrant schools that are informally established by local migrant communities and there are around 88 migrant schools with an estimated 15,855 students and 981 teachers.572 Those schools face challenges such as lack of official recognition by the Thai education authorities and insecurity of migrant teachers who are themselves undocumented and lack of mechanism to ensure good quality education. Consequently, further

educational opportunities are shunned away from those children. In spite of non-formal educational program of civil societies for the working migrant children (see AlertNet 2010), there have been problems fulfilling the needs of those children.

2. De Jure State Responses

a. Bases of State Responsibility

Myanmar has not ratified any international treaty related to protection of migrant women and children such as International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Convention Concerning Decent Work for Domestic Workers (No. 189) (CPRMW). However, according to the State's UPR report, the State is observing CPRMW with the purpose of signing it. Based on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007), Myanmar has pledged to prevent abuse and discrimination in migration. A Memoranda of Understanding (MOU) on appointment of workers and cooperation was signed between Thailand and Myanmar on 21 June 2003.

b. National Policies against Abuse and Discrimination in Migration

Literature on Myanmar national policies against Abuse and Discrimination in Migration rarely exists. This might probably be due to the decades of neglect of the previous military regime on the issue, as Htoo Chit, Executive Director of Thailand-based Grassroots Human Rights Education and Development, remarked. However, the former regime did enact 'Law Relating to Overseas Employment' in 1999, and it seems that it is the only legislation put in place to protect migrant workers' rights. According to the government's statement in a parliament session, policies to protect migrant workers have been adopted through the respective embassies of Thailand and Malaysia. In accordance with the MOU between Thailand and Myanmar, the government has adopted a nationality verification (NV) process to produce a temporary passport and provide migrant workers a legal status. The purpose is to protect workers from abusive working conditions and ensure that their labour rights are on equal terms with Thai workers. The process has been operating since July 2009.

c. Assessment of State Policies

Literature assessing state policies of migrant protection is very rare. The Overseas Employment Law allows establishment of overseas job hunting agencies. Licensed agencies are required to take responsibilities of the workers as to their labour rights in foreign countries, in accordance with the Foreign Employment Law (99) [Section 25, Sub-section (d)]. Under the Law, employment agencies are also prohibited from malpractices and there have been some arrests of such agencies over the years.

It seems that the government's current policy of national verification (NV) and issuing temporary passport is successful. According to anecdotes, Burmese migrants who have successfully registered for temporary passports have gained rights such as freedom of movement without restriction and access to health care facilities; it has been an encouragement for more registration for the temporary passport. Starting from July, 2011, the validity of temporary passport has been extended from 3 years to 6 years.

On the other hand, the government's policies aiming for restricting illegal migrants and trafficking might have had some repercussions. It is hopeful that such kind of policies can be amended soon in the reform process. According to a paper of Social Environmental Research Consultant (SERC), Myanmar law prohibits males under the age of 18 and females under the age of 25 from travelling abroad without a legal guardian and it said that such restriction alone 'put young people in a position of having no choice but to migrate illegally.'

Ethnic females under 25 who


576 '21st Day Session of Pyidaungsu Hluttaw Held,' The New Light of Myanmar

577 See more in the section of 3 (a) 'Monitoring Mechanisms' under the 'Literature on Migration of Women and Children.'


580 SERC, ‘A Comparative Picture of Migration, 8.
do not speak Burmese were more susceptible to deceitful brokers with promise to provide accompanied travel and paying jobs. Nikolais Win Myint also pointed out the need to remove root causes, such as alleviating poverty and reducing economic pressure, instead of stopping movement.

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

Embassies of Myanmar in host countries such as Malaysia and Thailand are the ones that need to take care of migrant rights issues. According to the government, organizations for protection of Myanmar workers were formed in Malaysia and Thailand in 2009. However, there is no information on what mechanisms have been put in place in Myanmar embassies in other host countries such as in Singapore or in Dubai. It seems that Myanmar embassies in those countries might respond to complaints of migrant worker rights violation on ad hoc basis.

The deputy labour minister of Myanmar and the Myanmar ambassador leads the Protection Committee for Myanmar migrant workers in Thailand. Recently, the Myanmar embassy in Bangkok appointed a labour affairs official to provide assistance to migrant workers with workplace issues and rights. As already discussed, under the 2003 MOU between Thailand and Myanmar, the government has been issuing temporary passports to Myanmar migrants in Myawady, Kawthoung and Tachilek in Myanmar and Ranong, Bangkok and Chiang Mai, Surat Thani, Samut Sakhon and Tak provinces in Thailand. According to the government, from 10 July 2009 to 28 February 2011, temporary Myanmar passports and identity cards have been issued to 408,160 workers.

According to the government, the Ministry of Labour has an overseas employment division and the Ministry of Foreign Affairs, the Ministry of Home Affairs and the Ministry of Immigration and Population are working closely as a task force. Necessary actions have been taken against employment agencies and brokers that violate existing laws. In 2008, the Department of Labour warned 110 licensed employment agencies that used clandestine methods in sending female migrants abroad that they could lose license or face imprisonment. The intention of the department of labour was to curtail labour exploitation in destination countries, especially of female migrants.

According to the information from a discussion in parliament last year, altogether 14 overseas employment agencies that violated licenses’ provisions were terminated. A total of 17 cases of brokers that sent workers overseas illegally were charged. Seven cases were charged due to lack of overseas employment licenses. According to the government, under the MOU between Myanmar and the Republic of Korea, Myanmar has been sending national workers with Employment Permit System (EPS) since 2009. While measures taken against unscrupulous employment agencies are welcoming, in some cases, rules and regulations were reportedly sidestepped through bribery.

According to the Minister of labour, Myanmar does not have adequate institutions to protect migrant workers’ rights effectively. The Minister said more bilateral agreements need to be signed and the signed MoUs and MoAs need to be upgraded so that they can guarantee the interests of Myanmar workers.

b. Complaints Process

It seems that migrant workers can lodge complaints against violations of their rights at respective Myanmar embassies in host countries. Evaluation reports on such

Ibid.
582 Nikolais Win Myint, ‘Migration and Trafficking.’
583 ‘21st Day Session of Pyidaungsu Hluttaw Held,’ The New Light of Myanmar
587 ‘21st Day Session of Pyidaungsu Hluttaw Held,’ The New Light of Myanmar.
588 Ibid.
590 ‘21st Day Session of Pyidaungsu Hluttaw Held,’ The New Light of Myanmar
591 Ibid.
593 The New Light of Myanmar, op. cit.
mechanisms are very rare and it seemed that during the previous regime, the issues of migrant workers were reportedly side-lined or ignored.\textsuperscript{594} However, as previously discussed, policy shift has been seen in this area. According to the news, the Myanmar embassy in Thailand has been working on protection of migrant workers’ rights in cooperation with the local workers’ rights groups.\textsuperscript{595} However, information regarding how migrant workers can lodge complaints against abuse cases at Myanmar embassies in respective host countries is still missing.

c. Protection and Rehabilitation

In a recent meeting between Myanmar Deputy Minister of Labour and the Thai Minister of Labour, the Myanmar government stated that it will provide more assistance to migrant worker. The two parties have also discussed on such issues as reopening of a comprehensive registration process for unregistered Myanmar migrants in Thailand; establishment of nationality verification (NV) centers in central regions of Thailand; and ensuring the social security benefits for Burmese workers who have passed NV.\textsuperscript{596} According to the media, the newly appointed official has begun meeting with migrant worker groups and has started assessing the situation.\textsuperscript{597}

In a recent case, Burmese Association of Thailand (BAT) in collaboration with two Thai NGOs and the newly founded Protection Committee for Myanmar migrant workers successfully provided legal assistance to 127 Burmese migrant factory workers to receive their allowance from their employers who first refused to pay. Due to flood threat, those workers needed money for food and transportation in October last year and they asked for their September allowance from their employers.\textsuperscript{598} Since September 2009, more than 2,700 illegal workers detained at immigration camps in Malaysia were sent back to Myanmar as result of the cooperation between the two authorities.\textsuperscript{599}

d. Prevention Measure

According to the State UPR report, the government has been holding public awareness programs such as talks and seminars on human rights issues including migrant workers’ rights in cooperation with international and national human rights experts since 2000.\textsuperscript{600} However, there is a lack of information relating to awareness raising programs for migrant workers in such areas as contents of labour contracts, legal rights, procedure for invoking redress and procedure for migration for women who wish to migrate independently or recruitment agencies.

4. Role of Non-State Actors

a. Assistance to Victims

In Thailand, some Burmese organizations are providing support to migrant workers with the support of ILO and Thai NGOs. Some of such organizations include Yang Chi Oo Workers’ Association (YCOWA), Burma Labour Solidarity Organization (BLSO), the Federation of Trade Unions-Burma (FTUB), Grassroots Human Rights Education and Development (HRDF), the Committee for Promotion and Protection of Child Rights (Burma) (CPPCR),

In Malaysia, similar organizations include the Burma Campaign Malaysia (BCM), Burmese Workers’ Rights Protection Committee based in Kuala Lumpur (WRPC) and the Network of Action for Migrants in Malaysia (NAMM).

FTUB mentioned a need of more NGOs to work on migrant worker issues. According to FTUB’s 2006 data, monks and religious persons were the main external sources of comfort for migrant children and young women.\textsuperscript{601} (See also C.3.a for information on INGOs and NGOs providing assistance to trafficked survivors.)

b. Prevention Programs

Some of the above mentioned organizations like Grassroots Human Rights Education and Development (HRDF) are raising awareness of migrant workers’ rights


\textsuperscript{596} IOM, ‘Migration Information Note.’

\textsuperscript{597} Nay Thwin, ‘Burma Appoints Labour Official for Thailand.’

\textsuperscript{598} ‘Burmese Migrant (127) Received Estimated (3) Millions Baht for Their Allowance!,’ Democracy for Burma.

\textsuperscript{599} 21st Day Session of Pyidaungsu Hluttaw Held, ‘The New Light of Myanmar’

\textsuperscript{600} Human Rights Council, ‘National Report,’ para. 108.

\textsuperscript{601} Elaine Pearson et al., ‘The Mekong Challenge,’ xxvi.
with the support of ILO and NGOs, and with Thai labour and legal groups.

c. Monitoring and Cooperation

As mentioned above, some Burmese NGOs based in Thailand are cooperating with some Thai NGOs and ILO in providing support and raising awareness of rights of migrants. They are now starting to cooperate with the newly established mechanisms of the Myanmar embassy to protect workers’ rights.602

According to the Minister of Labour, they are cooperating with IOM to be more efficient in their work. According to the Minister, ‘everyone in favour of the interests of migrant workers is urged to render assistance and hold talks for institutional development and cultural change.’603

5. Progress Indicators and Challenges

There is no report on progress indicators and challenges in the government’s activities regarding migrant issues. However, generally, as mentioned earlier, such factors as anecdotes of success in the national verification process and issuing temporary passports,604 and the government’s prosecution of unscrupulous employment agencies can be seen as the progress the government has made.

Based on the existing literature, main challenges can be seen in such areas as lack of adequate legal framework, mechanisms and institutions in addition to lack of the government’s data on migrant abuse and discrimination.

6. Recommendations for Further Study

A summary of what is not known

1) Lack of data compiled by the government on the number of skilled and unskilled migrant workers of the country; assessment on their situation; root causes of abuse and discrimination; and their impact.

2) Lack of information on measures and mechanisms put in place with clear mandates and resources to safeguard the rights of migrant workers both inside and outside, especially regarding mechanisms established at Myanmar embassies in other destination countries, except in Thailand.

3) Scarcity of information on bilateral cooperation with other destination countries on migrant issues, except Thailand.

Recommended areas for data collection and further research

1) Collect data on the number of skilled and unskilled migrant workers of the country; make an assessment on their situation; root causes of abuse and discrimination; and their impact.

2) Make an analysis of the existing laws and policies, their weaknesses, strengths and shortfalls in relation to protecting the rights of migrant workers.

3) Make an evaluation on the existing mechanisms and progress and barriers in the implementation of the safeguard of migrant workers’ rights.

4) Study best practices and lessons learned in the region and around the world in the area of protecting migrant workers’ rights, and how they can be applied within the context of Myanmar.

602 See ‘Burmese migrant (127) received estimated (3) millions Baht for their allowance!, ‘Democracy for Burma, 2011.

603 ‘21st Day Session of Pyidaungsu Hluttaw Held,’ The New Light of Myanmar.

604 Jaloon Htaw, ‘Successful Migrant.’
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