



HUMAN RIGHTS
RESOURCE CENTRE

Violence, Exploitation, and Abuse and
Discrimination in Migration

Affecting Women and Children in ASEAN: A Baseline Study



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

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Human Rights Resource Centre

The Human Rights Resource Centre and its foundation were officially registered by the Ministry of Law and Human Rights on 31 March 2010 (Keputusan Menteri Hukum dan Hak Asasi Manusia Republik Indonesia Nomor: AHU.1173.AH.01.04.Tahun 2010). It is a not for profit foundation under Indonesian Law. The Centre has been established with the independence necessary to implement its own research, training and educational agenda. While the HRRC is hosted at the University of Indonesia, it has an autonomous structure and independent funding to ensure its independence and regional focus. The HRRC is a genuinely regional institution that will employ in its operations the most capable and qualified individuals from across ASEAN.

The Human Rights Resource Centre (HRRC) has been designed to support the work of ASEAN human rights bodies, by providing an independent forum for regional experts to engage in research and capacity building, as well as training and teaching that addresses human rights issues in ASEAN. Its overarching goal is to develop regional networks of experts on human rights issues in ASEAN in order to promote a better understanding of human rights in the region.

The HRRC is headed by Mr. Marzuki Darusman as Executive Director and includes a core research staff with direct experience in leading regional projects in human

rights training, research, and education. The activities of HRRC will be concentrated in three areas: (i) research, analysis and data collection/presentation; (ii) training and capacity building; and (iii) support for educational programs at universities throughout the region.

The HRRC encompasses a network of Partner and Affiliated Institutions that taps into the region's rich academic research community. Current Partner Institutions include University of Indonesia, University of the Philippines, University of Malaya, the Law School of the National University of Singapore, Singapore Management University, Pannasastra University of Cambodia, Ateneo the Manila University in the Philippines, Chulalongkorn University in Thailand, and Gadjah Mada University in Indonesia. The Islamic University of Indonesia in Yogyakarta, which has a strong interest in human rights education, is HRRC's first affiliate institution.

Through collaboration with these partner and affiliated university-based institutions across ASEAN, the HRRC's research, training, and capacity building projects will contribute to the development of human rights throughout the region.

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Foreword

I am pleased to present you with the second baseline study from the Human Rights Resource Centre and it is my sincere hope that this baseline study on women and children rights would serve as the much needed and useful reference source of information of near policy quality thus serving its intended purpose of supporting the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Intergovernmental Commission on Human Rights (AICHR) in their works and initiatives also the works of the NGO communities and movement in ASEAN.

With half of the almost 600 millions people in ASEAN are women and children, it is critical that their rights are protected. This study is a big undertaking in terms of subject and it is also the first study which compiles the situation and condition of women and children in the 10 ASEAN member states affected by violence, exploitation, and abuses & discrimination in migration. The rapporteurs scrutinized the secondary sources of published materials from government, NGOs, police, and other institutions and academically analyzed to bring forth this study.

As a baseline study, I hope that this document would aspire and assists not only the human rights bodies in ASEAN but also the stakeholders to conduct a follow up research and to take actions to protect the rights of women and children in ASEAN.



Marzuki Darusman
Executive Director

The study would not be possible without the hard work of Ms. Faith Suzette and a research team of nine rapporteurs and four research assistants who benefited from the expert guidance of two eminent advisers Dr. Kevin Tan and Prof. David Cohen, and the support of ACWC and UN WOMEN. I also express our highest appreciation to the Embassy of Norway in Indonesia, USAID, the Open Society Foundation, the MacArthur Foundation, and the East West Center for their on-going support in making this study a possibility.

Jakarta, December 2012

Marzuki Darusman

Executive Director

Limitations of this report

Dr. Kevin Tan

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

This is a Baseline Study on the subjects of Exploitation, Violence and Migration Affecting Women and Children in ASEAN. It is not an attempt at a comprehensive empirical survey of the situation in the ASEAN states. That would have been impossible given limitations of time and resources available to the researchers and to the Centre.

Rather, it is a compilation, categorisation and analysis of the published material on the subject. It is important to note that researchers could only work with materials that are in fact published and made widely available to the general public. Confidential reports and undisclosed statistics held by various government departments would obviously not be included unless they were unconditionally made available to the researchers.

The object of the Report is to gather, analyze and assess the depth of information available prevalence, causes, and impact of violence, exploitation or migration in each ASEAN country with the view to providing a comprehensive, objective assessment of the situation as revealed through the published literature. Where reports have been made available by state and quasi-state agencies to the researchers, every effort has been made to incorporate them in the reports. However, researchers are not obliged to contact such agencies in pursuit of data that is not publicly available.

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

Executive Summary

Executive Summary

Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam, as Member States of the Association of South East Asian Nations (ASEAN), have committed to ensure the enjoyment of human rights by the women and children of their region.¹ All Member States are Parties to the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Recently, the ASEAN reaffirmed its commitment to its women and children by establishing the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission for the Promotion and Protection of Women and Children (ACWC). As AICHR and ACWC begin to identify and implement their programmes, the Human Rights Resource Centre (HRRRC), through this Baseline Study, seeks to provide support by giving an overview of the breadth and depth of the available data and literature and the relevance of, and gaps in information. This Study aims to identify areas where empirical research and data collection are necessary and, thus, provide the basis for a research plan and follow-on studies that can serve as a major knowledge and policy resource for the ACWC, AICHR, civil society organizations, and ASEAN governments. This Executive Summary represents the distillation of the findings and analysis of 10 Country Reports and the Synthesis Report contained in this volume.

Our Baseline Study reveals that all ASEAN Member States have enacted laws and have adopted programmes to protect women and children from violence, exploitation, and abuse and discrimination in the context of migration. There is considerable variation in national legal frameworks; how far along each has gone in implementation, monitoring, and data collection also varies widely. Our Study details specific gaps in data,

implementation, and oversight of existing programs. Our Study also shows that non-state actors play a very important role in providing protection to victims and promoting freedom from violence, exploitation, and abuse and discrimination in migration.

Significant progress has been made; however, many gaps are also apparent. In sum, we pinpointed the need to strengthen international collaboration, review existing commitments and policies, improve mechanisms and address inefficiencies, target the root causes, and develop systems for collecting and analysing up-to-date disaggregated data. From our Baseline Study, our general recommendations for further study, reform, and capacity building are as follows:

1. Review commitments to and compliance with international instruments that protect against violence, exploitation, and abuse and discrimination in migration of women and children.
2. Conduct comprehensive research projects into the legislations, policies, and mechanisms in each ASEAN Member State to reconcile inconsistencies in legislation and nullify laws and regulations that fall below the standards of the CEDAW and the CRC, and propose methods to improve mechanisms within ASEAN countries and a system that will promote better collaboration among the ASEAN Member States.
3. Conduct studies to develop indicators for the purpose of creating and maintaining databases that will provide comprehensive, accurate, updated, and disaggregated information.
4. Conduct studies into the forms, root causes, and impact of violence, exploitation, and abuse and discrimination in migration in countries where such information were found to be inadequate.
5. Conduct studies on how governments and non-state actors can improve collaboration and cooperation so as to facilitate sharing of information and diminish discrepancies in the information they provide, avoid duplication of efforts, and better allocate resources.
6. Review policies to determine whether or not adequate actions are being taken to address the

¹ See Declaration of the Advancement of Women in the ASEAN Region (1988); ASEAN Plan of Action for Children (1993); ASEAN Vision 2020 (1997); Ha Noi Declaration (1998); Declaration on the Commitments for Children in ASEAN (2001); ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004); Declaration on the Elimination of Violence against Women in the ASEAN Region (2004); Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (2010).

root causes of violence, exploitation, and abuse and discrimination in migration.

7. Conduct studies on creating and proposing systematic awareness-raising programs.
8. Conceptualize and create activities that encourage and build the capacity of in-country researchers.

Findings on Violence

The Country Reports highlighted domestic violence; sexual violence, including rape, incest, sexual harassment, and lascivious or indecent acts; violence against commercial sex workers; violence against indigenous women and children; corporal punishment; violence against street children; child and forced marriage; violence against children in conflict with the law; bullying of children; and persecution of effeminate boys and homosexuals. Some concerns are important for all ASEAN Member States, others only for some. For example, incidences of acid attack were reported in Cambodia and Vietnam, while concerns relating to female genital mutilation were found in Indonesia, Malaysia, and the Philippines. There were some reports of violence against women refugees and asylum seekers in Malaysia, and some reports relating to Thailand's denial to recognise some groups of persons as refugees. Violence against women and children were reported to have occurred in conflict areas in Indonesia, Myanmar, Philippines, and Thailand.

Not all of the concerns mentioned above are equally prevalent in all ASEAN countries. Instead, these forms of violence were found to occur in varying degrees and the availability of data to gauge prevalence also varied widely. Furthermore, different studies use different data collection methods; thus, comparison of even available data is constrained. One particular difficulty in comparing prevalence of violence against women and children in the region is the variance in what acts are covered by the legal definitions of particular crimes. In some instances, such as in the cases of marital rape, sexual harassment, and domestic economic violence, where these acts are not penalized in law, insufficient data may be attributed to lack of awareness because of the gap in legislation and corollary implementing mechanisms. Underreporting due to fear of social stigma, cultural and social beliefs, or lack of confidence in the justice system was also found to be a constant issue, particularly in assessing statistics on sexual and domestic violence.

Sources attribute prevalence of violence to several factors, the most often-mentioned being gender stereotypes. Cultural acceptability of violence, economic difficulties, gaps in policies, lack of education and awareness, vices, inaccessibility to services, ethnic discrimination, and military activities are also identified as key contributors. Stresses and pressures on families due to rapid economic development and increased participation of women in the labour force were also mentioned.

Poor physical and mental health was the most often-cited impact of violence, including permanent physical impairment, severe trauma, suicide, thoughts of killing abusive partners, and loss of self-esteem. Aside from physical and mental disorders, sources indicated that violence on children affects their ability to learn. It can also lead to isolation, depression, suicidal behaviour, and criminal and risk-taking behaviour, including drug and alcohol abuse.² Negative impacts specific to sexual violence include deep psychological trauma, pregnancy and dying in childbirth, abortion, sexual diseases, and being subjected to blame, discrimination, and social stigma.

The Country Reports also refer to literature that found negative social impacts. For instance, domestic violence was found to destroy the stability of the family unit, causing children to suffer from depression and shame due to social stigma of family problems. As a result, some dropped out of schools and ran away from the family.³

Most countries in the ASEAN region enacted special laws on domestic violence. Myanmar, however, does not have specific legal provisions on domestic violence. Instead, laws that penalize offences that cause bodily harm against persons are used. Brunei Darussalam has no special domestic violence law, however both the Married Women Act (Amended) 2010 and the Islamic Family Law (Amendment) Order 2010 were amended to include a common definition of "domestic violence". Substantive variations in the acts covered and persons protected by the respective laws of the ASEAN Member States relative to domestic violence were apparent.

2 See Glenn Miles, *Stop Violence Against Us, A Preliminary National Research Study*, 1; and Ministry of Health, "Decision of the Minister of Health No. 1226/Menkes/SK/XII/2009 (2009 MHG)," 16 December 2009, Annex, 2.

3 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," *Asian Journal of Social Psychology* 8, (2005).

Wide variations in the legal definitions of violations other than domestic violence were also seen. The Country Reports cited literature that indicated the need for ASEAN Member States to assess legislation that contributed to discrimination and violence against women. This includes assessment of whether or not the legal definition of rape requires proof of violence rather than the absence of consent on the part of the victim, and whether the laws protect against marital rape, sexual harassment, and female genital mutilation. A review of policies that protect children was also mentioned; for instance, literature indicated inadequacy of laws to protect against corporal punishment and child marriages.

Generally, the Country Reports found sufficient literature that describe the complaint, protection, and prevention mechanisms that address violence against women and children. However, as compared to literature assessing policies and laws as they are written, fewer studies assess the effectiveness of those laws and complaints processes.

Among the challenges in addressing violence are the need to review legislation, strengthen mechanisms, address cultural and traditional attitudes, and resolve the lack of comprehensive and accurate data.

Findings on Exploitation

An HRRC compilation of Universal Periodic Reviews, CRC Committee Reports, and CEDAW Committee Reports⁴ identified trafficking of women as a concern in Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. Trafficking of children was identified as a concern in Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, and Vietnam.

Exploitation of women and children in general, and sex tourism in particular, were identified as concerns in Thailand. Sexual exploitation or prostitution of women was also mentioned in the Committee Reports of Cambodia, Indonesia, Myanmar, Philippines, and Vietnam. Sexual exploitation of children was indicated in the Committee Reports of Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, and Vietnam. Exploitation of domestic workers within Indonesia and exploitation of domestic migrant workers from Indonesia were indicated as concerns. Exploitation of migrant women, particularly

domestic workers, within Malaysia and Singapore was also mentioned. Exploitation of children domestic workers is reportedly a concern in Malaysia as well. Concern over child labour was particularly expressed in the Committee Reports of Cambodia, Lao PDR, and the Philippines. The Committee Reports also mentioned children involvement in armed conflict in Myanmar, Philippines, and Thailand.

A report stated that there is insufficient reliable data on Brunei Darussalam, making the number of trafficking victims indistinguishable.⁵ This lack of reliable data, however, is not exclusive to Brunei Darussalam but was indicated as an issue in all other ASEAN countries as well.

In many cases, those trafficked were tricked into believing they were getting a decent job or deceived about the nature of their employment, salary, or the conditions they would face in destination countries. However, literature also indicated high incidences of voluntary migration that led to involuntary servitude.

Widespread poverty, high unemployment, low levels of literacy, and few income-earning opportunities were commonly indicated as causes of exploitation. Perceived greater income opportunities in rapidly developing urban areas may provide an additional incentive. In the case of Myanmar, protracted armed-conflicts on border areas and political instability are also main driving forces. Aside from the above-mentioned “push factors,” demand for cheap sex and labour fuels exploitation. The imbalanced gender-ratio in China and strong demand for male child in a one-child policy country contributes to the prevalence of trafficking in women and children from Vietnam to China.

Weak law enforcement, corruption, and difficulties in obtaining birth certificates are said to contribute to prevalence of exploitation. Culture and gender roles, the widespread use of the Internet, consumerism, ease of travel, and geographic proximity are also said to facilitate exploitation. Aside from these factors, other causes included lack of awareness of dangers involved, lack of access to financial institutions, lack of safety nets, and shattered or dysfunctional families.

4 See Annex A: Baseline Study on the Protection and Promotion of the Rights of Women and Children in ASEAN Factsheet.

5 The Body Shop and ECPAT, “Stop Sex Trafficking of Children and Young People.”

Poor health was indicated as a common impact. This includes malnutrition, exposure to sexually transmitted diseases, unwanted pregnancies and abortions, infections due to unhygienic conditions and overcrowding, and occupational health risks. Hazardous working conditions also negatively affect the growth of children and result to poor mental and psychological health. Literature also shows that victims of trafficking often suffer from stigmatization and non-acceptance by their communities after their experiences. Economic exploitation and sexual exploitation of children at young ages have negative impacts not only on their health, but also on their education and development.

The laws that penalize trafficking and the various forms of exploitation have been the subject of many substantial and in-depth reviews. Thus, the Country Reports were able to cite various assessments of them. Most of the ASEAN countries have issued separate special laws that address trafficking. However, in Singapore, the definition of “trafficking” in the Trafficking Protocol has not yet been incorporated into local laws. Consolidation of provisions that address offenses relevant to exploitation and trafficking in the Women’s Charter, Penal Code, and Children and Young Persons Act may give needed clarity and consistency. Lao PDR does not have a separate legislation on trafficking in persons; instead a 2005 amendment was made to prohibit human trafficking through the Penal Code.⁶ In cases where the trafficking offence involves women and children, the Law on the Protection of Women will be applied, as provided by the Penal Code.

The Country Reports highlight literature that examined how migration policies affect prevalence of exploitation. The South East Asia National Human Rights Institutions Forum (SEANF) stated that registration systems restricting workers to only the employer who brought them into the country may also fuel irregular migration because migrant workers experiencing difficulties will flee into the underground economy when they are not permitted to change their employer.⁷ On the part of

the countries where migrants usually originate from, it appears that, as in the case of Myanmar, tight restrictions on movement and access to information may have increased young people’s vulnerability to exploitation. On the other hand, as was noted in Vietnam and Cambodia, encouraging the unemployed to seek work opportunities abroad without providing adequate safeguards creates opportunities for trafficking. In general, strengthening the migration policy frameworks of the ASEAN countries was recommended in order to effectively protect against exploitation.

Pertaining particularly to child soldiers, gaps in the legal system penalizing child soldiers were indicated in Thailand and the Philippines. In Thailand, neither the Penal Code nor the Child Protection Act explicitly criminalises the recruitment of children under the age of 18.⁸ In the Philippines, the lack of prosecution of perpetrators of recruitment of child soldiers was partly attributed to the “ambiguity of Republic Act 7610, article 10, Sec.22 (b) prohibiting the recruitment of children.”⁹ A bill now pending before the Philippine Senate aims to give better protection.¹⁰

In most instances, governments have established inter-agency collaborations to specifically address trafficking. Nine of the ten ASEAN Member States have established specialist anti-trafficking units within their law enforcement structures or assigned such cases to an existing specialist unit.¹¹ The remaining ASEAN Member State, Brunei Darussalam, has indicated its intention to establish such a unit in the near future.¹² National Human Rights Institutions were also credited for providing assistance to victims, monitoring implementation and compliance with international standards, and conducting awareness campaigns relative to exploitation. The

6 Asia Regional Trafficking in Persons Project, “Trafficking in Persons and the Criminal Justice Sector,” <http://www.artipproject.org/artip-tip-cjs/laws-policies-national-ams.html>, (accessed 25 May 2012).

7 South East Asia National Human Rights Institutions Forum (SEANF), *South East Asia National Human Rights Institutions Forum (SEANF) Paper on Migrant Workers 2010*, 12-13. See also Regional Thematic Working Group on International Migration Situation Report 2008, 123.

8 Coalition to Stop the Use of Child Soldiers, *Report to the Committee on the Rights of the Child in advance of Thailand’s initial report on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, September 2011, 10.

9 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: the Philippines*, 22 October 2009, CRC/C/PHL/CO/3-4, paragraph 69.

10 Human Rights Watch, “Philippines: Amend Draft Law on Child Soldiers: Revise Bill to Prosecute Recruiters of Children, Not Parents,” 16 October 2012, <http://www.hrw.org/news/2012/10/16/philippines-amend-draft-law-child-soldiers> (accessed 10 November 2012).

11 ASEAN, *Progress Report on Criminal Justice Responses to TIP*, 33.

12 *Ibid.*

increasing collaboration among ASEAN Member States was also cited as a major positive development. Shelters, in varying degrees of availability, have been established for victims of exploitation. In some countries, the need for more shelter and support services was identified.

Challenges to addressing exploitation included the need to review policies, strengthen mechanisms, improve survivor support and protection, meet international commitments, improve international collaboration, and systematically gather adequate disaggregated data.

Findings on Abuse and Discrimination in Migration

Reports indicate that aside from suffering difficult, unfair, and exploitative work conditions, there are labour migrant women who are subjected to physical abuse, sexual abuse and harassment, psychological abuse, verbal abuse, and threats by their employers. There were also reports of migrants being restricted from religious fasting or praying. Some are deprived of privacy or have their movements and communication avenues restricted.¹³ Incidences of abuses by police and other officials were also reported; this included excessive body searches, rape, harassment, beating, threats, and humiliation.¹⁴ Instances of abuse and discrimination from the community were also reported. Migrant women reportedly have limited basic labour protection and access to social services, as they are non-nationals in the workplace.¹⁵

On children of migrants, although migration of adults impacts children who are left behind in the home country, those who migrate with their parents are reportedly more vulnerable and seriously affected.¹⁶ Children who migrate internationally and children born to irregular migrants often face difficulty accessing social services or securing a legal identity.¹⁷ Some children are exposed to the risk of child labour, child trafficking, sex work, and exploitation. Undocumented children are also targets for arrest and detention by immigration officers and police.¹⁸

Insufficiency of data on abuse and discrimination in migration was noted. 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.¹⁹ A 2008 report found a “paucity of information on child migrants, other than street children or trafficked children. Virtually all studies of children migrating across international borders in East and South-East Asia appear to have been conducted in Thailand.”²⁰

Abuse and discrimination in migration was mostly attributed to the disadvantaged position migrants have in demanding for better conditions. This is derived from low level of education, lack of knowledge of available legal protection, need for employment, and irregular or illegal status in the country of destination. Social isolation of domestic migrant workers due to the nature of their work makes them vulnerable to abuse and discrimination. In some countries, foreign domestic workers are often viewed as culturally inferior and this contributes to the prevalence of abuses against them. Segregation of the labour force

13 Solidarity for Migrant Workers, *Singapore: A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review, May 2011*, paragraph 15.

14 See e.g. Raks Thai Foundation, MPA Foundation, Foundation for AID Rights, Human Rights and Development Foundation, Friend of Women Foundation, Pattanarak Foundation, AIDSNet Foundation and the Labour Right Protection Net Work (Raks Thai Foundation, et. al), *A Joint Submission on Migration Workers and Their Families in Thailand for the 12th Session of the Universal Periodic Review, October 2011*, paragraphs 41 and 42; Mekong Migration Network (MMN) and Asian Migrant Centre (AMC), *Migration in the Greater Mekong Sub-region Resource Book – In-depth Study: Arrest, Detention and Deportation*, 3rd ed., Hong Kong: Clear-Cut Publishing & Printing Co. (2008), 136; Bagain Aleyssa A. Acmad-Abdulkarim, “Life Histories of Filipino Deportees from Malaysia: Changes in the Dimension of Life” (Doctoral dissertation, Xavier University-Ateneo de Cagayan (XU), March 2010), 132.

15 IBON Foundation, *IBON Facts and Figures: OFWs, Remittances and Philippine Underdevelopment (Vol. 31, Nos. 9 and 10)*, (Manila: IBON Foundation, 15 and 31 May 2008), 12.

16 Regional Thematic Working Group on International Migration, *Situation Report 2008*, xviii.

17 *Ibid.*

18 See e.g. Refugees International, *Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness*, 13 June 2007, available at: <http://www.unhcr.org/refworld/docid/47a6ee98d.html> (accessed 10 August 2012); Camilla Olson, “Street Children in Malaysia,” *Refugees International Blog*, 13 January 2009, <http://www.refugeesinternational.org/blog/street-children-malaysia>.

19 John Bryant, “Children of International Migrants in Indonesia, Thailand, and the Philippines: a Review of Evidence and Policies,” *Innocenti Working Paper Series*, April 2005, 1, available at www.globalnetwork.princeton.edu (accessed 20 April 2012).

20 Regional Thematic Working Group on International Migration, *Situation Report 2008*, 189.

and “devaluation of female labour,”²¹ and discrimination on the basis of religion, ethnicity, and race were also suggested.²² Economic downturn was also indicated as a factor in a few reports, such as when economic changes that erode profit margins lead employers to lower wages to below contractual agreements and reduce employees’ benefits to the bare minimum.²³

The Country Reports mention a range of negative social impacts of abuse and discrimination in migration. For instance, domestic migrant workers who are not properly sent home to their countries after their period of work and are left on their own without money or documents may be driven to work on the streets as prostitutes to earn their way home. There are said to be migrant children who face risks of being trafficked and recruited by gangs.

Various health consequences of abuse and discrimination in migration were enumerated. A usual factor that contributes to health issues is the lack of access to government services. Social, economic and work pressures also negatively affect the health of migrants. The situation faced by migrant children is aggravated by the absence of care by parents who neglect their children from pressure at work.²⁴

There are some instances where migrants face cruel or degrading punishment, in the form of caning or whipping, for violating laws relating to migration. This was indicated to occur in Brunei Darussalam,²⁵ Malaysia,²⁶ and

Singapore.²⁷ The reports also point to instances where the law discriminates against migrants. For instance, in Malaysia and Singapore, the right of migrant workers to marry a citizen or permanent resident is limited.²⁸ A concern that arises is that pregnant migrant workers who are not allowed to marry their local partners will be deported, causing the family to be separated.

Particularly on sex-specific bans on migration, in Indonesia, the recruitment and placement of pregnant women migrant workers is prohibited.²⁹ The law also requires women migrant workers to present a letter expressing the permission of their husband, or parents, or guardian to the placement agencies.³⁰ In Myanmar, the U.S. Department of State stated that, “In an effort to address the problem of trafficking in persons, officials continued to impede the travel of women under the age of 25.”³¹

Gaps in the legal framework protecting the rights of women, as well as their children, in the countries where migrants mostly come from were identified. Legislations and mechanisms to protect migrant workers in receiving countries also need to be strengthened. For migrants, embassies were indicated as the main recourse. The resources of sending countries, however, were often reported to be inadequate to meet the needs of migrant

21 “Opportunities for migrant women from East and Southeast Asia, particularly, have been confined to a narrow range of economic activities. Many are recruited because of racist and sexist stereotypes of women as cheap, docile, temporary, and inclined to factory work.” Dante B. Gatmaytan, “Death and the Maid: Work, Violence, and the Filipina in the International Labor Market,” *Harvard Women’s Law Journal* (1997), 20: 246-247.

22 AWARE, *CEDAW Shadow Report*, May 2011, paragraphs 4-5.

23 Regional Thematic Working Group on International Migration, *Situation Report 2008*, 3.

24 Committee for Promotion and Protection of Child Rights (Burma) (CPPCR), “Feeling Small in Another Person’s Country: The Situation of Burmese Migrant Children in Mae Sot Thailand,” 2009, http://www.burmalibrary.org/docs08/Feeling_Small.pdf (accessed 18 January 2012), 13.

25 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Brunei Darussalam*, A/HRC/13/14, January 4, 2010, 21.

26 “Caning is mostly used as punishment for migrant labourers for immigration offences. Immigrants who are convicted of illegal

entry are normally caned up to three times, although the country’s Immigration Act allows for them to be caned up to six times. In June 2009, the Malaysian government announced that they had sentenced 47,914 migrants to be caned for immigration offences since amendments to its Immigration Act came into force in 2002. “Photographic evidence shows the cruelty of caning in Malaysia,” *Amnesty International*, 25 August 2009, <http://www.amnesty.org/en/news-and-updates/news/photographic-evidence-shows-cruelty-caning-malaysia-20090825> (accessed 3 August 2012).

27 “World Report 2012: Singapore,” *Human Rights Watch*, <http://www.hrw.org/world-report-2012/world-report-2012-singapore> (accessed 3 August 2012).

28 See e.g. Employment of Foreign Manpower (Work Passes) Regulations, Condition 8, Part IV (Conditions to be complied with by foreign employee), First Schedule; and Solidarity for Migrant Workers 2011 UPR Joint Submission, paragraph 9.

29 Migrant Workers Law, article 35(c).

30 *Ibid*, article 51

31 United States Department of State, *2011 Country Reports on Human Rights Practices - Burma*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fc75ab3c.html> (accessed 14 August 2012).

workers.³² The Country Reports also noted literature that indicated deficiency of programs to reintegrate persons who have returned after migrating for work, regardless of whether they experienced abuse or discrimination while overseas.

Programs preparing migrants for their life overseas and making relevant information available were emphasized as important prevention strategies. The importance of international collaboration in addressing abuse and discrimination in the context of migration was also highlighted. Developments in these areas were shown in the Country Reports.

The challenges in addressing abuse and discrimination in migration included the need to mitigate push factors, review legislation and strengthen mechanisms, ensure workers' and employers' preparedness, systematically gather relevant data, and establish stronger international and regional collaboration.

³² See e.g. Komnas Perempuan, 2011 *CEDAW Independent Report*, paragraph 42; and Sana and Abano, "Labor Migration in Southeast Asia," in Laipson and Pandya (eds.), *On the Move: Migration Challenges*, 62; and Ambito and Banzon, *Review of Philippine Migration Laws*, 20-21.

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

Synthesis Report

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A. INTRODUCTION*

The Association of South East Asian Nations (ASEAN) has long ago manifested its commitment to ensure the enjoyment of human rights by the women and children of its Region.¹ In 1988, ASEAN recognized “the necessity of meeting the needs and aspirations of women in the ASEAN Member Countries.”² The Ministers responsible for social welfare in the ASEAN Member States, in recognition of the “importance of regional cooperation in improving the conditions of children in ASEAN,” agreed on the ASEAN Plan of Action for Children in 1993. In 2004, all 10 ASEAN Foreign Ministers adopted the Declaration on the Elimination of Violence against Women in the ASEAN Region.³

Individually, the Member States of the ASEAN have all bound themselves to the provisions of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Recently, the ASEAN reaffirmed its commitment to its women and children by establishing the ASEAN Intergovernmental Commission on Human Rights (AICHR) and ASEAN Commission for the Promotion and Protection of Women and Children (ACWC).

Numerous studies have been conducted and several reports published on the situation of women and children in ASEAN. As AICHR and ACWC begin to identify and implement their programmes, it is an opportune time to piece together available data on issues that concern women and children in all Member States. One of the core aims of the Human Rights Resource Centre (HRRC) is

to provide support for ASEAN human rights institutions and initiatives through research, analysis, and capacity building; thus, this Baseline Study.

This report is intended as a Baseline Study that will provide an overview of the breadth and depth of different reports and analyses, the relevance of and gaps in existing reports, as well as analysis of contradictions and inconsistencies amongst the various compilations and studies. This Study will identify areas where additional research and data collection are necessary and, thus, provide the basis for a research plan that can serve as a major resource for the ACWC, AICHR, civil society organizations, and ASEAN governments.

1. Scope and Limitations

This Baseline Study covers all ten (10) ASEAN Member States and focuses on the following issues: violence, exploitation, and abuse and discrimination in the context of migration. These issues were identified as common concerns for most of the ASEAN Member States.⁴

Considering that all ASEAN Member States are parties to the CRC and CEDAW, “violence”, “exploitation” and “abuse and discrimination in migration” in this Study are understood in the context described by these Conventions and their General Recommendations.

Thus, gender-based violence is understood to be

... 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.⁵

Violence against children refers to “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse” as stated in article 19, paragraph 1 of the Convention.”⁶

* The author is grateful for the invaluable guidance provided by the HRRC team of Advisers and the contributions of the HRRC Country Rapporteurs and Research Assistants. The author also wishes to express her utmost gratitude to Susan N. Delos Reyes, Norjamin Gallardo-Delos Reyes, Frances P. Cantillo, and SawanyaPhakphian for their input and assistance.

1 The Member States of the ASEAN are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

2 Declaration of the Advancement of Women in the ASEAN Region (1988).

3 See also ASEAN Vision 2020 (1997), Ha Noi Declaration (1998), Declaration on the Commitments for Children in ASEAN (2001), ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004), Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (2010).

4 See Annex A: Baseline Study on the Protection and Promotion of the Rights of Women and Children in ASEAN Factsheet.

5 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19, adopted at the Eleventh Session, 1992, A/47/38*, paragraph 6.

6 UN Committee on the Rights of the Child (CRC), *General Comment No. 13 (2011): The right of the child to freedom from all forms*

The CRC recognizes the rights of children to be protected from all forms of exploitation, including economic exploitation and sexual exploitation.⁷ CEDAW mandates States Parties to take all appropriate measures to suppress all forms of traffic in women and exploitation of prostitution of women.⁸

In General Recommendation No. 16, the CEDAW Committee referred to unpaid work as a form of exploitation of women. In General Recommendation No. 19, the CEDAW Committee stated that “there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals.”⁹ These provisions are reflected in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (hereinafter Trafficking Protocol).¹⁰ Thus, for the purpose of this Study, the term “exploitation” shall be based upon the description set out in Article 3(a) of the Trafficking Protocol, to wit:

Exploitation shall 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.

As understood in CEDAW General Recommendation No. 26, the term “abuse and discrimination in migration” shall refer to:

Thus, the scope of this general recommendation is limited to addressing the situations of the following

of violence, 18 April 2011, CRC/C/GC/13, paragraph 4.

7 UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, Articles 19(1), 32(1), 34, 36, and 39.

8 UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, Article 6.

9 CEDAW General Recommendation 19, paragraph 14.

10 While only 8 of the 10 ASEAN Member States have signed or acceded to the Trafficking Protocol, the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004) reaffirms “ASEAN’s unwavering desire to embrace the spirit behind the United Nations Convention against Transnational Organized Crime and its relevant protocols as it reflects the commitment of the Member States of the United Nations to prevent and combat transnational organized crime.”

categories of migrant women who, as workers, are in low-paid jobs, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship, unlike professional migrant workers in the country of employment. As such, in many cases, they may not enjoy the protection of the law of the countries concerned, at either de jure or de facto levels. These categories of migrant women are:

- Women migrant workers who migrate independently;
- Women migrant workers who join their spouses or other members of their families who are also workers;
- Undocumented women migrant workers who may fall into any of the above categories.¹¹

Abuse and discrimination of children in migration shall cover situations of children of migrant workers who accompany their parent/s and those who migrate on their own, unless falling within the scope of the section on Exploitation.

Gender equality cuts across all subjects of this Study; however, this Study does not primarily focus on the same. This Study relies on available publications; no empirical studies were undertaken. Sources reviewed are those that have been published not earlier than year 2005, unless a report published prior to 2005 dealt with an important issue on which no subsequent report was made.

2. Methodology¹²

This Baseline Study primarily relies on the country-specific findings of our team of researchers, as contained in the individual Country Reports. As the purpose of the Study is to map out what information is available on the issues concerned, this Study draws on existing secondary sources, including issuances and publications by governments, academic institutions, and civil society organizations. This baseline survey is thus not based upon independent empirical studies; rather, it can serve as a road map for identifying gaps in knowledge and areas where such empirical research is particularly required.

11 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 26 on women migrant workers*, 5 December 2008, CEDAW/C/2009/WP.1/R, paragraph 4.

12 See, for further details, Annex B: Terms of References; and Annex C: Template for Country Reports.

Each Country Report is classified into three major sections: 1.) Violence; 2.) Exploitation; and 3.) Abuse and Discrimination in Migration. While these three concerns overlap in definition and in fact,¹³ to the extent that it is at times difficult, if not impossible, to divide them with precision, this Study strove to focus on the issues separately so as to cover literature concerning violations that particularly affect women and children in their home countries and outside the same—whether they migrate by force or deceit or voluntarily.

Each section on Violence, Exploitation, and Abuse and Discrimination in Migration in the Country Reports contain the following components:

Description of the Problem

- Prevalence
- Root Causes and Aggravating Practices
- Impact

De Jure State Responses

- Bases of State Responsibility
- National Policies
- Assessment of State Policies

Implementation, Monitoring and Prevention

- Implementing and Monitoring Mechanisms
- Complaints Process
- Protection and Rehabilitation
- Prevention Strategy

Role of Non - State Actors

- Assistance to Victims
- Prevention Programs
- Monitoring and Cooperation

13 “This general recommendation deals only with the work-related situation of women migrants. While it is a reality that in some instances women migrant workers may become victims of trafficking due to various degrees of vulnerability they face, this general recommendation will not address the circumstances relating to trafficking. The phenomenon of trafficking is complex and needs more focused attention. The Committee is of the opinion that this phenomenon can be more comprehensively addressed through article 6 of the Convention which places an obligation on States parties “to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. The Committee emphasizes however, that many elements of the present general recommendation are also relevant in situations where women migrants have been victims of trafficking.” CEDAW General Recommendation 26, paragraph 4, note 4.

Progress Indicators and Challenges

Recommendations for Further Study

Description of the Problem

The sections on Violence, Exploitation, and Abuse and Discrimination in Migration begin by gathering and analysing the depth of available information on prevalence, causes, aggravating factors, and impact of violence, exploitation, or abuse and discrimination in migration in each ASEAN country. The Beijing Platform for Action eloquently explains the importance of proper documentation of incidences of violations when it states:

The absence of adequate gender - disaggregated data and statistics on the incidence of violence makes the elaboration of programmes and monitoring of changes difficult. Lack of or inadequate documentation and research on domestic violence, sexual harassment and violence against women and girls in private and in public, including the workplace, impede efforts to design specific intervention strategies.¹⁴

De Jure State Responses

Thereafter, the Country Reports review what various reports say as regards each state’s *de jure* compliance with the CRC and CEDAW. Ratification, accession, or succession to the CEDAW and CRC creates a *de jure* obligation for the laws of ASEAN Member States to accord with these conventions. To achieve *de jure* compliance, a State party must ensure that its constitution and domestic laws concur with the legal rights and obligations created by the Conventions.¹⁵ This section of the Country Reports consolidates information on amendment or repeal of laws contradictory to the CRC or CEDAW, modification of existing laws, or the enactment of new laws in areas lacking the necessary legislation.

The compliance of the laws and policies of the State with other international and regional treaty and non-

14 United Nations, *Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women*, 27 October 1995, available at: <http://www.unhcr.org/refworld/docid/3dde04324.html> (accessed 10 July 2012), paragraph 121.

15 Christine Forster and VednaJivan. *Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries*. 1st edition March 2009, Revised edition March 2010, United Nations Development Fund for Women (UNIFEM), 1.

treaty instruments relating to violence, exploitation, and migration are also considered. While non-treaty materials such as bilateral instruments, guidelines, resolutions of UN bodies and the ASEAN, and codes and standards issued by international organizations are not sources of direct legal obligation, they are important in fleshing out the substantive content of legal norms and in pointing the direction of accepted practice.¹⁶

Implementation, Monitoring, and Prevention

Each Country Report then collates what reports say relative to a State's *de facto* compliance with its commitments, *i.e.*, the action actually being taken by the State to implement and ensure actual realization of its obligations under the CRC and CEDAW.

This section looks at whether or not ASEAN Member States have established mechanisms to monitor both public authorities and private organizations and individuals in their implementation and observance of laws relative to violence, exploitation, and abuse and discrimination in migration.

It also reviews information relative to the States' complaints processes, *e.g.*, whether or not the complaint process is adequately funded and free of charge to complainants, staffed by gender experts, able to receive complaints against both public and private institutions or individuals, allows standing to persons not personally violated, and affords protection to the person filing the complaint.

Included in this section are assessments of the State's prevention strategy, including its "efforts involving the media and public education programmes aimed at changing social, cultural and traditional attitudes that are root causes of, and perpetuate"¹⁷ violations of the Conventions.

Role of Non-State Actors

The participation and contribution of all sectors of civil society are crucial to the effective implementation of a State's commitments.¹⁸ Recognizing the important role of non-state individuals and non-governmental organizations, the Country Reports then look at what the reports say regarding programs of non-state actors aimed at assisting victims and ending violence, exploitation and abuses relative to migration.

Progress Indicators and Challenges

The sections on Violence, Exploitation, and Abuse and Discrimination in Migration then analyse the available information regarding progress achieved by the responses of the state and non-state actors, the indicators being used to show or measure progress, and the challenges to addressing concerns relating to violence, exploitation and migration.

Recommendations for Further Study

Each section thereafter concludes by giving a brief summary of what information is not available and the areas of controversy amongst the various reports so as to recommend areas for data collection and further research.

3. Expected Outcome

This study is intended as a Baseline Study that will provide an overview of the breadth and depth of different reports and analyses. It also aims to pinpoint the relevance of gaps in existing reports; identify gaps in legislation; collate analyses on prevalence, root causes, and progress of implementation and monitoring mechanisms; as well as analyse contradictions and inconsistencies amongst the various compilations and studies.

This study will identify areas where additional research and data collection are necessary and, thus, provide the basis for a research plan that can serve as a major resource for the ACWC, AICHR, civil society organizations, and ASEAN governments.

¹⁶ The Association of Southeast Asian Nations (ASEAN), *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, August 2010, 17.

¹⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Mexico*, 25 August 2006, CEDAW/C/MEX/CO/6, paragraph 15.

¹⁸ See Beijing Platform for Action, Chapter II, paragraph 27.

SYNTHESIS REPORT

A Baseline Study on issues that particularly affect women and children in the ASEAN Region is highly challenging. The Country Reports demonstrate that how the laws treat the forms of violations and how society looks at the same greatly affects the quality of the data that can be collected. One of the goals of this study is to identify where available data needs to be supplemented because of these factors.

Each ASEAN Member State has committed to the same provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). How each woman and child will eventually enjoy those rights and whether or not the violation of the same will be added to a statistic, however, depends on each sovereign state's political will and the community's social and cultural norms. To illustrate, in the ASEAN Region, some countries treat marital rape as a crime. A few countries regard prostitution as legal. Some countries see some forms of child discipline as permissible. Some countries like to record everything. A few countries like to keep the numbers to themselves. Domestic violence, in some contexts, is considered an internal family affair; rape a shameful misfortune. All these factors result in the variety of data, at times voluminous, at times inconsistent, and at other times incomplete, that this Baseline Study tries to fit together.

B. VIOLENCE

1. Description of the Problem

a. Prevalence

An HRRC compilation of CRC and CEDAW Committee Reports and Universal Periodic Reviews identifies violence against women as a serious concern in Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam. The need for prohibition of sexual harassment in the workplace was highlighted in the reports of Indonesia and Singapore.

The same compilation shows that violence against children is a concern in Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand, and Vietnam. Violence in the form of inhumane treatment or corporal punishment of children

was mentioned in the Committee Reports on Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia (where corporal punishment of women, as well as children, was found as an issue), Myanmar, Philippines, Singapore, and Vietnam. Arrest and detention of street children are particular concerns in Cambodia, Indonesia, Malaysia, Myanmar, and the Philippines. Concerns for children in the juvenile justice system were highlighted in all country reports except Vietnam's. Child marriage was identified as an issue in Brunei Darussalam, Indonesia, Lao PDR, and the Philippines. (See Annex A: Baseline Study on the Protection and Promotion of the Rights of Women and Children in ASEAN Factsheet.)

According to a World Health Organization 10-country study, 40% of Thai women experience physical or sexual violence at least once during their lifetimes.¹⁹ In contrast, a 2009 International Violence Against Women survey found that, compared to other participating countries, Singapore had the lowest rate of lifetime violence (9.2%), physical violence (6.8%), and sexual violence (4.2%) victimisation. Singapore had the second lowest rate in respect of experience of violence (2.6%), physical violence (2.1%), and sexual violence (0.5%) victimisation in the 12 months preceding the survey.²⁰

Circumstances Where Violence Is Prevalent

Domestic Violence

The Country Reports show prevalence of domestic violence at varying degrees. Availability of data to gauge prevalence also varied widely. Furthermore, different studies use different data collection methods; thus, comparison of even available data is constrained. To demonstrate:

The Country Report on Singapore indicated that 2,971 fresh applications for Personal Protection Orders (PPO) were made in 2009. PPO applications indicate incidences of family violence and the number of applications was previously published by the Subordinate Courts together

19 Kent R. Kerley, XiaoheXu, Bangon Sirisunyaluck and Joseph M. Alley, "Exposure to Family Violence in Childhood and Intimate Partner Perpetration or Victimization in Adulthood: Exploring Inter-generational Transmission in Urban Thailand," *Journal of Family Violence*, 2010, Volume 25, Number 3, 338.

20 *International Violence Against Women Survey: The Singapore Report*, "Preliminary Results of Study by SAFV and NUS," 28 January 2010, <http://www.ncss.org.sg/VWOCorner/abstracts.asp>.

with other information on its annual caseload, but this was done only until 2009. Statistics on PPOs are usually not gender-disaggregated. However a study of PPO applications in 2004 showed that women made up 82% of complainants.²¹ Research findings from 2004 showed that 42.5% of PPO application cases involved the causing of injury, 26.4% were of threats and continual harassment, and 26.1% involved multiple forms of violence. The County Report on Singapore drew attention to the reported increase of foreign wives seeking help for being abandoned or being subjected to physical abuse. It was noted, however, that government data does not contain nationality profiling, which would have been useful in accurately assessing the incidences of abuses against foreign wives.

In Cambodia, a stakeholders' Joint Submission to the 2009 Universal Periodic Review noted that domestic violence affects 20% to 25% of Cambodian women.²² According to the results of a survey conducted by the Ministry of Women's Affairs, sampling 3,000 persons from the general population and 300 local authorities, equally distributed in 13 provinces and chosen at random, 64% of the sample knew a husband who acted violently towards his wife; 22.5% of female respondents had suffered violence from their husbands.²³

In the Philippines, the 2008 National Demographics and Health Survey showed that three in 10 women have experienced spousal violence.²⁴ The survey collected information on several forms of spousal violence—physical, sexual, emotional and economic. It was the first time for the survey to gather information on violence from a nationally representative sample of 13,594 women throughout the Philippines.²⁵

21 "Faces of Family Violence: A Profile Study on Family Violence," Subordinate Courts Research Bulletin Issue No. 38, December 2004, <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4473>.

22 UN Human Rights Council, Working Group on the Universal Periodic Review, *Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Cambodia*, 9 September 2009, A/HRC/WG.6/6/KHM/3, paragraph 19.

23 Ministry of Women's Affairs, *National Action Plan to Prevent Violence on Women*, July 2009, 4.

24 National Statistics Office [Philippines] and ICF Macro, *Philippines National Demographic and Health Survey 2008: Key Findings*, Calverton, Maryland, USA: NSO and ICF Macro (2009), xxiii.

25 *Ibid.*, xix.

The Country Report on Indonesia notes that, in 2006, Komnas Perempuan recorded 22,152 cases of violence against women, which were reported to it and its partner institutions; 74% were domestic violence cases.²⁶ According to Komnas Perempuan, domestic violence dominates cases of violence against women in Indonesia.²⁷

For 2010, the Royal Malaysia Police and Ministry of Women, Family and Community Development indicated that there were 3,173 reported cases of domestic violence in Malaysia. The numbers do not differentiate between men and women victims, as is consistent with the Domestic Violence Act being gender-neutral. Nonetheless, the police department has acknowledged that about 98% of reported victims have been women.²⁸

In Myanmar, although there is limited literature on the extent of domestic violence, the CEDAW Committee and the US State Department recognized a problem of widespread domestic violence, including spousal abuse.²⁹

The National Study on Domestic Violence against Women in Vietnam, released on 25 November 2010, found that 32% of ever-married women reported having experienced physical violence in their lifetime and 6% of them indicated having experienced it within past 12 months.³⁰ It was also found that some wives are abused by their in-laws when they move in with the husband's family.³¹

26 Indonesian Commission on Violence against Women (Komnas Perempuan), *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*, 17 July 2007, paragraphs 24-25.

27 Komnas Perempuan, *2010 Note on Violence against Women*, 7 March 2011, 9.

28 Andrew Sagayam, "A Rape Every 2.5 Hours," Malay Mail Online, 19 May 2011, <http://www.mmail.com.my/content/72570-rape-every-25-hours> (accessed November 9, 2011).

29 UN Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Myanmar*, 7 November, 2008, CEDAW/C/MMR/CO/3, paragraph 22; United States Department of State, "2010 Country Report on Human Rights Practices: Burma," 37.

30 General Statistics Office of Viet Nam, *Keeping Silent is Dying: Results from the National Study on Domestic Violence against Women in Viet Nam*, 50.

31 *Ibid.*, 67-68, 77.

The 2010 US Department of State Human Rights Report on Brunei Darussalam states that 62 cases of spousal dispute abuse were reported. As reported to the police, there were 119 cases of Wife Abuse in 2009, 117 in 2010, and 85 in 2011.³² The Country Report generally noted that available statistics from the government agencies do not include a definition of their indicators, nor do they provide the scope of the survey; thus, it was difficult to reconcile inconsistent figures.

In Lao PDR, a 2004 Gender and Development Group (GDG) survey showed that 45% of wives had experienced spousal violence.³³ A 2011 GDG survey showed that 94 (8%) respondents lived with physical domestic violence in one form or another; 53 of them were women. Twelve per cent of female victims and 10% of male victims were forced to have intercourse with their spouses. Mental and sexual violence were included in the 2004 survey, but not in the 2011 survey, save for the question on forced sex.³⁴ It was noted that the 2011 data may suffer from misinformation as interviewers were volunteers not trained in research and turnover in the team was high.³⁵

The number of violence against women and children cases in Thailand was found to be growing progressively. In 2009, statistics from 617 hospitals showed approximately 64 cases of violence per day; 80% of those cases involved domestic violence.³⁶ A WHO multi-country study shows that, in most cases, sexual violence by a partner is considerably less prevalent than physical violence and physical violence was often accompanied by sexual violence; Thailand however, is an exception where women

reported more sexual than physical partner violence.³⁷ In contrast, in Singapore, few reports of marital rape have been made, and in all those cases, there were no grounds for prosecution and, hence, no convictions.

The Country Report on Vietnam shows that violence varies among the regions and education levels of the studied groups. Women of Kinh, Muong and Hoa ethnicity faced the highest rates of gender-based violence.³⁸ The Country Report on Lao PDR mentions that experts on the situation of highland ethnic minorities indicate that incidences of wife-beating are more prevalent among ethnic groups practising patrilocal marriage systems.³⁹ In Singapore, an over-representation of minority groups in family violence cases was noted in a number of reports.

One particular difficulty in comparing prevalence of violence against women and children in the ASEAN Region, as will be shown in the Assessment section, is the variance in what acts are covered by the legal definitions of particular crimes. For instance, the Country Report on Myanmar noted that there is no data on marital rape and that this is possibly due to lack of awareness on the issue since there is no law that penalizes marital rape. In Singapore, economic violence is not included in the statutory definition of family violence; thus, this type of violence was not reflected in the surveys covered by the Study. Under-reporting is, of course, always an issue in assessing statistics on sexual and domestic violence.

Rape

Rape was discussed in all the Country Reports and varying degrees of comprehensiveness of data are again apparent. A few examples may serve as illustrations:

In Malaysia, a total of 3,595 cases of rape were reported in 2010, averaging to 10 women who were raped every day in 2010. Recent statistics from the Malaysian Police Force show 408 rape cases in the months of January

32 ASP Mariyani Abdul Wahab, "Letter to Editor: Awareness, Prevention and Intervention," *The Brunei Times*, 2 December 2011, <http://www.bt.com.bn/letters-editor/2011/12/02/awareness-prevention-intervention> (accessed January 4, 2012).

33 CUSO-VSO and GDG, *Rural Domestic Violence and Gender Research: Lao PDR*, 2004.

34 Gender and Development Group, *Domestic Violence Research in 5 provinces, Lao PDR*, November 2011, 74.

35 *Ibid.*, 27-28.

36 Unchalee Katanurug, "The Performance Assessment of 'One Stop Crisis Center: OSCC' in Hospitals under the Ministry of Public Health," a paper presented at the Thailand National Population Conference 2010, November 25-26, 2010, The Twin Towers Hotel, Bangkok, 432; Immigration and Refugee Board of Canada, *Thailand: Domestic violence, including state protection, support services and recourse available to victims (January 2009 - December 2010)*, 31 December 2011, THA103653.E, <http://www.unhcr.org/ref-world/docid/4e43cb852.html> (accessed December 27, 2011).

37 Kent R. Kerley, "Exposure to Family Violence," 338.

38 Rasanathan and Bhushan, "Gender-based violence in Viet Nam: Strengthening the response by measuring and acting on the social determinants of health," 1.

39 Gesellschaft für Technische Zusammenarbeit, *Rural Livelihoods Improvement Programme, Rural Development in Mountainous Areas of Northern Lao PDR, Component 3: Institutional Development, "Rights-Based Approaches to Gender and Livelihoods: Implications for Programming"*, June 2007, 13.

and February 2012 alone.⁴⁰ It was noted that this is a decrease of 43 cases from the same period the previous year (January and February 2011).⁴¹ Nonetheless, this would still mean that a daily average of 6 to 7 rape cases occurred over the two-month.

In Indonesia, Komnas Perempuan received 3,530 cases of community-based violence against women in 2010; of these, 1,781 were cases of sexual violence.⁴² Sexual violence covers rape, attempted rape, and harassment. Victims generally came from ages 13 – 40 years; perpetrators come from ages 25 – 40. Komnas Perempuan indicated that there was an increase in the number of perpetrators over 40 years old. In the absence of sufficient empirical studies the degree of under-reporting is impossible to gauge and this may be particularly the case in regard to reporting to a National Human Rights Commission.

The Country Report on Cambodia noted literature finding inadequate data on the number of rape crimes and other sexually violent crimes in Cambodia, “with no single comprehensive source of information.” The existing numbers indicate a disparity between the number of reported rape cases and the number of offenders brought to trial. For the year 2009, literature identified 535 suspected rape incidents, involving 541 victims, with an overwhelming 72% involving children victims. In the same reporting period, there were 627 offenders who were cited as familiar to the victims, with only 1% of rape cases attributed to strangers.⁴³

Lao PDR does not have a central crime database, nor does it issue public statistics on crime.⁴⁴ Lao PDR provided the following data for the CEDAW Review: for 2005 and 2006, 382 cases of violence against women and children

were brought to court; of these, 52 were of rape.⁴⁵

In 2010, the Women and Children Abuse Investigation Unit (WCAIU) of Brunei Darussalam investigated 27 rape cases, 6 were against women below 14 years of age, and 4 were between the ages of 14-16. In seven out of 10 cases, the victims knew the perpetrators from online chat. There were seven cases under the Unlawful Carnal Knowledge Act and the victims met all of the perpetrators in an online chat. Ages of the perpetrators range from 15-19 years old, much younger compared to the cases seen in 2009.⁴⁶ This data was published in a letter responding to an article to clarify that the WCAIU was not blaming the victims, but merely highlighting the issue. Such detailed information coming from a government unit in Brunei Darussalam, however, was not available in other issues covered by this Study.

Sexual Harassment

Sexual harassment was mentioned in several of the Country Reports as an issue. As shown in the examples below, because of the paucity of data, sexual harassment requires a great deal of empirical research in order to ground reliable comparative assessments.

In Cambodia, one out of 10 female garment factory workers has reported being the victim of sexual harassment. Although sexual harassment cases are said to be rising, no victim has filed a complaint in Cambodia's courts; this is attributed to lack awareness of the laws, lack confidence in the judicial system, and lack of a proper mechanism to help victims file a complaint.⁴⁷ In Thailand, a 2006 survey found that about 66% of female youths and 26% of male youths had experienced different forms of sexual harassment.⁴⁸ The Country Report on Malaysia

40 “Perbandingan Jenayah Indeks Bagin Tempoh Jan-Feb 2011 dan Jan-Feb 2012,” *Portal Rasmi Polis Diraja Malaysia*, <http://www.rmp.gov.my/defaultbase.cfm?path=about/Ops.cfm?mod=78> (accessed 18 July 2012).

41 *Ibid.*

42 Komnas Perempuan, *2010 Note*, 9 and 12.

43 Cambodian Human Rights and Development Association (AD-HOC), Cambodian Defenders Projects (CDP), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Transcultural Psychosocial Organization (TPO), Cambodian Human Rights Action Committee (CHRAC), *Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia*, October 2012, page 41, paragraph 114.

44 U.S. State Department, “2010 Human Rights Report: Laos,” 14.

45 UN Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined sixth and seventh periodic report of States parties: Lao People's Democratic Republic*, 30 May 2008, CEDAW/C/Lao/7, 19.

46 In Brunei Darussalam, a girl under the age of 14 who consented to a sexual act with another man is considered as rape while a girl under the age of 16 who consented to a sexual act with another man is punishable under the Unlawful Carnal Knowledge Act.

47 NGO-CEDAW and CAMBOW, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women In Cambodia, 2010*, March 2011, 51.

48 ABAC Poll Research Center, *Situation of Sexual Harassment and*

observed that there have been news reports on sexual harassment, particularly in the form of molestation of girls in schools.⁴⁹ It was also noted that there is little statistical data on how extensive workplace sexual harassment is in Malaysia. In Vietnam, sexual abuses within the family and workplace remain shameful issues and there are few studies to indicate appropriate number of cases. Sexual harassment in schools is beginning to be explored. In Indonesia, incidences of sexual harassment were said to have been committed against girl domestic-workers.⁵⁰ The existence of sexual harassment in the workplace in Singapore has received attention from local NGO, AWARE. In 2008, AWARE conducted a research in which 54% of the 500 respondents, which consisted of both sexes, said they had experienced some form of sexual harassment.⁵¹

The Country Report on Myanmar had to rely on data from 2002, 2004, and anecdotes of women and girls who revealed how they had been touched and groped sexually by men on crowded buses and other public places. A study by the Myanmar Women's Affairs Federation (MWAFF) revealed that there were 209 reported cases of sexual assault in 2001 and 338 cases in 2004 in 17 states and divisions of Myanmar. However, it was not clear as to what context they occurred in-- home, work, or public places. The UNFPA report noted that "this study provided fascinating introductory information," but more in-depth study is needed.⁵²

Sexual Behaviors among Thai Adolescents (in Thai), 2006, <http://www.ryt9.com/s/abcp/51311/> (accessed January 5, 2012).

49 See Melissa Chi, "Scoutmaster accused of molesting girls at co-ed school," *The Malaysian Insider*, (22 March 2012), <http://www.themalaysianinsider.com/mobile/malaysia/article/scoutmaster-accused-of-molesting-girls-at-co-ed-school/>; and M. Mageswari, "Discipline Teacher Charged with Molesting 11 Underage Girls," *The Star* (4 March 2011), <http://thestar.com.my/news/story.asp?file=/2011/3/4/nation/20110304162502&sec=nation>.

50 International Labour Organization (ILO), "Recognising Domestic Work as Work," April 2010, www.ilo.org (accessed 12 November 2011), 2.

51 "8.3% of women respondents and 42% of male respondents indicated having been sexually harassed at work. Out of that, 34% of women respondents and 19.2% of male respondents had been harassed several times - AWARE, Research Study on Workplace Sexual Harassment 2008, 2008, 18." Association of Women Action and Research (AWARE), *CEDAW Shadow Report*, May 2011, paragraph 11.45, note 247, available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/AWARE_forthesession.pdf (accessed 13 July 2012).

52 UNFPA Myanmar, "Executive Summary: Report on Situation Analysis of Population and Development, Reproductive Health and

Acid Attack

There were reported incidences of acid attacks in Cambodia and Vietnam. The Country Report on Vietnam found that, although there are numerous news reports of acid splashing, there is no integrated study or country-wide statistics. Acid attack is said to be punishment for alleged adultery. Hospitals say that 90% of the incidences occur in the context of domestic violence. Some victims suffered permanent damage, some committed suicide.⁵³ There was little information regarding conviction rates or sentencing.

In Cambodia as well, no official statistics on acid attacks was found. However, the Cambodian Acid Survivors Charity (CASC) recorded 287 acid attacks from 1982 to 2011, injuring more than 300 people. The CASC recorded 10 attacks that burned 16 people in the first nine months of 2011. The CASC likewise said that there are few convictions and 90% of its cases have not gone to court.⁵⁴ New legislation with stiffer penalties and more nuanced provisions aim to address these problems.

Female Genital Mutilation

Practices of genital mutilation were found in Indonesia, Philippines, and Malaysia. Sufficient information to adequately gauge prevalence, however, was not available.

In the Philippines, the Yakan in Basilan practice female circumcision because of religion. Respondents said, "This practice should also be done because it is the way the prophet lived it, and most especially, it is written in the Holy Qur-an." Another study indicated the practice of *turi* among selected Maranao women who resided in Iligan City.⁵⁵ The Country Report cited literature describing the practice as common among Muslim groups in the country.⁵⁶ Also, forced sterilization has reportedly been

Gender in Myanmar," 2010, accessed Oct 28, 2011, http://country-office.unfpa.org/myanmar/2010/08/03/2561/executive_summary/.

53 Joanna Bourke-Martignoni, "Violence against Women in Vietnam: Report prepared for the Committee on the Elimination of Discrimination against Women," 25th session: 2-20 June 2001, 21-25.

54 PTI, "Cambodian lawmakers approve law on acid attacks," *Zeenews.com*, November 04, 2011, http://zeenews.india.com/news/world/cambodian-lawmakers-approve-law-on-acid-attacks_739966.html.

55 Amabelle B. Arquisal, "*Turi* among selected Maranao women residing in Iligan City," Thesis (M.A.Socio.), MSU-Iligan Institute of Technology, Iligan City, 2007.

56 Maria Kontoyannis, Christos Katsetos, "Female Genital Mutila-

occurring among indigenous tribes in Mindanao “for many years already;”⁵⁷ no estimate on the prevalence of the practice was, however, given.

In some regions of Malaysia, Malay-Muslims also practice female circumcision.⁵⁸ 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.” The ruling, however, clarified that this practice is not strictly compulsory.⁵⁹

In Indonesia, there is reportedly a group that supports the practice of female circumcision by interpreting a certain hadith as obligating female circumcision as it is for male. The practice of female circumcision/female genital mutilation is reportedly prevalent in Indonesia and has been the subject of recent media and public attention.⁶⁰ The Country Report indicated the absence of statistical data on prevalence of the practice. However, the government has stated that it will conduct a widespread research to map the practice of female circumcision, including studies on numerous physical, biological, sexual, cultural, psychological and religious implications of the practice.⁶¹

tion,” *Health Science Journal*, Volume 4, Issue 1, 2010, <http://www.hsj.gr/volume4/issue1/405.pdf>, 32

57 “Doctors’ confab stresses health care, physician’s duty,” *Catholic Bishops’ Conference of the Philippines*, <http://www.cbcpnews.com/?q=node/18331> (accessed 7 July 2012).

58 See e.g. Ab. Rahman Isa, Rashidah Shuib, M. Shukri Othman, “The Practice of Female Circumcision among Muslims in Kelantan, Malaysia,” *Reproductive Health Matters*, Vol. 7(13), May 1999, 137; Abdul Khan Rashid, Sapna S. Patil and Anita S. Valimalar, “The Practice Of Female Genital Mutilation Among The Rural Malays In North Malaysia,” *The Internet Journal of Third World Medicine*, Vol. 9(1), 2010.

59 Hukum Pematangan Genitalia Wanita (Female Genital Mutilation), e-Fatwa Portal, Jabatan Kemajuan Islam Malaysia (JAKIM), <http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-pematangan-genitalia-wanita-female-genital-mutilation>.

60 UN Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined sixth and seventh periodic reports of States parties: Indonesia*, 22 November 2010, CEDAW/C/IDN/6-7, paragraph 131.

61 *Ibid*, paragraph 152.

Violence Against Sex Workers

Some of the Country Reports mention violence against sex workers as a concern.

For example, in Malaysia, although there are no figures to show the extent of violence against sex workers, 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.⁶² They also lack access to legal and medical recourse. They tend to suffer abuse from their pimps and law enforcement officers. This has resulted in sex workers going further underground and out of reach of social workers who can offer them aid and needed information.⁶³

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. Three of 16 respondents in a 2006 survey of sex workers married at or before the age of 16.⁶⁴ In Thailand, a 2007 study of female sex workers highlighted that 15% of the respondents had experienced violence in the week before the survey.⁶⁵ A joint NGO report stated that, in Cambodia, young women in the “entertainment industry,” which category includes beer promotion girls, massage girls, karaoke parlour staff, and direct sex workers, are at great risk of economic exploitation and sexual abuse. Four out of five women in the entertainment industry report that they have been victims of sexual harassment.⁶⁶

62 NGO Shadow Report Group, *NGO Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia*, 2005, article 6, available at http://www.iwraw-ap.org/resources/pdf/Malaysia_SR.pdf.

63 *Ibid*.

64 ThatsaphoneSongbandith, “Sexual Violence Against Service Women in Vientiane Capital, Lao PDR” (master’s thesis, Mahidol University, 2006), 63.

65 Planned Parenthood Association of Thailand and Sexual Rights Initiative, *Joint UPR Submission on the Human Rights of Sex Workers in Thailand*, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRTHStakeholdersInfoS12.aspx> (accessed January 11, 2012).

66 NGO-CEDAW and CAMBOW, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women In Cambodia, 2010*, March 2011, 52.

The Country Reports, however, indicated that sex workers have a hard time having their complaints taken seriously or hesitate to report abuses because they are abused further by police officers or are threatened with prosecution in countries where prostitution is illegal. For example, women and girls involved in sex work in Cambodia are said to suffer beatings, rape, sexual harassment, extortion, arbitrary arrest and detention, forced labour, and other cruel treatment at the hands of police, public park security guards, government officials, and those working in the centres and offices run by the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSAVY).⁶⁷ Thus, it is difficult to determine the extent of the problem.

Violence Against Indigenous Women and Children

In Malaysia, a 2009 report by the Ministry of Women, Community and Family Development, confirms the rape and sexual exploitation of Penan women and girls in Sarawak by employees and associates of timber companies.⁶⁸

Human rights violations were also noted against Rohingya minority in Myanmar. The CEDAW Committee, HRW, the Arakan Project, and the Irish Center for Human Rights, recorded severe restrictions on their freedom of movement; restricted access to medical care, food and adequate housing; forced labour; and restrictions on marriages and pregnancies.⁶⁹ Reports also stated that Myanmar's armed forces raped ethnic minority women in conflict-affected and extractive industries areas. The U.S Department of State noted that some armed ethnic groups may also have committed abuses including torture, killing and rape. However the scale might not be as big as that by the government army.⁷⁰

67 Human Rights Watch, *Off the Streets Arbitrary Detention and Other Abuses against Sex Workers in Cambodia*, July 2010, 4.

68 Ministry of Women, Community and Family Development, "Official Report on the Investigation of Allegations of Sexual Violence Against Penan Women in Sarawak," available at <http://hornbillunleashed.files.wordpress.com/2009/09/penan-ir.pdf>.

69 CEDAW, *Concluding Observations 2008*, paragraph 42; Human Rights Watch (HRW), "World Report 2011: Events of 2010," 2011, <http://www.hrw.org/sites/default/files/reports/wr2011.pdf> (accessed 10 March 2012); Chris Lewa, "North Arakan: An Open Prison for the Rohingya in Burma," *Forced Migration Review (FMR)*, 2009, 32; Irish Center for Human Rights, "Crimes against Humanity in Western Burma: The Situation of the Rohingyas," 2010, www.nuigalway.ie/human_rights/.../ichr_rohingya_report_2010.pdf (accessed 8 November 2011).

70 United States Department of State, "2010 Country Report on Hu-

man Rights Practices: Burma," 41

Recently, a conflict in the Rakhine State led to the death of up to 62 people, including a Rakhine woman "who was raped and stabbed to death by three Bangali Muslims."⁷¹ This indicates that women in Rakhine Region are vulnerable to some forms of gender-based violence until the rule of law prevails in the region.⁷² Before this event, due to lack of studies on gender-based violence in Rakhine State, reports on vulnerability of Rakhine women were not often found.

Sexual and other forms of violence against women and girls in other ethnic areas in Myanmar were also reported, including in Shan, Kachin, Kayin, Chin, Mon, Karenni, Arakan, and Palaung states.⁷³ The Country Report on Myanmar indicated the difficulty in accurately assessing prevalence of rape and discrimination against women and children in the Northern Area of Rakhine State and in other ethnic minority areas. Discrepancies exist between the reports of the government and those of national and international human rights organizations.

Violence Against Women in Conflict Areas

Aside from abuses against ethnic women in conflict-affected areas in Myanmar, abuses were also reported in the conflict-affected areas in Indonesia, Philippines, and Thailand.

In Indonesia, types of violence reportedly suffered by Acehese women included rape, sexual harassment, battery, and murder.⁷⁴ Meanwhile, in Papua, reports

71 Fang Yang (Editor), "Death toll rises to 62 in Myanmar's riot-hit Rakhine state: official," *Xinhua News*, http://news.xinhuanet.com/english/world/2012-06/21/c_131668742.htm (accessed 12 July 2012).

72 See Kyaw Zwa Moe, "Why is western Myanmar burning?" *Bangkok Post*, 22 June 2012, <http://www.bangkokpost.com/lite/topstories/299138/why-is-western-myanmar-burning> (accessed 12 July 2012).

73 UN Human Rights Council, "Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council Resolution 5/1: Myanmar," A/HRC/WG.6/10/MMR/3, 18 October, 2010, paragraph 28-29; CEDAW, *Concluding Observations 2008*, paragraph 24; and Human Rights Watch (HRW), "World Report 2011," 290.

74 CEDAW Working Group Initiative (CWGI), *Independent Report of NGOs concerning the Implementation of the Convention on the Elimination of all Forms of Discrimination against Women in Indonesia*, May 2007, paragraph 165.

indicate that violence against women is still prevalent.⁷⁵ The perpetrators of the violence are mostly members of the military and police forces. In 2009, at least 138 cases of violence against women were reportedly perpetrated by members of the military and police forces in Papua.⁷⁶ Sexual violence against women reportedly also occurs in Maluku and Poso, where social conflicts are rampant.⁷⁷

The Country Report on the Philippines also noted that the CEDAW Committee has expressed concern over the situation of rural and indigenous women, as well as the Muslim women in the Autonomous Region in Muslim Mindanao (ARMM). These women have limited access to justice in cases of violence, especially in conflict areas.⁷⁸ While there are other conflict areas in ASEAN, such as Southern Thailand and parts of Myanmar, reliable data on the prevalence of sexual violence in these specific contexts is not available. Further, as was observed in the Country Report on Indonesia, there is limited information on women and children who are internally displaced due to armed conflict and social conflict. Information on the prevalence of violence against them is even scarcer.

Violence against Refugees and Asylum-Seekers

Women refugees and asylum-seekers in Malaysia are reportedly targets of violence, including sexual or gender-based violence. They are said to have minimal access to lawyers, medical treatment, safe houses, and other necessary support.⁷⁹ More information is needed to capture the extent of the problem.

75 Komnas Perempuan, *2011 Note on Violence against Women: Stagnation of the Legal System, Suspending the Hope of Female Victim*, 7 March 2012, 22.

76 Working Group on Documentation of Violence against Women and Violations of Women's Rights in Papua (Papua WG), *Enough! Testimonies of Papuan Women, Victims of Violence and Human Rights Violations 1963 – 2009*, 19 April 2010.

77 Komnas Perempuan, *Independent Report to CEDAW Committee on the Implementation of CEDAW in Indonesia 2007 – 2011*, 10 October 2011, paragraph 23.

78 UN Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Philippines*, CEDAW/C/PHI/CO/6, 25 August 2006, paragraph 29.

79 Amnesty International, "Malaysia: Abused and Abandoned: Refugees denied rights in Malaysia," 16 June 2010, 15, <http://www.amnesty.org/en/library/info/ASA28/010/2010/en>.

Children Specific Issues

The Country Reports indicated prevalence of forms of violence occurring at home, in school, at work, in care and justice system, and in the community. Difficulties in ascertaining the extent of these problems were manifest. Some issues that were particularly highlighted are mentioned in this section.

Corporal Punishment

Several Country Reports indicated corporal punishment as a concern. For instance, in Cambodia, literature shows that 50.5% of boys and 36.4% of girls admitted to having been beaten by their parents. Eighty-four per cent of girls and 81.1% of boys say they have seen other children being beaten by their parents.⁸⁰

The CRC committee raised its concern that corporal punishment continues to be socially and legally acceptable in Myanmar. In one event, a student was even beaten to death by her teacher.⁸¹ In a survey, 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.⁸² In Vietnam, a statistical review by UNICEF showed that 61% of children aged 2-14 experienced minor physical punishment in the home in 2005-2006. As in Myanmar, some mothers or caretakers (46%) were found to believe that children need to be physically punished.⁸³

In Thailand, A UNICEF survey of nearly 500 children in southern Thailand found that 38% had direct experience of violent punishment; 8% said this happens often.⁸⁴ A study funded by the National Health Foundation found that up to 60% of the teachers surveyed supported the use of

80 Glenn Miles and Sun Varin, *Stop Violence Against Us, A Preliminary National Research Study into the Prevalence & Perceptions of Cambodian Children to Violence Against and By Children in Cambodia*, available at <http://vac.wvasiapacific.org/downloads/tear2.pdf>, L.

81 Juliet Shwe Gaung, "Corporal Punishment 'common practice': author," *The Myanmar Times*, Vol 23, No. 455, January 26-February 1, 2009, <http://www.mmmtimes.com/feature/investing/inv009.htm> (accessed January 10, 2012).

82 Palaung Women's Organization (PWO), "Voices for Change," 16.

83 UNICEF, *Progress for Children: A World Fit for Children – Statistical Review*, Number 6, December 2007.

84 UNICEF, *Everyday Fears: A study of children's perceptions of living in the southern border area of Thailand* (Bangkok: UNICEF, 2008), 10-11.

corporal punishment in schools.⁸⁵ Reports also indicated that ill treatment and violence by parent(s) against their children is prevalent in Indonesia.⁸⁶ In Singapore, children (below 21 years of age) were involved in 32% of Personal Protection Order applications surveyed in 2004, either directly or as witnesses.⁸⁷ The government also did profiling studies in relation to family violence and intra-familial child abuse. Further, local children's groups conducted independent profiling studies on child abuse in schools. It was noted that intra-familial child abuse may be reported less than extra-familial child abuse.⁸⁸

The Country Reports indicated literature stating difficulty in assessing prevalence of corporal punishment because of several reasons, the most common of which is the cultural acceptability of the practice. Aside from this factor, in the Philippines, it is said that the extent and magnitude of violence against children in schools is largely unknown as there are many non-governmental organizations assisting children who are survivors of violence, but systematic data collation is weak. Additionally, the figures in a Plan Philippines baseline study represented only reported cases, which often involved serious physical and psychological harm. More subtle forms of violence were rarely reflected.⁸⁹

Sexual Violence Against Children

The number of incidences where minors are the victims of sexual violence is reportedly alarming. The Cambodia

Human Rights and Development Association (ADHOC) investigated 460 cases of rape in 2009, 366 of those involved minors.⁹⁰ In a survey, 63.5% of girls and 64% of boys said they know children who have been raped. It also showed that 21.4% of girls and 23.5% of boys say they have witnessed the rape of a child by an adult.⁹¹

Statistics indicate an increase of reported child abuse cases in Malaysia over the years. Data from the Department of Social Welfare show that 2,780 cases of child abuse were reported in 2008.⁹² This means that an average of 7 children were reported to be victims of child abuse each day. Neglect (952 cases) is the most common form of child abuse in Malaysia, followed by physical abuse (863 cases) and sexual abuse (733 cases, of which 529 cases were incestuous). Sexual abuse disproportionately affects female child victims, with reported incest cases involving 499 female victims and 30 male victims.

In Vietnam, the average age of victims of sexual abuse is reportedly 12 years old.⁹³ In Lao PDR, rape of ethnic women prior to reaching puberty was a problem. However, no cases had been reported in recent years and the Lao Women's Union is said to have conducted grass roots surveys that confirmed this to be the case.⁹⁴

In the Philippines, statistics from 2000 to 2006 show sexual abuse as the most prevalent type of abuse against children. Sexual abuse included rape, incest, and acts of lasciviousness. Of the total 7,606 child abuse cases reported to the Department of Social Welfare and

85 Global Initiative to End All Corporal Punishment of Children (GIEACPC), *Thailand—Briefing for the Human Right Council Universal Periodic Review – 12th session, 2011*, March 2011, accessed January 11, 2012, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRTHStakeholdersInfoS12.aspx>.

86 UN Human Rights Council, *National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 - Indonesia*, 11 March 2008, A/HRC/WG.6/1/IDN/1, paragraph 25. The UPR did not provide further data to support the prevalence of ill-treatment and violence committed by parent(s) to their children.

87 Subordinate Courts Singapore, "Faces of Family Violence: A Profile Study on Family Violence," Research Bulletin Issue No. 38, December 2004, <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4473> (accessed 8 May 2012).

88 John M. Elliot, Joyce I. Thomas, and Chua Yee Sian, *Child Sexual Abuse in Singapore: Professional and Public Perceptions*, SCS, Research Monograph No. 5, <http://www.childrensociety.org.sg/images/Monograph%205%20Proofread%20Copy.pdf>, chapter 2.

89 Plan Philippines, *Toward a Child-Friendly Education Environment: A Baseline Study on Violence Against Children in Public Schools*, February 2009, 5.

90 Joint Cambodian NGO Torture, Inhuman or Degrading Treatment Report, paragraph 114.

91 Glenn Miles, *Stop Violence Against Us, A Preliminary National Research Study*, L.

92 "Perangkaan Sosial Terpilih: Trend Sosial di Malaysia, Siri 11/2009," *Statistics Department Malaysia*, http://www.statistics.gov.my/portal/download_Labour/files/BPTMS/PST-Siri11.pdf (accessed 20 July 2012), 13-14. Also archived at "Statistics: United Against Abuse," *UNICEF Malaysia*, <http://www.uniteagainstabuse.my/learn/facts?id=4> (accessed 11 July 2012).

93 United Nations Viet Nam, "Fact Sheet: Young People and Protection," available at http://www.un.org.vn/en/publications/cat_view/130-un-viet-nam-joint-publications/211-youth-joint-un-publications.html (accessed 10 July 2012), citing UNICEF Viet Nam (2006), *Child abuse in Viet Nam*.

94 International Service for Human Rights, "Committee on the Elimination of Discrimination Against Women, 44th Session, Lao People's Democratic Republic 6-7th Report, 24 July 2009," *Human Rights Monitor Series*, 4.

Development in the year 2006, 70% of victims were girls.⁹⁵ Of the 7,606 child abuse cases, 2,803 were sexual abuses. The numbers, however, have been slowly declining since 2002.⁹⁶ In Singapore, the number of statutory rape cases decreased in 2010 from about 90 to 50 cases.⁹⁷ Online sexual grooming, however, is a concern.⁹⁸ Teenagers in Singapore have been raped, molested or otherwise abused by persons they met in online chat rooms.⁹⁹ As in other areas of violence, under-reporting of sexual violence may occur for a number of reasons and may vary from state to state. For instance, a 2005 study on child sexual abuse in Singapore revealed that more than half of the family members informed about the abuse failed to report the incident due to shame or economic factors.¹⁰⁰

Street Children

Except for Brunei Darussalam and Singapore, all country reports mention special concern regarding street children. While efforts have been made to address the needs of street children, the Country Reports indicate literature that point to lack of adequate mechanisms that determine the extent of and address the needs of street children. Accurate data and registration of street children are missing.

In the Philippines, the Government estimated that there were 246,000 street children in major cities in 2001.¹⁰¹

95 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention, Third and fourth periodic reports of States parties due in 2007: Philippines*, CRC/C/PHL/3-4, 20 March 2009, paragraph 85.

96 Philippines CRC Third and Fourth Periodic Reports, "Table 11. Number of reported cases of child abuse served by the Department of Social Welfare and Development (DSWD) by type," paragraph 134.

97 "Crime Situation for 2010: Crimes of Concern Register Decreases," *Singapore Police Force*, last updated 3 October 2011, http://www.spf.gov.sg/stats/stats2010_decreases.htm.

98 See RadhaBasu, "Lifting shroud of shame over child sex abuse," *Straits Times*, 28 April 2009; and RadhaBasu, "Child sex abuse: 1 in 3 cases is calculated," *Straits Times*, 19 January 2008.

99 ECPAT International Research Report, *Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore*, 2010, 22, citing Angeline Khoo et al. "Parents and Children's Perceptions of the Dangers of the Internet," Paper presented at AWARE, Perth, December 2001.

100 AWARE, *CEDAW Shadow Report*, May 2011, paragraph 19.45, citing "When abuser is not a stranger," *Sunday Times*, 9 February 2009.

101 Philippines, 3rd and 4th Periodic Report to the CRC, 2008, paragraph 201.

Remarkable changes in the lives of individual street children are said to have taken place because of joint efforts of local task forces and a network of government agencies;¹⁰² however, conflicts in policies and strategies between the government and the NGOs in addressing the street children phenomenon need to be threshed out and resolved.¹⁰³

There also are said to be a high number of children who are living and working on the streets in Indonesia. In 2007, the Department of Social Welfare recorded approximately 104,497 children living on the streets and only 14,451 children were recorded to have received social care from designated shelters.¹⁰⁴ Recently, the government stated that, in 2011, there were approximately 230,000 street children in Indonesia.¹⁰⁵ A survey in 2007 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.¹⁰⁶

Street children and their families in Vientiane, Lao PDR, were put in prisons before international meetings and national events, as part of efforts to "clean the streets."¹⁰⁷ A UNICEF outreach team in Vientiane noted 39 cases of violence and abuse against street children; of them, three girls were raped and six migrant girls believed to be sexually exploited.¹⁰⁸ However, according to the government, there are "very few" cases of street violence.¹⁰⁹

102 *Ibid*, paragraph 294.

103 *Ibid*, paragraph 301. "e.g., government rescue or removal of street children from the streets vs. the NGO strategy of street organizing, street education, and protected work opportunities on the streets."

104 Ministry of Social Welfare, "Factsheet on Street Children" (2007).

105 UN Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Indonesia*, 7 March 2012, A/HRC/WG.6/13/IDN/1, paragraph 104.

106 Indonesian Working Group on the Advocacy against Torture (WGAT), *Shadow Report: Prepared for the UN Committee against Torture in Connection to Its Review of Indonesia's Second Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2008 SR-CAT). 72.

107 UNICEF Lao PDR, "Review of UNICEF Support to Street Children Activities," December 2006, 9, 13-15.

108 *Ibid*, 13-14.

109 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: 2nd periodic report of States parties due in 1998: Lao People's Democratic Republic*, 10 August 2010, CRC/C/LAO/2, paragraph 41(c).

Cambodia reportedly lacks mechanisms and resources to address the problem of children in street situations. “Clean-up operations,” such as the one carried out in 2008, sent children in street situations to rehabilitation centres in Koh Romduol and Prey Speu run by the Phnom Penh Department of the Ministry of Social Affairs, resulting to illegal confinement and a variety of abuses, which in some cases resulted in their death, including by suicide.¹¹⁰

Child/Forced Marriage

According to data provided by the National Population and Family Planning Agency, in 2009, early marriages of girls below 16 years in Indonesia accounted for 21.75% of all marriages;¹¹¹ this indicates a slight decrease compared to the percentage of early marriages in 2004, which was 25%.¹¹² In rural areas, early marriage accounted for 47.79% of the marriages.¹¹³ In Malaysia, according to the Population and Housing Census 2010, 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, with men marrying girls as young as eleven years old.¹¹⁴

In Vietnam, while the age for marriage is 18 for females and 20 for males, some ethnic minority marry girls at 15. In some ethnic groups, like Hmong, arranged marriages, often of very young girls, or even by kidnapping, still exist.¹¹⁵ A research conducted in 2009 in the Philippines confirmed that early and forced marriages were prevalent among Muslim girls who are 9-17 years old.¹¹⁶ A survey

was reportedly conducted in the Autonomous Region in Muslim Mindanao; however, a research paper found that there is no accurate data on how many Muslim girls in the region marry before the age of 18.¹¹⁷

Forced marriage of both children and adults still takes place in certain ethnic groups and families in Lao PDR, despite being prohibited by the Family Act.¹¹⁸ Early marriage was also mentioned as a concern in Myanmar¹¹⁹ and Brunei Darussalam;¹²⁰ arranged marriages reportedly still occur in Cambodia.¹²¹

Violence Against Children in Conflict with the Law

In Lao PDR, a 2003 study found that 30% of detained children reported experiencing physical or mental punishment, including beating, crawling, sitting in the sun and with holding meals.¹²² In the Philippines, some children have also been subjected to police abuse while in detention for committing minor crimes.¹²³

<http://ezinearticles.com/?Arranged-Marriages---Are-They-For-Real?&id=960013> (accessed 7 July 2012); and “Philippine Muslim (Tausug) Marriages on Jolo Island,” *Zawaj*, <http://www.zawaj.com/weddingways/tausag/tausag1.html> (accessed 7 July 2012).

110 UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Cambodia*, CRC/C/KHM/CO/2, 20 June 2011, paragraph 69.

111 NGO Coalition for Women and Children Rights, *2011 Shadow Report I – UPR*, paragraph 9.

112 UN HRC, *Indonesia UPR National Report 2008*, paragraph 31.

113 NGO Coalition for Women and Children Rights, *2011 Shadow Report I – UPR*, paragraph 9.

114 “Marriage’ of two underage girls in K’tan sparks debate,” *Malaysiakini*, 13 March 2010, reproduced: http://kamal-talksmalaysia.blogspot.com/2010/03/marriage-of-two-underage-girls-in_13.html (accessed 9 November 2011).

115 Bourke-Martignoni, “Violence against Women in Vietnam,” 13.

116 JohairaWahab/ Nisa Ul Haqq Bansa Moro (Women for Justice in the Bangsa Moro), “Intervention,” [http://www2.ohchr.org/english/bodies/hrcouncil/minority/docs/session4/ItemV/Participants/Nisa Ul Haqq Fi Bangsa Moro Philippines.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/minority/docs/session4/ItemV/Participants/Nisa%20Ul%20Haqq%20Fi%20Bangsa%20Moro%20Philippines.pdf), 1. See also Amanda Jane, “Arranged Marriages – Are They For Real?,” *ezinearticles*,

117 “Philippines: Early Marriage Puts Girls at Risk,” *IRIN humanitarian news analysis*, <http://www.irinnews.org/Report/87873/PHILIPPINES-Early-marriage-puts-girls-at-risk> (accessed April 30, 2012).

118 UN Committee on the Rights of the Child, *Concluding Observations: Lao People’s Democratic Republic*, 8 April 2011, CRC/C/Lao/CO/2, paragraph 95.

119 See, e.g., Women’s Protection Technical Working Group, “Women’s Protection Assessments,” 2010, 72-75.

120 The Body Shop and ECPAT, “Stop Sex Trafficking of Children and Young People,” *ECPAT International*, http://www.ecpat.net/EI/Publications/Trafficking/Factsheet_Brunei.pdf.

121 Ngo Menghak, “Arranged marriage in modern times,” *The Phnom Penh Post*, 8 July 2010, <http://www.phnompenhpost.com/index.php/2010070840360/LIFT/arranged-marriage-in-modern-times.html>.

122 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,” 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.

123 <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154399.htm>

In Myanmar, former child political prisoners who were detained between 1994 and 2007 were reportedly subjected to unlawful arrest, detention, and torture for involvement in peaceful demonstrations, their membership in a high school union, and their perceived association with rebel groups.¹²⁴ The CRC Committee expressed concern about the high number of children in pre-trial detention and reports that they were punished physically.¹²⁵

Child offenders are allegedly still detained in the same place as adults in Indonesia. In 2009, Komisi Perlindungan Anak Indonesia (Commission on the Protection of Indonesian Children (KPAI) stated that at least 6,000 children go into Indonesia's criminal legal system every year. KPAI indicated that members of the police force have committed violence against these children by not implementing a diversion approach and directly criminalising them.¹²⁶

The minimum age for criminal responsibility in Myanmar, Singapore, and Brunei Darussalam is 7. The minimum ages for other ASEAN countries are as follows: Indonesia, 8; Malaysia, 10; Thailand, 10; Cambodia, 14;¹²⁷ Vietnam 14; Philippines, above 15; Lao PDR, 15. The CRC Committee has said that it considers minimum ages of criminal responsibility below 12 as not internationally acceptable.¹²⁸

The Country Report on Indonesia noted a positive development in a recent Constitutional Court judgment. In its 24 February Decision, the Constitutional Court declared provisions of the Law on Juvenile Court which set out the age of criminal responsibility of 8 years as unconstitutional.¹²⁹ It stipulated that children below the

age of 12 can no longer be held criminally responsible and therefore cannot be subject for detention.¹³⁰

Violence Against Children in Conflict-Areas¹³¹

In the conflict area of Papua, Indonesia, UN documentations have pointed out the use of excessive force by law enforcement officials against school children in 2006.¹³² Komnas Perempuan reported that refugee children live in fear of being harassed by law enforcers since they were suspected as children of members of the Papua Free Movement (OPM).¹³³

In Myanmar, children were reportedly subjected to serious abuses, such as recruitment as child soldiers, rape, and indiscriminate use of anti-personnel land mines around civilian areas by both government armed forces and non-state armed ethnic groups.¹³⁴ The report of the Secretary General states that, in 2011, "of the 22 verified incidents, a total of 9 occurred in Kachin State as a result of fighting between the Tatmadaw and KIA, during which 22 children were killed or maimed."¹³⁵

Bullying

In Singapore, surveys conducted in 2006 and 2007 found that 25% of secondary school students and 21% of primary school students were victims of bullying.¹³⁶ The surveys were, however, criticised by the Minister for Education for representing a wide spectrum of bullying behaviours, including "teasing".¹³⁷ The Minister

124 Child Rights Forum of Burma, *CRC Shadow Report Burma*, 38-40, citing Chin Human Rights Organization (CHRO) and Assistance Association for Political Prisoners (Burma).

125 CRC, *Concluding Observations 2012*, paragraphs 90-91.

126 KPAI, *2009 End Year Note*, 30 December 2009.

127 Article 38 of the Criminal Code of Cambodia states that "[t]he criminal legal age is set at 18 years of age;" however, Article 39 provides that "the court may pronounce a criminal conviction against a minor of 14 years of age or more, if the circumstances of the offence or the personality of the minor justify in doing so."

128 CRC Committee, *General Comment No. 10: children's rights in juvenile justice*, UN document CRC/C/GC/10, 2007, paragraph 32.

129 Decision of the Indonesian Constitutional Court on the Judicial Review of Law No. 3 of 1997 on Juvenile Court against the 1945 Constitution. Case No. 01/PUU-VIII/2010. 24 February 2011. pp. 150 – 153.

130 Decision of the Constitutional Court, Case No. 01/PUU-VIII/2010, 24 February 2011, 152. The decision declared Article 5 of Juvenile Court Law that established the age of criminal responsibility at 8 years old as unconstitutional and stipulated the age of 12 as the standard for criminal responsibility. See also UN HRC, *Indonesia UPR National Report 2012*, paragraph 102.

131 Prevalence of recruitment of child soldiers is discussed in the section on Exploitation.

132 UN OHCHR, *2008 Compilation of UN Documentation*, paragraph 13.

133 Komnas Perempuan, *2010 Note*, 43 – 45.

134 Human Rights Watch (HRW), "World Report 2011," 288.

135 UN Security Council, "Children and Armed conflict: Report of Secretary General," A/66/782-S/2012/261, 26 April 2012.

136 Winston Ong and John M. Elliott, *Young Adults' Recall of School Bullying*, SCS, Research Monograph No. 9, July 2010, iii.

137 "FY 2011 Committee of Supply Debate: 4th Reply by Mr Masagos Zulkifli BMM, Minister of State for Education and Home Affairs, on Strengthening Education for All," *Ministry of Education*, <http://www.moe.gov.sg/media/speeches/2011/03/07/fy-2011-committee-of-supply-de-4.php> accessed 8 May 2012).

maintained that bullying involving hurt or intimidation remained infrequent.¹³⁸ A 2006 Ministry of Education survey put prevalence at 3.7 cases per 1000 students. In-depth studies on bullying in schools among ASEAN countries to determine prevalence and the existence of sufficient mechanisms to protect children from bullying would be valuable.

Persecuting Effeminate Boys and Homosexuals

In April 2011, the Education Department of Terengganu, Malaysia, ordered 66 Muslim boys between the ages of 13 to 17 to be sent to a special camp to undergo four days of religious and physical education. The boys were selected because they displayed “feminine mannerisms.”¹³⁹ The state’s education director said that the students were invited to join the camp but were not compelled to do so. This action was criticized as it singles out certain children for discriminatory treatment, which in turn could lead to bullying in schools, mental health problems, family rejection, and even violence.¹⁴⁰ Focused studies on prevalence of persecution of effeminate boys in other parts of Malaysia and across the ASEAN Region would be helpful.

b. Root Causes

Gender Roles

The Country Reports indicate that gender stereotypes play a major role in prevalence of violence. The perception that women are subservient leads men to be disrespectful of their rights. The beliefs that form this basis, however, vary.

In Cambodia, women are said to be traditionally inferior to their male counterparts and this is reflected in traditional codes of conduct such as the *Chbab Srey* (Women’s Law or Code of Women), which teaches women to be subservient to men.¹⁴¹ In Myanmar, the influence

of Brahmin culture reportedly can be seen in some attitudes that relegate women to a subordinate position. In Brahmin culture, women are regarded as the inferior sex and their gender-specific bodily functions, such as menstruation and childbirth, are identified as dangerous and polluting to male purity.¹⁴² Thai women are widely described as bearers and supporters of Thai Buddhism, who provide routine support for monks and temple activities. They are often portrayed as normally inferior and barred from being ordained as monks. Women are forbidden from direct or indirect contact with monks because of their “lower karma”. Thai women are taught to suffer bravely so that they can be reborn as a man in the next life.¹⁴³

The Country Report on Lao PDR notes a report finding that wife-beating is more prevalent among ethnic groups with patrilocal practices.¹⁴⁴ Patrilocal practices are said to 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.¹⁴⁵ Gender stereotypes and entrenched patriarchal attitudes were also indicated as root causes for violence against women in Malaysia, Indonesia, and the Philippines. In Singapore, there is reportedly persistence of patriarchal attitudes; however, the Country Report noted that the prevalence and types of gender stereotypes, and how they are related to or influence violence against women have not been studied.

Interestingly, in Vietnam, gender roles are a root cause of violence, despite the country’s matrilineal influences. “Domestic violence is tied to a complex field of cultural forces that consists of a patrilineal tradition of ancestor worship, assumptions about females’ versus males’

138 *Ibid.*

139 “Effeminate boys in Malaysia sent to ‘anti-gay’ camp”, BBC (UK), 19 April 2011, <http://www.bbc.co.uk/news/world-asia-pacific-13133589>.

140 “IGLHRC Letter to Malaysian Minister: Children’s Rights Violated in Discriminatory Camp,” 29 April 2011, <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/1377.html>.

141 The Cambodian Committee of Women (CAMBOW), *Violence Against Women: How Cambodian Laws Discriminate Against Women*, November 2007, 7. See also, Cambodia National Council For Children (CNCC), *Report Reply to the List of Issues Raised by the*

Office of the Special Representative of the Secretary General on Violence against Children in Cambodia, 2006-2010, 22: “The traditional codes of conduct for women and men (*ChbabSrey* and *ChbabProh*) have been fundamental to Cambodian culture for centuries, formalising unequal gender relations... Today the codes have no legal status in Cambodia... They are not included in the school curriculum. However, the ethos of these codes remains embedded throughout Cambodian society.”

142 Sue Hamilton, “Buddhism: The Doctrinal Case for Feminism,” *Feminist Theology* 4, (1996).

143 Xu, Xiaohu, Kerley, Kent R. and Sirisunyaluck, Bangon. “Understanding Gender and Domestic Violence From a Sample of Married Women in Urban Thailand.” *Journal of Family Issues* 32 (2011), 793.

144 Gesellschaft für Technische Zusammenarbeit, “Rights-Based Approaches to Gender and Livelihoods,” June 2007, iii.

145 *Ibid.*

character, Confucian virtues, and a history of war. Females are expected to encourage household harmony by adjusting themselves and, in so doing, make social life smooth. Males, on the other hand, are assumed to have a hot character, meaning that a male might fly into a rage and even behave violently.¹⁴⁶

The Report on Lao PDR cited findings showing that violence was more likely to occur in cases where the woman earns less money than the man.¹⁴⁷ However, the Country Report on Vietnam cites statistics from a 1999 study showing that women bread-winners suffered more abuse except for those in the form of physical violence. Women bread-winners were more prone to neglect, strong words, yelling, prohibition and forced sex.¹⁴⁸ The prevalence of violence against women who challenge gender-roles would be an interesting area for further study.

It is worthy to note that gender roles were indicated as one of the reasons of the higher number of abuse on boys compared to girls in Indonesia. Local culture and gender stereotyping dictate that male children should be able to 'stand a test'.¹⁴⁹

Cultural Acceptability of Violence

The Country Reports indicate that physical punishment of children is frequently viewed as an acceptable form of discipline by parents and teachers. Even some children themselves perceive it as acceptable, as a study conducted by Plan Philippines revealed. Physical and verbal forms of violence were accepted by respondent children "as part of discipline" and "appropriate when inflicted within certain parameters." However, the preference of children was, of course, a more positive form of discipline, such as being

talked to and corrected, guided, or counselled.¹⁵⁰ Some degree of cultural acceptability of spousal violence was also observed. For instance, a 2007 survey found that 19% of Singaporeans surveyed believed that physical fighting was part of married life and 36% believed that an abused spouse had a duty to stay in the marriage for the sake of young children.¹⁵¹

Economic Difficulties

The Country Reports cited poverty as a main root cause of violence. For example, in 2010, the Commissioner of the 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 in Indonesia.¹⁵² The correlation between economic status and prevalence of violence was also noted in Singapore. In a 2004 Subordinate Courts survey of PPO application cases, 71% of complainants and 65% of the respondents were earning less than \$1,500 monthly, while 42% of both complainants and respondents were earning less than \$500 monthly.¹⁵³ In Malaysia, statistics from the Women's Aid Organisation's indicate that financial problems were a triggering factor in 38.7% of the cases it received in 2011.¹⁵⁴ Money and work-related problems were also found as common reasons for domestic violence in Lao PDR.¹⁵⁵

146 Helle Rydstrom, "Encountering "Hot" Anger Domestic Violence in Contemporary Vietnam," available at http://www.detcivilasamhallet.se/pages/dokument/rydstrom_encountering_hot_anger.pdf (accessed 13 July 2012), 1.

147 CUSO-VSO and Gender and Development Group, "Rural Domestic Violence and Gender Research: Lao PDR," undated, 2, available at http://www.iwraw-ap.org/resources/pdf/44_shadow_reports/LaoPDR_Compiled_Report.pdf.

148 Vu Tuan Huy Vu Man Loi, Nguyen Huu Minh, Jennifer Clement, "Gender-based Violence: the Case of Vietnam," *World Bank Policy Research Report* (Hanoi: World Bank, 1999), 8.

149 UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: State Party Report: Indonesia*, 7 July 2003, CRC/C/65/Add.23, paragraph 236.

150 Plan Philippines, *Toward a Child-Friendly Education Environment: A Baseline Study on Violence Against Children in Public Schools*, 2009, accessed March 6, 2012, <http://plan-international.org/learn-withoutfear/files/philippines-toward-a-child-friendly-education-environment-english>.

151 Ministry of Community Development and Sports, "Protecting Families From Violence: The Singapore Experience," 2009, 24, available at <http://app1.mcys.gov.sg/ResearchRoom/ResearchStatistics/ProtectingFamiliesfromViolence.aspx>.

152 C. Windoro AT, "Kemiskinan, Penyebab Kekerasan pada Anak," *Kompas*, 27 September 2010, www.nasional.kompas.com (accessed on 12 November 2011).

153 Subordinate Courts Singapore, "Faces of Family Violence: A Profile Study on Family Violence," *Research Bulletin Issue No. 38*, December 2004, <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4473> (accessed 8 May 2012), 2-3.

154 Women's Aid Organisation, *Annual Statistics 2011*, <http://wao.org.my/file/file/WAO%20Annual%20Statistic%202011.pdf> (accessed 25 July 2012).

155 CUSO-VSO and GDG, *Rural Domestic Violence and Gender Research: Lao PDR*, 2004, 2.

Gaps in Policies that Facilitate Violence

The Country Reports indicated vacuums in policies that allow violence to take place. As example, in Singapore, the Ministry of Manpower has no official guidelines for employers on workplace sexual harassment and has no plans to develop them.¹⁵⁶ Thus, there is little motivation for companies to address the problem. Failures by companies to take reasonable steps to prevent and protect against sexual harassment related to their business and services would give opportunities for sexual harassment to occur, and for perpetrators to get away with it. In the Philippines, women's rights advocates said that the absence of divorce under the law limit the ability of women to escape abusive relationships.¹⁵⁷

Education and Awareness

Level of education was found to be a factor in prevalence of violence. For instance, a survey done in Singapore showed that individuals with lower education levels are at greater risk of family violence. Seventy-six per cent of complainants and respondents in PPO application cases filed in 2004 did not have at least a post-secondary education.¹⁵⁸ Likewise, a study in Lao PDR showed that less-educated women were more likely to experience violence than women who have some higher education.¹⁵⁹ Women in Cambodia, as well, were found to be more vulnerable to physical and emotional violence when they had fewer years of education than their husbands.¹⁶⁰

156 AWARE, *Research Study on Workplace Sexual Harassment*, 2008, 29.

157 See Christine Ong, "Women's groups push for divorce bill in Philippines," *channelnewsasia.com*, 17 June 2011, <http://www.channelnewsasia.com/stories/southeastasia/view/1135789/1/.html> (accessed 13 July 2012); and Rowena P. Festin, "Is the Philippines Ready for Divorce?" *Philippine Daily Inquirer*, 9 July 2011, <http://lifestyle.inquirer.net/5183/is-the-philippines-ready-for-divorce> (accessed 13 July 2012).

158 "Faces of Family Violence: A Profile Study on Family Violence," *Subordinate Courts Research Bulletin Issue No. 38*, December 2004 at 2 and 3, available at <http://app.subcourts.gov.sg/subcourts/page.aspx?pageid=4473>.

159 CUSO-VSO and GDG, *Rural Domestic Violence and Gender Research: Lao PDR*, 2004, 2.

160 Sothy Eng, Yingli Li, Miriam Mulsow, and Judith Fischer, "Domestic Violence against Women in Cambodia: Husband's Control, Frequency of Spousal Discussion, and Domestic Violence Reported by Cambodian Women," Published online: 20 October 2009, http://www.engagingmen.net/files/resources/2010/sysop/Cambodia_VAW.pdf (accessed 13 July 2012), 239, citing Yount, K., & Carrera, J. (2006). Domestic violence against married women in Cambodia. *Social Forces*, 85, 355–387. The study by Eng, et. al, however found

Gambling, Drugs, and Alcohol

Some Country Reports indicated vices as causes of violence. In Brunei Darussalam, a case study attributed violence against women to drug and alcohol addiction, pornographic movies, submissive girlfriends/ spouses and involvement in illegal crimes.¹⁶¹

The Country Report on Singapore noted that the strong association between family violence and drug and alcohol abuse has been emphasised. However, the last known local study on this area was a 2000 Subordinate Courts study covering 625 reported cases. The 2000 study found that 26.9% of the cases were possibly related to alcohol and drug abuse, while 23.1% were likely related.

The link between alcohol and violence seems to be supported by a 2011 domestic violence survey in Lao PDR. It was found that 26% of wives suffered domestic violence because the husband was drunk. Availability of alcohol in villages with alcohol-distillation activities has been noted as having a strong correlation to spousal violence.¹⁶² Some correlation¹⁶³ between alcohol use and physical and emotional abuse was also found in a study in Cambodia.¹⁶⁴ Recent studies have shown an alarming rate of alcohol use particularly among young men. In Malaysia

that, "Wife education in this study was not associated with any of the violence variables. One explanation for this insignificance may be due to distribution of the women's educational levels in the dataset. Almost all the women had below secondary school education (80%) [57% had primary school education and 28% had no education at all]. Thus, there may not be enough variance in education for it to be used as a predictor in the model.

161 Rogayah Abdullah, *Penderaan wanita di negara Brunei Darussalam: keskajian di daerah Brunei Muara* (Torture of Women In Brunei Darussalam: Case Study in Brunei-Muara District), Brunei: Dewan Bahasadan Pustaka, 2005.

162 Gesellschaft fur Technische Zusammenarbeit, "Rights-Based Approaches to Gender and Livelihoods," June 2007, 13.

163 In 2005, a survey "showed a strong link between alcohol and violence. In general, as the use of alcohol increased, violent behaviour increased as well." Ministry of Women's Affairs (MOWA), Kingdom of Cambodia, *Violence Against Women: A Baseline Survey*, 2005, 44. A follow-up survey in 2009, however, found that "results are mixed with no clear correlation between the two." Neary Rattanak (Ministry of Women's Affairs), *Violence Against Women 2009 Follow-Up Survey*, 21.

164 Sothy Eng, Yingli Li, Miriam Mulsow, and Judith Fischer, "Domestic Violence against Women in Cambodia: Husband's Control, Frequency of Spousal Discussion, and Domestic Violence Reported by Cambodian Women," Published online: 20 October 2009, http://www.engagingmen.net/files/resources/2010/sysop/Cambodia_VAW.pdf (accessed 13 July 2012), 246.

as well, the Women's Aid Organisation identified alcohol abuse as a triggering factor for domestic violence in 36% of cases received in 2011; drug abuse was indicated as a triggering factor for domestic violence in 22.7% of the cases received in the same year.¹⁶⁵

Remoteness, Inaccessibility to Services

Sexual violence against Penan women in Malaysia was found to be partly due to their remoteness. Along with poverty, remoteness of residence resulted in reliance on timber companies for transportation to obtain health services and education and also for basic goods. Other contributory factors included 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.¹⁶⁶

Ethnic Discrimination

The existence of discriminatory perceptions against ethnic minorities was acknowledged in Lao PDR's 2009 Periodic Report to the CRC Committee.¹⁶⁷ The Country Report on Lao PDR pointed out that ethnic discrimination would reinforce the vulnerability of ethnic minority women and girls.

Sexual Violence in Military Expansion

In Myanmar, it was noted that military expansion in ethnic areas has reportedly exacerbated prevalence of sexual violence.¹⁶⁸ In a summary report of 24 stakeholders'

submissions to the Universal Periodic Review, concern was raised over the culture of impunity and practice of widespread and systematic use of rape.¹⁶⁹ In addition, in some ethnic areas, "[m]ore than five decades of civil war have bred a culture of male domination, fear, and violence."¹⁷⁰

Other Factors

The Country Report on the Philippines cited fast pace of living, rapid technological development, urban migration and congestion, and increased participation of women in the labour force as some developments that put stresses and pressures on the family; these stresses can lead to maltreatment and abuse of children.¹⁷¹ In Myanmar, some anecdotes indicate that parents under financial stress and ignorance tend to use corporal punishment.¹⁷² A news article on a sermon given by Imams in Brunei Darussalam also indicated depression, anger, and dissatisfaction as causes of violence on women and children.¹⁷³

lands and resources. It serves multiple purposes: terrorizing local communities into submission; flaunting the power of the dominant troops over the enemy's women; humiliating and demoralizing ethnic resistance forces and also serving as a "reward" to its troops for fighting," 69.

165 Women's Aid Organisation, *Annual Statistics 2011*, <http://wao.org.my/file/file/WAO%20Annual%20Statistic%202011.pdf> (accessed 25 July 2012).

166 "Official Report on the Investigation of Allegations of Sexual Violence Against Penan Women in Sarawak," compiled by the Ministry of Women, Community and Family Development, <http://hornbillunleashed.files.wordpress.com/2009/09/penan-ir.pdf>.

167 "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." CRC, *Consideration of reports submitted by States: Lao PDR*, CRC/C/LAO/2, paragraph 31.

168 Women of Burma, *CEDAW Shadow Report: Burma 2008*, available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/Women_Burma42.pdf (accessed November 13, 2011), 69-70. "Sexual violence is being used by the regime as an integral part of its strategy to subjugate the ethnic peoples, and establish control over their

169 Human Rights Council, "Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council Resolution 5/1: Myanmar," A/HRC/WG.6/10/MMR/3, 18 October, 2010. at paragraph 28; Human Rights Council, "Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar, Tomas Ojea Quintana," A/HRC/13/48, 10 March 2010, paragraph 57.

170 Palaung Women's Organization (PWO), "Voices for Change: Domestic Violence and Gender Discrimination in the Palaung Area," 2011, available at <http://www.burmapartnership.org/2011/11/voices-for-change-domestic-violence-and-gender-discrimination-in-the-palaung-area/> (accessed December 24, 2011), 34.

171 Celia Yangco, "A Comprehensive Approach to Prevention of Child Maltreatment in the Philippines: Building Partnerships among Agencies, Organizations and the Community," [paper presented at the 130th International Training Course Visiting Experts' Papers, UNAFEI], http://www.unafei.or.jp/english/pdf/RS_No69/No69_13VE_Yangco.pdf (accessed 13 July 2012), 97.

172 "Myanmar Family and Perceptions," *Myanmars.net*, <http://www.myanmars.net/myanmar-culture/myanmar-family.htm> (accessed March 10, 2012).

173 "Domestic violence cases on the rise in Brunei: sermon," *The Brunei Times*, July 5, 2008, http://www.bruneitimes.com.bn/home_news/2008/07/05/domestic_violence_cases_on_the_rise_in_brunei_sermon (accessed March 8, 2012).

c. Impact

Poor physical and mental health was the most often cited impact of violence. For instance, the 2006 Violence against Women and Children Survey in Indonesia showed trauma as the most common impact, which was experienced by 69.5% of the abused women surveyed.¹⁷⁴ A study conducted by Komnas Perempuan on the effects of violence against women includes the following findings: permanent physical impairment, unwanted pregnancy that leads to unsafe abortion, miscarriage, still born, severe trauma, and suicide.¹⁷⁵

In the Philippines, women expressed fear that they were losing their sanity as an effect of violence. Some had confessed thoughts of killing abusive partners. At least two did prepare to kill their partners. Repeated abuse made women lose their self-esteem, making it more difficult for them to end abuse.¹⁷⁶

Data on the impact on physical and mental health were mostly available. The Country Reports on Malaysia and Brunei Darussalam, however, noted that there appears to be a need for thorough and systematic studies on the physical, psychological, and social impact of violence against women and children.

The Country Reports describe many negative social impacts of violence that cover a broad spectrum. For example, the Country Report on Myanmar indicated that domestic violence was found to have destroyed the stability of the family unit and left a negative impact on children. Children suffered from depression and shame due to social stigma of family problems. As a result, some dropped out of schools and ran away from the family.¹⁷⁷

174 Cited in Ciput E. Purwianti and Clara H. Salombe, Indonesia Country Report for the 2009 Women Leader Empowerment Seminar in Asia Pacific Region, undated, www.nwec.jp, (accessed 12 November 2011).

175 Komnas Perempuan, *MenguakMisteri di BalikKesakitanPerempuan*, 2006, 20.

176 Women Working Together to Stop Violence against Women (WWTSVAW), *Breaking the Silence, Seeking Justice in Intimate Partner Violence in the Philippines: A Review on the Implementation of Republic Act 9262 or the Anti-Violence against Women and their Children Act of 2004*, 2009, available at http://www.amnesty.org.ph/publications/pdfs/Phils_WOOC_VAW_report_final.pdf, 17.

177 Palau 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," *Asian Journal of Social Psychology* 8, (2005).

In Vietnam, it was found that around half of all divorces were partly due to domestic violence; the divorce rate continued to rise, but many women remained in abusive marriages rather than confront social and family stigma and economic uncertainty.¹⁷⁸ Domestic violence issued to be an important cause of family breakdowns, separations, divorces, infidelity, homelessness, prostitution, and trafficking of women and children.¹⁷⁹ In Indonesia, it was found that more than 30% of the divorce cases filed from 2006 to 2007 were based on the ground of domestic violence.¹⁸⁰

Survivors of sexual violence also revealed a wide range of negative impacts: deep psychological trauma, pregnancy and dying in childbirth, sexual diseases, being subjected to blame, discrimination, and social stigma.

In the case of religious-based violence, the Country Report on Indonesia noted the following impacts in a study on women and children of the Ahmadiyah group: loss of livelihood; loss of the right to start a family; loss of citizenship status. Reproduction of hate and severe trauma was observed on the children who witnessed violence against their parents or properties because of their belief.¹⁸¹

Children Specific Impact

Some Country Reports identified studies that were conducted specifically on the impact of violence on children. For instance, the Indonesian Ministry of Health (IMH) indicates that 10%-12% of children in Indonesia who fall victim to violence suffered physical and mental disorders.¹⁸²

In a preliminary national research study on violence against children in Cambodia, it was found that violence in childhood can affect children's ability to learn. It can

178 United States Department of State, "2009 Human Rights Reports: Vietnam," 11 March 2010, <http://www.state.gov/j/drl/rls/hrrpt/2009/eap/136015.htm> (accessed 13 July 2012).

179 VWU and Vietnamese NGOs, "Alternative Report: Ten years of implementing the Beijing Platform of Action in Vietnam," (2005), 14

180 CEDAW, *Indonesia 6th & 7th Report*, paragraph 207.

181 Neng Dara Affiah, *Marjinalisasi dan kekerasan terhadap Perempuan dan Anak pada Kelompok Agama Minoritas sebagai Tantangan Gerakan Perempuan*, 2010, 3-4.

182 Ministry of Health, "Decision of the Minister of Health No. 1226/Menkes/SK/XII/2009 (2009 MHG)," 16 December 2009, Annex, 2.

cause physical and emotional illness during childhood and into adulthood. It can lead to isolation, depression, and suicidal behaviour. It can lead to criminal and risk-taking behaviour, including drug and alcohol abuse. Sexual abuse of children can also have health-risk consequences including HIV/AIDS, sexually transmitted infections, pregnancy and negative self-esteem.¹⁸³

The effects of rape on young girls include being stigmatized by their communities. In Myanmar, some girls and families were forced to leave their homes and communities and some found it difficult to marry due to their stigmatized identities.¹⁸⁴ On child marriage, a research conducted in the Philippines showed that more than half of those between 15 to 17 years old who were surveyed reported poor socio-economic conditions after marriage because they had lost opportunities for education and work.¹⁸⁵ Of the women surveyed in the research, 3 in 4 experienced miscarriages and other reproductive health-related illnesses.¹⁸⁶

In Singapore, particularly as regards bullying, surveys show that 7% of primary and 10% of secondary school children reported harming themselves; 6% of secondary schoolchildren contemplated suicide. The actual rate of suicide resulting from bullying, however, is unknown.¹⁸⁷ As regards corporal punishment, a study showed that it tends to build up resentment and shame, and has resulted in behavioural and emotional problems in children.¹⁸⁸

183 Glenn Miles, *Stop Violence Against Us, A Preliminary National Research Study*, 1.

184 Human Rights Education Institute of Burma (HREIB), "Forgotten Future: Children Affected By Armed Conflict in Burma," September 2008, accessed January 10, 2012, http://www.hreib.com/index.php?option=com_aBookandview=bookandcatid=andid=1%3AForgotten-future-children-affected-by-armed-conflict-in-burmaandItemid=410, pg. 55-56.

185 "Intervention by Johaira Wahab of Nisa Ul Haqq Bansa Moro (Women for Justice in the Bangsa Moro)." *United Nations Office of the High Commissioner for Human Rights*, <http://www2.ohchr.org/english/bodies/hrcouncil/minority/docs/session4/ItemV/Participants/NisaUlHaqqFiBangsaMoroPhilippines.pdf> (accessed 7 July 2012).

186 *Ibid.*

187 Koh Chee Wan and Tan Annie, *Bullying in Singapore Schools*, SCS, Research Monograph No. 8, July 2008, <http://www.childrensociety.org.sg/images/stories/ResearchPublicEducationPublications/bullying.pdf>, 29-30.

188 Beyond Social Services, "Feedback on the Implementation of the United Nations Convention on the Rights of the Child 2010," at 4, citing Lee Y.P., Fung D.S., Wei K.C., Woo B.S., Teo J., "Between the rod and reason: a study of parental disciplinary methods and child emotional/behavioural outcomes," *Annals of the Academy of*

2. De Jure State Responses

General Observations

The Country Report on Lao PDR indicates that the definition of discrimination in the Decree on the Implementation of the Law on the Development and Protection of Women 2006 is closely in accord with that in CEDAW.¹⁸⁹ There are, however, concerns that there is no actual prohibition of discrimination in either the Law or the Implementation Decree.¹⁹⁰

The Special Rapporteur on freedom of religion or belief noted that women in Brunei Darussalam face discrimination in the application of religious laws in areas such as divorce, inheritance, custody of children and transmission of citizenship. The principle of non-discrimination is not expressed in Brunei Darussalam's legislation and discrimination reportedly persists against girls and children born out of wedlock under existing personal status law.¹⁹¹

In Indonesia, it was noted that most legislation only contains the general principle of non-discrimination, without specifically referring to discrimination against women.¹⁹² Malaysia's constitutional prohibition against gender discrimination was found not to extend to gender discrimination by private companies or individuals.¹⁹³ The Constitution also does not directly address gender-

Medicine, Singapore 33 (Sept 2004), 27-28. Available at <http://www.beyondresearch.sg/>.

189 Article 2, Decree on the Implementation of the Law on the Development and Protection of Women 2006: "Discrimination against women is all forms of distinction, exclusion or restriction on women made on the basis of sex which has the effect of nullifying the recognition by society of the equality of men and women in the enjoyment of human rights and freedoms in the political, economical, cultural and social or any other fields."

190 UNIFEM, *Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries*, 2nd ed., March 2010, 4 and 89.

191 UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Brunei Darussalam*, 27 October 2003, CRC/C/15/Add. 219, paragraph 24.

192 CWGI, *Independent Report of NGOs 2007*, paragraph 34.

193 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.

based violence whether committed by the state or non-state actors.

According to the CEDAW committee, Myanmar's 2008 Constitution does not effectively guarantee substantive equality in accordance with the CEDAW's definition of discrimination. In spite of the fact that the Constitution formally indicates sex as a ground of discrimination in the appointment of government posts, the Constitution adds that "nothing in this section shall prevent appointment of men to the positions that are naturally suitable for men only."¹⁹⁴ Also worth noting is that Myanmar does not have a specific national law for children.

The CEDAW Committee noted the lack of progress on the part of the Philippines to revise discriminatory legislation, particularly provisions of the Code of Muslim Personal Laws, which permit marriage of girls under the age of 18, polygamy and arranged marriages.¹⁹⁵ Moreover, according to the CRC Committee, children born out of wedlock, still face discriminatory practices, such as their classification as "illegitimate" and their restricted right to inherit.¹⁹⁶

The Country Report on Singapore indicated that only citizens are referred to in the Constitution's express prohibition on non-discrimination.¹⁹⁷ This, and Singapore's immigration-related reservation to CEDAW, is pertinent in understanding the country's immigration policies as they are relevant to the issues subject of this Study.

Thailand made reservations to Article 16 of the CEDAW relating to marriage and family relations as such: "In all matters which concern national security, maintenance of public order and service or employment in the military or

paramilitary forces, the Royal Thai Government reserves its right to apply the provisions of the Convention on the Elimination of all forms of Discrimination against Women, in particular articles 7 and 10, only within the limits established by national laws, regulations and practices." Thailand ratified the CRC also with a reservation on the right of the refugee child in Article 22: "The application of articles 22 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand."

Assessment of State Policies

Domestic Violence

Most of the countries in the ASEAN region enacted special laws on domestic violence. Myanmar, however, does not have specific legal provisions on domestic violence. Laws that penalize offences that cause bodily harm against persons instead are used. Brunei Darussalam has no special domestic violence law, however both the Married Women Act (Amended) 2010 and the Islamic Family Law (Amendment) Order 2010 were amended to include a common definition of "domestic violence".

As can be seen in the chart below, there are substantive variations in the acts covered and persons protected by the respective laws of the ASEAN Member States relative to domestic violence.

¹⁹⁴ CEDAW, *Concluding Observations 2008*, paragraph 10.

¹⁹⁵ CEDAW, *Concluding Comments: Philippines 2006*, paragraph 11.

¹⁹⁶ UN Committee on the Rights of the Child, *Concluding observations: The Philippines*, 22 October 2009, CRC/C/PHL/CO/3-4, paragraph 86.

¹⁹⁷ Article 12 states: "Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment." Article 12 does however enshrine the principle of equality of all persons before the law, and equal protection of the law for all persons.

Country	Definition of Domestic Violence
Brunei Darussalam	<p>The Married Women Act (Amended) 2010 and Islamic Family Law (Amendment) Order 2010 define domestic violence as the commission of any of the following acts:</p> <ul style="list-style-type: none"> • Wilfully or knowingly causing, or attempting to cause, a family member to be in fear or hurt; • Causing hurt to a family member by such act which is known or ought to have been known would result in hurt; • Compelling the family member by force or threat to engage in any conduct or act which he has the right to abstain; • Wrongfully confining or restraining a family member against his will; • Continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or • Causing destruction, damage, or loss to property of a family member or causing financial loss to a family member.¹⁹⁸
Cambodia	<p>The Law on the Prevention of Domestic Violence and the Protection of Victims, states as follows: <i>Article 2.</i> Domestic violence is referred to the violence that happens and could happen towards:</p> <ul style="list-style-type: none"> • Husband or wife • Dependent children • Persons living under the roof of the house and who are dependent of the households. <p><i>Article 3.</i> Domestic violence is required to be prevented in time effectively and efficiently and that it is required to take the most appropriate measures in order to protect the victims or the persons who could be vulnerable. Violence includes: Acts affecting life Acts affecting physical integrity Tortures or cruel acts Sexual aggression.</p>
Indonesia	<p>The Law on the Elimination of Domestic Violence (Undang Undang tentang Kekerasan Dalam Rumah Tangga or 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.”¹⁹⁹ Under Article 2(1) of KDRT Law, the scope of the Law includes:</p> <ul style="list-style-type: none"> • Husband, wife, and child (including foster child and stepchild); • 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 • Domestic worker that live in the same household.
Lao PDR	<p>“Domestic violence against women and children is 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.”²⁰⁰ The definition covers 3 types of violence, namely, acts or omissions that cause (1) physical impact, (2) mental impact, and (3) impact on assets.²⁰¹ In particular, “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.²⁰²</p>

Country	Definition of Domestic Violence
Malaysia	<p>Section 2 of the Domestic Violence Act states that domestic violence means the commission of any of the following acts:</p> <ul style="list-style-type: none"> • Wilfully or knowingly placing or attempting to place the victim in fear of physical injury; • Causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury; • Compelling 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; • Confining or detaining the victim against the victim's will; or • Causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim, by a person against – <ul style="list-style-type: none"> » his or her spouse; » his or her former spouse; » a child; » an incapacitated adult; or » any other member of the family. <p>“Spouse” includes a de facto spouse, that is to say, a person who has gone through a form of 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.</p>
Myanmar	<p>There is no specific law relating to domestic violence. However, any person inflicting violent acts hurting other persons can be held liable under sections 319 to 338 of the Penal Code.</p>
Philippines	<p>Section 3 (a) of the Violence Against Women and Their Children Act of 2004 (Republic Act 9262) states as follows: “<i>Violence against women and their children</i>” refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.</p>
Singapore	<p>“Family violence” means the commission of any of the following acts:</p> <ul style="list-style-type: none"> • Wilfully or knowingly placing, or attempting to place, a family member in fear of hurt; • Causing hurt to a family member by such act which is known or ought to have been known would result in hurt; • Wrongfully confining or restraining a family member against his will; • Causing continual harassment with intent to cause or knowing that it is likely to cause anguish to a family member, but does not include any force lawfully used in self-defence, or by way of correction towards a child below 21 years of age.²⁰³
Thailand	<p>Section 3 of the Protection of Victims of Domestic Violence Act B.E. 2550 (2007) states as follows:²⁰⁴</p> <p>“Domestic violence” means any act committed with an intention to cause bodily, mentally or healthily harm of, or an act committed intentionally in a manner that may cause bodily, mentally or healthily harm of, a family member or any coercion or undue influence conducted with a view to make a family member to do something, refrain from doing something or accept any act illegally, but not including an act committed through negligence;</p> <p>“Family member” mean a spouse or ex-spouse, a person who cohabits or used to cohabit as husband and wife without marriage registration, legitimate child, adopted child, member of family, including the persons who live mutually in the same household.</p>

Country	Definition of Domestic Violence
Vietnam	<p>The Law on Domestic Violence Prevention and Control states as follows:²⁰⁵</p> <p>Article 1: Domestic violence is defined as purposeful acts of certain family members that cause or may possibly cause physical, mental or economic injuries to other family members.</p> <p>Article 2: Domestic violence acts: The acts of domestic violence consist of:</p> <ul style="list-style-type: none"> • Corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one's health and life; • Insulting or other intended acts meant to offend one's human pride, honour and dignity; • Isolating, shunning or creating constant psychological pressure on other family members, causing serious consequences; • Preventing the exercise of the legal rights and obligations in the relationship between grandparents and grandchildren, between parents and children, between husbands and wives as well as among brothers and sisters. • Forced sex; • Forced child marriage; forced marriage or divorce and obstruction to freewill and progressive marriage • Appropriating, demolishing, destroying or other purposeful acts to damage the private properties of other family members, or the shared properties of family members; • Forcing other family members to overwork or to contribute more earning than they can afford; controlling other family members' incomes to make them financially dependent; • Conducting unlawful acts to turn other family members out of their domicile. <p>2. The violent acts stipulated in paragraph 1 of this Article shall also be applicable to family members in cases of divorcees or living together as husband and wife without marriage registration.</p>

Assessments on the special domestic violence laws were readily available. Thus, the Country Reports were able to cite literature that considered the scope of the laws as regards persons protected and acts covered, criminal and civil remedies, access to relief, and support for survivors of domestic violence.

198 Married Woman Act Amendment Order 2010, 28 June 2010, available at http://www.agc.gov.bn/agc1/images/LAWS/Gazette_PDF/2012/EN/s063.pdf (accessed 12 March 2012).

199 KDRT Law, Art. 1(1).

200 Law on the Protection of Women, UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR, Article 29.

201 Law on the Protection of Women, UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR, Articles 30-32.

202 Law on the Protection of Women, UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR, Article 32. "Impact on assets" refers to "an intentional act of any individual in the family that causes damage to assets and results in consequences on the livelihood of family members, such as: the use of family assets for his or her own interests in an unlawful way, non-performance of obligations to take care of the family, causing women to lose their inheritance rights as provided in the laws, [and] destroying the house [or] property of the family"

The countries addressed the issue of domestic violence in a variety of ways. The domestic violence law in Indonesia limits the scope of its application to those people that live in the same household.²⁰⁶ In Malaysia, the law includes in its protection "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."²⁰⁷ This restriction has been criticized as it

203 Women's Charter, Chapter 353, Section 64, <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=d901df3f-d21b-46bc-840f-8e6b6ecdf5d5;page=0;query=CompId%3A61deee43-1e42-490f-a5ae-33054850e926;rec=0#pr64-he-> (accessed 19 March 2012).

204 Translation provided by *ThaiLaws.com*, <http://sgdatabase.unwom-en.org/uploads/DV%20PTC%20ACt%202550%20-%202007.pdf> (accessed 25 May 2012).

205 Law on Domestic Violence Prevention and Control as published on *International Knowledge Network of Women and Politics*, <http://www.iknowpolitics.org/node/9509> (accessed 25 May 2012).

206 KDRT Law, Art. 2.

207 Domestic Violence Act, Section 2.

discriminates against women cohabiting with a man who have not undergone any religious or customary marriage ceremonies.²⁰⁸

All the special laws in the region cover matrimonial relationships. Some, such as Cambodia and Indonesia, cover only existing matrimonial relationships; others, such as Malaysia and Singapore, include former spouses within the definition.²⁰⁹ In contrast, the Philippine law covers acts “against a woman who is his wife, former wife, or against a woman with whom the person has or had a *sexual or dating relationship*, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode.”²¹⁰ Vietnam, according to UN Women, has the widest coverage among ASEAN countries, as the law does not include any clause defining survivors or coverage and is gender neutral.²¹¹

The domestic violence law of the Philippines covers acts which result in or are likely to result in “physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or deprivation of liberty.”²¹² In Singapore, the definition of “family violence” encompasses physical, emotional and psychological harm. It does not include sexual or economic violence. Economic violence is also not included in the law against domestic violence in Cambodia.²¹³

The Implementation Decree of the Law on the Protection of Women of Lao PDR distinguishes between “*minor*” domestic violence and “*severe*” domestic violence.²¹⁴

It has been observed that this may reinforce the social legitimization of such “minor” acts.²¹⁵

The Women’s Charter of Singapore provides two exceptions to acts that would otherwise constitute family violence: 1) self-defence, and 2) the correction of a child below 21 years of age. Violence committed in self-defence is expressly excluded from the definition of family violence. While this may protect women who perpetrate acts of violence in self-defence, it may provide a justification for men committing domestic violence.²¹⁶

Literature sites the absence of provisions for the element of self-defence in Cambodian legislation as regards women protecting themselves from domestic violence.²¹⁷ Interestingly, the law against domestic violence states that disciplining persons, including spouses, in accordance with Khmer culture is allowed.²¹⁸ There is potential for Cambodian men to use this provision to protect themselves from criminal prosecution for domestic violence.²¹⁹

In some countries, such as Indonesia, the Philippines, and Thailand, criminal sanctions are included in the special laws.²²⁰ Some domestic violence laws, for instance those in Cambodia and Malaysia, do not criminalize domestic violence as a specific crime punishable by new penalties. 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

208 “Joint Action Group: The amendments to the Domestic Violence Act are not comprehensive enough,” *Women’s Aid Organization*, http://www.wao.org.my/news_details.php?nid=180&ntitle=The+amendments+to+the+Domestic+Violence+Act+are+not+comprehensive+enough (accessed 5 October 2011).

209 UN Women, *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices*, 2nd ed. (UN Women, 2011), 18.

210 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004, Section 3(a).

211 UN Women, *Domestic Violence Legislation in ASEAN*, X.

212 Republic Act No. 9262 or the Anti-Violence Against Women and Their Children Act of 2004, Section 3(a).

213 CAMBOW, *How Cambodian Laws Discriminate Against Women*, 9.

214 UNIFEM, (now UN Women) (can) *intiate Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries*, 2nd ed., March 2010, 89.

215 UN Committee on the Elimination of Discrimination against Women, *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, paragraph 23.

216 UN Women, *Domestic Violence Legislation in ASEAN*, 18.

217 CAMBOW, *How Cambodian Laws Discriminate Against Women*, 9.

218 The Law on the Prevention of Domestic Violence and the Protection of Victims, Article 8. “Every disciplining by giving advice or reminding or appropriate measures taken to allow spouses or children or dependent persons to follow the good ways of living with dignity and the nation’s good custom and tradition, if the disciplining and teaching are conducted with the noble nature (consisting of compassion, pity, joy at other’s happiness, and sincerity) and in accordance with the principles of the United Nations Conventions on Human Rights and Child Rights recognized by the Kingdom of Cambodia, shall not be included as the use of violence or domestic violence.”

219 CAMBOW, *How Cambodian Laws Discriminate Against Women*, 10.

220 UN Women, *Domestic Violence Legislation in ASEAN*, X.

domestic violence.²²¹

The Country Report on Indonesia also pointed out that the domestic violence law in Indonesia is treated as *delik aduan* or offence on complaint. Only the victim or a person holding a power of attorney from the victim (or, in the case of a minor, the parent or guardian or the police after the child has filed a complaint) can initiate an investigation.²²² In contrast, in Thailand for instance, complaints can be made not only by the victim, but also by anybody who sees or has information about domestic violence. The Protection of Victims of Domestic Violence Act states that it is everyone's public duty to report domestic violence.²²³ Access to support services is recognized as a legal right in Lao PDR, the Philippines, and Vietnam.²²⁴

Except for the Philippines and Lao PDR, the domestic violence laws in ASEAN countries are formulated in a gender-neutral manner. It has been said that the gender-neutral formulations of domestic violence laws do not reflect international and ASEAN standards.²²⁵

Rape

As indicated by the chart below, there is a wide range of variation in the way in which rape is defined in the legislation of ASEAN member states.

Country	Rape: How Committed
Brunei Darussalam	A man is said to commit rape, who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the 5 following descriptions— against her will; without her consent; with her consent, when her consent has been obtained by putting her in fear of death or of 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; with or without her consent when she is under 14 years of age. ²²⁶
Cambodia	Rape is committed as follows: “All acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into sexual organs of a person of either the same sex or different sexes by violence, coercion, threat or surprise constitutes a rape: The rape is punishable by an imprisonment from 5 (five) to 10 (ten) years.” ²²⁷
Indonesia	Rape is committed when: “Any person who, by using force or threat of force, forces a woman to have sexual intercourse with him out of marriage, shall, being guilty of rape, be punished by a maximum imprisonment of 12 years.” ²²⁸
Lao PDR	Rape is constituted when: “Any person [uses] 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” ²²⁹ However, the exception is where the woman is the offender's spouse. ²³⁰ Sexual intercourse with a girl or boy under 15 years of age is criminalized. ²³¹

221 “Joint Action Group: The amendments to the Domestic Violence Act are not comprehensive enough,” *Women's Aid Organization*, http://www.wao.org.my/news_details.php?nid=180&ntitle=The+a+mendments+to+the+Domestic+Violence+Act+are+not+comprehensive+enough (accessed 5 October 2011).

222 KDRT Law, Articles 26–28.

223 The Protection of Victims of Domestic Violence Act B.E. 2550 (2007), Section 5.

224 UN Women, *Domestic Violence Legislation in ASEAN*, *Ibid*, xi (para. 20).

225 *Ibid*, 15. “The enactment of “special” laws is to advance international goals of equality and to recognise violence against women as an impediment to women's human rights, as stated in the ASEAN DEVAW. Therefore, the gender-neutral formulations of laws in ASEAN states do not reflect the understanding reiterated in the international and ASEAN standards.”

226 Penal Code, Section 375.

227 Penal Code of Cambodia 2010, Article 239.

228 Penal Code, Article 285.

229 Penal Law, Article 128; UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

230 *Ibid*.

231 *Ibid*, Article 129.

Country	Rape: How Committed
Malaysia	<p>“375. A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions: against her will; without her consent; with her consent, when her consent has been obtained by putting her in fear of death or hurt to herself or any other person, or obtained under a misconception of fact and the man knows or has reason to believe that the consent was given in consequence of such misconception; with her consent, when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married or to whom she would consent; with her consent, when, at the time of giving such consent, she is unable to understand the nature and consequences of that to which she gives consent; with or without her consent, when she is under sixteen years of age.”²³²</p>
Myanmar	<p>“A man is said to commit ‘rape’ who, except in the case hereinafter excepted has sexual intercourse with a woman under circumstances falling under any of 5 following descriptions: Against her will; Without her consent; With her consent, when her consent has been obtained by putting her in fear of death or of 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 With or without consent when she is 14 years of age Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”²³³</p>
Philippines	<p>Rape, when and how committed- By a man who shall have carnal knowledge of a woman under any of the following circumstances: through force, threat or intimidation; when the offended party is deprived of reason or is otherwise unconscious; by means of fraudulent machination or grave abuse of authority; when the offended party is under 12 years of age or is demented even though none of the circumstances mentioned above be present. By any person, who under any of the circumstances mentioned in paragraph 1 hereof shall commit an act of sexual assault by inserting his penis into another person’s mouth or anal orifice or any instrument or object into the genital or anal orifice of another person.²³⁴</p>
Singapore	<p>Any man who penetrates the vagina of a woman with his penis — without her consent; or with or without her consent, when she is under 14 years of age, shall be guilty of an offence. Marital rape is excluded as an offence save in limited circumstances.²³⁵ “Woman” is defined as a female human being of any age.²³⁶</p>
Thailand	<p>Whoever has sexual intercourse with other person, being in the condition of inability to resist, by committing any act of violence or by making such another person misunderstand himself of herself as another person, shall be punished with imprisonment of four to twenty years and fined eight thousand to forty thousand baht. The sexual intercourse according to the first paragraph means committing of doer’s sexual desire by using doer’s sexual organ, for committing other person’s sexual organ, anus or oral cavity, or using any things for committing against other person’s sexual organ or anus.²³⁷</p>
Vietnam	<p>“Those who use violence, threaten to use violence or take advantage of the victims’ state of being unable for self-defence or resort to other tricks in order to have sexual intercourse with the victims against the latter’s will shall be sentenced to between two and seven years of imprisonment.”²³⁸</p>

232 Act 574, Penal Code, Incorporating all amendments up to 1 January 2006, Section 375, as published on *Attorney General’s Chambers*, <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf> (accessed 13 July 2012).

233 Penal Code, Section 375, as published on *Interpol*, <https://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaMyanmar.pdf> (accessed 13 July 2012).

234 Revised Penal Code, Art 266-A.

235 Penal Code, Section 375.

236 *Ibid*, Section 2.

237 Penal Code, Section 276.

238 The Penal Code of Vietnam (Eng. translation provided by World Legal Information Institute, 2009), Article 111.

In some countries, the definition of rape has been criticized as being too narrow and not reflecting important developments in progressive jurisprudence on sexual violence. This is particularly manifested in requirements for proof of violence rather than the absence of consent on the part of the victim. For instance, in Cambodia, the provision on rape makes no reference to consent. Cambodian law makes “cruelty, coercion and surprise” the defining elements of rape, not the absence of consent. This reportedly tends to lead judges to seek evidence of serious violence and injuries in any rape case, ignoring the fact that many victims may not struggle with their attackers for fear of being further injured or killed.²³⁹

The Indonesian Criminal Code also does not mention rape on the basis of lack of consent. Further, provisions on rape 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.²⁴⁰ However, at present the government of Indonesia is reportedly planning to replace the present Criminal Code.

The Philippine law on rape does not provide for a comprehensive definition of consent as well. The Supreme Court has, however, issued decisions stating that consent should be proven as defence in rape cases.²⁴¹ An examination of the different jurisprudence on consent vis-à-vis rape would be worthwhile considering as a possible new area of research.

In Lao PDR, the definition of rape has been described as narrow, perhaps due to ambiguity in the interpretation of “in order to have sexual intercourse with the woman against her will,” and the State has been urged to widen the definition to include any sexual relations without the woman’s consent.²⁴²

239 CAMBOW, *How Cambodian Laws Discriminate Against Women*, 20.

240 The Criminal Code of Indonesia, Article 292.

241 See e.g. “In rape, the ‘sweetheart’ defense must be proven by compelling evidence: first, that the accused and the victim were lovers; and, second, that she consented to the alleged sexual relations. The second is as important as the first, because this Court has held often enough that love is not a license for lust.” *People of the Philippines vs. Reynaldo Olesco y Andayang*, G.R. No. 174861, 11 April 2011, citing *People v. Bautista*, G.R. No. 140278, 3 June 2004.

242 UN Committee on the Elimination of Discrimination against Women, *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, paragraphs 25 and 26.

Spousal Rape

According to the laws of Brunei Darussalam, sexual intercourse by a man with his wife, as long as she is not under 13 years of age, is not rape. Protections against “sexual assault” by a spouse are provided under Islamic Family Law Order 2010 and Married Women Act 2010.²⁴³

In Cambodia, the Law on the Prevention of Domestic Violence and the Protection of Victims recognizes marital rape by including “sexual aggression” as a form of domestic violence and incorporating “violent sex” as an element of “sexual aggression”. Unfortunately, there is no definition of the term “violent sex” in the law. Many Cambodian wives may not struggle against their husbands and remain silent while being raped.²⁴⁴

Indonesia criminalised marital rape in 2004 through the enactment of KDRT Law. According to Komnas Perempuan, the wide definition is sufficient to include the act of marital rape.²⁴⁵ However, Amnesty International argues that the KDRT Law does not specifically refer to rape but only to “sexual violence”. Amnesty International added that the KDRT Law requires at least two elements of proof and, further, the case of marital rape is treated as *delik aduan* or offence on complaint.²⁴⁶

Malaysia’s Penal Code was amended in 2007 to criminalize a husband’s use of force against a wife for sexual intercourse. The CEDAW Committee criticized the new provision as narrow and criminalizes sexual assault based on use of force and death threats, rather than marital rape based on lack of consent of the wife.²⁴⁷ However, a man was jailed in 2009 for forcing his wife to have sex with him. This is the first successful prosecution under the 2007 amendment to the Penal Code, and is considered to be a significant breakthrough for women’s rights in Malaysia.²⁴⁸

243 United States Department of State, *2010 Human Rights Report: Brunei Darussalam*.

244 CAMBOW, *How Cambodian Laws Discriminate Against Women*, 20.

245 Komnas Perempuan, *10 Tahun Reformasi: Kemajuan dan Kemunduran Perjuangan Melawan Kekerasan dan Diskriminasi Berbasis Gender*, 1 February 2008, 7.

246 Amnesty International, *Left Without a Choice*, available at <http://www.amnesty.org/en/news-and-updates/report/indonesia-left-without-choice-barriers-reproductive-health-indonesia-2010-11>, 19.

247 CEDAW, *Concluding Observations*, paragraph 21.

248 “Malaysian jailed for marital rape,” *Sydney Morning Herald*, August 6, 2009, <http://news.smh.com.au/breaking-news-world/malaysian->

In Myanmar, spousal rape is not a crime unless the wife is under 14 years old.²⁴⁹ In Lao PDR, the provision on rape does not apply where the woman is the offender's spouse.²⁵⁰ There is no specific clause on "marital rape" in the Penal Code of Vietnam. The 2007 US State Department Report on Human Rights confirms that there were no known instances of prosecution for spousal rape or sexual harassment in Vietnam.²⁵¹

In Singapore, marital rape is excluded from the offence of rape, except where

the wife is living apart from her husband and (a) the marriage is in the process of being terminated, or (b) the wife has applied for a PPO against the husband;

or the husband has (a) been restrained by the court from having sexual intercourse with the wife, or (b) had PPOs in respect of their wives in force against them.

Singapore's policy of keeping immunity for marital rape is based in essence on the so-called "second-guessing" that can occur between husband and wife over whether the wife has consented to sex.²⁵²

In Thailand, Criminal Code Amendment Act (No.19) B.E. 2550 (2007) revised the definition of rape to cover rape of people of all sexes, all types of sexual penetration, criminalise marital rape and impose more severe penalties. The amendment removed the previous distinction that limited rape to sexual intercourse between a man and a woman who is not his wife.²⁵³

Philippine laws implicitly recognize marital rape, since it provides that subsequent forgiveness by the wife as offended party, in case the husband is the offender,

jailed-for-marital-rape-20090806-eb1q.html.

249 United States Department of State, "2009 Human Rights Report: Burma," Penale code 376, Chapter XVI.

250 Article 128 of the Penal Law; UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

251 US State Department, "2007 Country Report on Human Rights Practices. Vietnam".

252 *Parliamentary Debates Singapore: Official Report*, vol 83 at col 2175 (22 October 2007).

253 *The UN Secretary-General's database on violence against women*, <http://sgdatabase.unwomen.org/searchDetail.action?measureId=18245&baseHREF=country&baseHREFId=1277> (accessed 13 July 2012).

extinguishes the crime or penalty of rape.²⁵⁴ However, the CEDAW Committee expressed concern over the fact that forgiveness from the wife extinguishes the criminal dimension and severity of the act.²⁵⁵ The Committee on Economic, Social and Cultural Rights (CESCR) also shares this view.²⁵⁶

Age of Consent and Marriageable Age

Tabulated hereunder are the ages of consent and marriageable ages in the ASEAN countries. It should be noted that the CEDAW Committee recommends the minimum age of marriage to be 18.²⁵⁷

254 Revised Penal Code, Article 344. "In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes."

255 CEDAW Concluding Comments: Philippines 2006, paragraph 15.

256 UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant [on Economic, Social and Cultural Rights]: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Philippines*, 1 December 2008, E/C.12/PHL/CO/4, paragraph 25.

257 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994, Article 16 (2); UNICEF: Child Protection Information Sheet, Child Marriage. http://www.unicef.org/protection/files/Child_Marriage.pdf, 16 May 2012.

Country	Age of Consent	Marriageable Age
Brunei Darussalam	16, unless "by way of marriage" ²⁵⁸ <i>Chinese Marriage Act</i> 15 ²⁵⁹	14 ²⁶⁰ <i>Chinese Marriage Act</i> Female: 15 ²⁶¹
Cambodia	15 ²⁶²	18; However, if one of the parties has attained the age of majority and the other party is a minor at least 16 years of age, the parties may marry with the consent of the parental power holders or guardian of the minor. ²⁶³
Indonesia	Female: Criminal Code: 15 ²⁶⁴ Both, Child Protection Law: 18 ²⁶⁵	Female: 16 ²⁶⁶ Male: 19 ²⁶⁷
Lao PDR	15 ²⁶⁸	18 ²⁶⁹
Malaysia	16 ²⁷⁰	Non-Muslim Male: 18 ²⁷¹ Non-Muslim Female: 18 (16, if with Licence by Chief Minister) ²⁷² Parental consent required for male and female until 21 ²⁷³ Muslim Male: 18 Muslim Female: 16 ²⁷⁴
Myanmar	14 ²⁷⁵	Marriage is said to be governed by multiple laws, including Myanmar Buddhist Woman Special Marriage and Succession Act 1954, the Islamic Law, the Christian Marriage Act, and the Hindu Customary Law. ²⁷⁶ <i>Buddhist Women Special Marriage and Succession Act</i> Non-Buddhist Male: puberty ²⁷⁷ Female: 14 ²⁷⁸ (but with consent of parents until 20 ²⁷⁹)
Philippines	12 ²⁸⁰	18 Parental consent required until 21 ²⁸¹ <i>Code of Muslim Personal Laws</i> ²⁸² Males: 15 Female: 15; 12 and has attained puberty upon order of Shari'a Court ²⁸³
Singapore	16 ²⁸⁴	18 Consent of parents or guardians required until 21 With Special Marriage Licence from the Ministry of Community Development: below 18 ²⁸⁵
Thailand	15 ²⁸⁶	17 ²⁸⁷
Vietnam	13 ²⁸⁸	Female: 18 Male: 20 ²⁸⁹

258 Laws of Brunei, Unlawful Carnal Knowledge Act, Section 2 (Revised Edition 1984, Chapter 29).

259 "Any person who has carnal connection with a female under 15 years of age by English computation shall be deemed to be guilty of an offence under section 2 of the Unlawful Carnal Knowledge Act, not with standing that a marriage ceremony by Chinese law or custom has been performed." Chinese Marriage Act, section 6(2).

260 The Marriage Act (Cap 76), section 3(1)(a), available at <http://www.agc.gov.bn/agc1/images/lob/pdf/Chapter%2076.pdf> (accessed 26 May 2012).

261 Chinese Marriage, Chapter 126, section 6(1), available at http://www.agc.gov.bn/agc1/images/LAWS/ACT_PDF/cap126.pdf.

262 Law on Suppression of Human Trafficking, and Sexual Exploitation, Article 42, available at <http://www.tpf-cambodia.com/downloads/new-law-on-legal-age.pdf> (accessed 27 May 2012).

263 The Civil Code of Cambodia, Article 948, available at <http://www.sithi.org/admin/upload/law/Civil%20Code%20English%202008.pdf> (accessed 27 May 2012).

264 Indonesian Penal Code. Article 287(1), available at http://www.wipo.int/clea/docs_new/pdf/en/id/id039en.pdf (accessed 27 May 2012). See also Cambodia National Council For Children (CNCC), *Report Reply to the List of Issues*, 44.

265 Law on Child Protection, Article 81.

266 Law No. 1 of 1974 on Marriage, State Gazette 1974: 1, 2 January 1974, Article 7.

267 Penal Code, Article 129. "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."

268 *Ibid.*

269 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Responses to the list of issues and questions with regard to the consideration of the combined 6th and 7th periodic reports: Lao People's Democratic Republic*, 22 June 2009, CEDAW/C/LAO/Q/7/Add.1, paragraph 28.

Sexual Harassment

“Sexual harassment” in the workplace is not specifically addressed in legislation in some countries, such as, Brunei Darussalam, Indonesia, Myanmar, and Vietnam. In Singapore the offence of outrage of modesty, as well as various offences under the Miscellaneous Offences Act, may instead be invoked. The existing nuisance offences, however, have been described as “far from sufficient” to address the issue.²⁹⁰

- 270 Penal Code (Act 574), Section 375(f), available at <http://www.agc.gov.my/Akta/Vol.%2012/Act%20574.pdf> (accessed 27 May 2012).
- 271 Law Reform (Marriage and Divorce) Act 1976 (Act 164), Section 10, available at <http://www.agc.gov.my/Akta/Vol.%2012/Act%20164.pdf> (accessed 27 May 2012).
- 272 *Ibid.*
- 273 *Ibid.*, Section 12.
- 274 Islamic Family Law (Federal Territories) Act 1984 (Act 303), section 8, available at <http://www.agc.gov.my/Akta/Vol.%2012/Act%20303.pdf> (accessed 27 May 2012).
- 275 Penal Code (Chapter XVI), Section 375, available at http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf (accessed 27 May 2012).
- 276 Social Institutions and Gender Index (SIGI), “Gender Equality and Social Institutions in Myanmar,” OECD Development Center <http://genderindex.org/country/myanmar> (accessed 27 May 2012).
- 277 *Ibid.*, citing CEDAW (2007) p.24.
- 278 *Ibid.*
- 279 “In 1999, the government reported that the legal age of marriage for women was 20 without the consent of parents.” *Ibid.*, citing CEDAW (1999) p.21.
- 280 RA 7610, Section 5, Article III, “Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.”; and Revised Penal Code of the Philippines, as amended by RA. 8353, Article 266-A, “Rape is committed: 1(d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.”
- 281 Family Code of the Philippines, Article 236, states that “[c]ontracting marriage shall require parental consent until the age of twenty-one.”
- 282 Presidential Decree No. 1083, Code of Muslim Personal Laws of the Philippines, Article 16(1) and (2), available at <http://www.chanrobles.com/presidentialdecreeno1083.htm> (accessed 27 May 2012); and “Intervention by Johaira Wahab of Nisa UI Haqq Bansa Moro (Women for Justice in the Bangsa Moro).”
- 283 Penal Code, Section 376A.
- 284 Registry of Marriages (Singapore), “Age,” available at http://app.rom.gov.sg/reg_info/rom_legal.asp (accessed 15 May 2012).
- 285 Penal Code, Section 277.
- 286 *Thai Civil Law Statute 2529*, Buddhist Calendar (1986 Ad), <http://www.chiangmailaw.com/marriage.htm> (accessed 26 May 2012).
- 287 Vietnam Penal Code, Article 112(4), Rape Against Children, available at http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=610 (accessed 27 May 2012).
- 288 AWARE, *CEDAW Shadow Report*, May 2011, 31.
- 289 The Marriage and Family Law, Article 9, available at http://moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=373 (accessed 27 May 2012); Khuat Thu Hong, Ph.D,

Adolescent Reproductive Health in Vietnam: Status, Policies, Programs, and Issues, http://www.policyproject.com/pubs/countryreports/ARH_Vietnam.pdf (accessed 27 December 2011).

290 AWARE, *CEDAW Shadow Report*, May 2011, 31.

Country	Legislation on “Sexual Harassment”
Brunei Darussalam	“Brunei does not have a law against discrimination or harassment in workplace for the women.” ²⁹¹ The law, however, “stipulates that whoever assaults or uses criminal force, intending thereby to outrage or knowing it is likely to outrage the modesty of a person, shall be punished with imprisonment for as much as five years and caning.” ²⁹²
Cambodia	Labour Law 1997: ²⁹³ Article 172. All employers and managers of establishments in which child labourers or apprentices less than eighteen years of age or women work, must watch over their good behaviour and maintain their decency before the public. All form of sexual violation (harassment) is strictly forbidden. Article 250. Sexual harassment is punishable by an imprisonment of between 6 (six) days to 3 (three) months and a fine of between 100,000 (one hundred thousand) Riels and 500,000 (five hundred thousand) Riels.
Indonesia	Indonesia does not define the term “sexual harassment” and no law particularly criminalizes sexual harassment in the workplace. ²⁹⁴ Article 289 of the Criminal Code, however, 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, be punished by a maximum imprisonment of nine years.”
Lao PDR	According to the State, the Penal Law and the Law on the Protection of Women will address instances of sexual abuse and harassment. ²⁹⁵ In this regard, the offence of outrage to decency is defined as “any act that causes embarrassment of a sexual nature to another person against such other person’s will.” ²⁹⁶ With regard to workplace sexual harassment, Article 19 of the Law on the Protection of Woman provides for the right to work in safe conditions.
Malaysia	The following definitions are excerpts from the Malaysian Code of Practice on Sexual Harassment in the Workplace. ²⁹⁷ Sexual Harassment means: Any unwanted conduct of sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment; <ul style="list-style-type: none"> • that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on his/her employment; or • that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or threat to his/her well-being, but has no direct link to his/her employment. Sexual harassment encompasses various conducts of sexual nature which can manifest themselves in five possible forms, namely: <ul style="list-style-type: none"> • verbal harassment i.e. offensive or suggestive remarks, comments, jokes, kidding, sounds, questioning. • non-verbal / gesture harassment i.e. leering, ogling, suggestive overtones, licking lips, holding or eating food provocatively, hand signal, sign language denoting sexual activities, persistent flirting. • visual harassment i.e. showing phonographic materials, drawing sex-based sketches, writing sex-based letters, sexual exposure • psychological sexual harassment i.e. repeated unwanted social invitations, relentless proposals for dates or physical intimacy, • Physical harassment i.e. inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling and sexual assault.
Myanmar	The term “sexual harassment” is not legally defined. However, Section 509 of the Penal Code states that: 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 heard, 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. ²⁹⁸
Philippines	The Anti-Sexual Harassment Act of 1995 (Republic Act 7877) states as follows: Work, education or training related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, train or or any other person who having authority, influence or oral ascendancy over another in a work, training or education environment, demands, requests or otherwise requires any sexual favour from the other, regardless of whether the demand request or requirement for submission is accepted by the object of the said Act.
Singapore	There is no law that specifically addresses sexual harassment; there is accordingly no legal definition of sexual harassment. Prosecutions, if any, would have to be founded on other criminal provisions, such as outrage of modesty or nuisance offences. For example, Section 354 of the Penal Code provides that whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person, commits an offence. “Outrage of modesty” is not defined. Also, section 509 of the Penal Code provides that 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 heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, commits an offence.

Country	Legislation on “Sexual Harassment”
Thailand	<p>Section 16 of the Labour Protection Act B.E. 2541 (1998) stipulates that sexual harassment is prohibited as follows: “It is forbidden for an employer or a person who is in overall charge of staff, a supervisor, or an inspector to sexually harass employees who are women or children.”</p> <p>The Civil Service Act B.E. 2551 (2008) also stipulates that sexual harassment is a prohibited act and the Civil Service Regulations Act on the Acts of Sexual Violation and Harassment B.E. 2553 (2010) defines five types of behaviour deemed to be sexual harassment in the workplace as follow:</p> <ul style="list-style-type: none"> • Sexual or physical contact, such as kissing, holding or touching certain parts of the body; • Sexualised talk, such as criticising or joking about body parts and telling dirty jokes to an unwilling audience; • Sexual gestures, such as looking at others in a sexual manner; • Communication with sexual content such as sending letters, messages or e-mails with pornographic content; and • Other actions deemed sexual and disturbing to others.
Vietnam	<p>There is no legal provision on the term “sexual harassment”. Instead the law penalizes forcible sexual intercourse under Article 113 of the Penal Code and the act of humiliating other persons under Article 121 of the Penal Code.</p>

In Thailand, the law forbids “an employer or a person who is in overall charge of staff, a supervisor, or an inspector to sexually harass employees who are women or children”.²⁹⁹ Further, the Civil Service Act B.E. 2551 (2008) stipulates that sexual harassment is a prohibited act and the Civil Service Regulations Act on the Acts of Sexual Violation and Harassment B.E. 2553 (2010) defines five types of behaviour deemed to be sexual harassment in the

workplace. Despite these measures, NGOs claim that the legal definition of harassment is vague and prosecution of harassment is difficult.³⁰⁰

Female Genital Mutilation

Neither Indonesia, nor Malaysia, nor the Philippines, where practices of genital mutilation have been recorded, was found to have specific laws defining “female genital mutilation” or “female circumcision”.

In the Philippines, however, harmful traditional practices have been listed as acts of violence against women in the Magna Carta of Women.³⁰¹ In Indonesia, The Criminal Code criminalises acts that cause bodily harm to anyone, including women. However, there is no legal provision particularly protecting women against violence committed specifically based on traditional practices or values. Moreover, in 2010, the Minister of Health of Indonesia issued a Ministerial Regulation on Female Circumcision to set up a more secure practice of female circumcision. This is seen as a step backwards as the Regulation, instead of prohibiting, regulates methods of female circumcision.³⁰²

Discriminatory Policies

The Country Reports indicated a number of policies

291 Zohari, Maryani, “Ensuring equal rights for women,” *The Brunei Times*, June 29, 2011, <http://www.bt.com.bn/opinion/2011/06/29/ensuring-equal-rights-women> (accessed 17 May 2012).

292 United States Department of State, “2010 Human Rights Report: Brunei Darussalam,” <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154379.htm> (accessed 25 May 2012).

293 MGD 5 Watch, “Cambodia,” http://www.mdg5watch.org/index.php?option=com_content&view=article&id=92&Itemid=154, (accessed 26 May 2012).

294 Komnas Perempuan, *2011 CEDAW Independent Report*, paragraph 10.

295 Lao People’s Democratic Republic, “Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic reports,” CEDAW/C/Lao/Q/7/Add.1, 22 June 2009, 24. The precise provisions were not identified.

296 Penal Law, Article 137, UNDP English translation endorsed by the Law Committee of the National Assembly of the Lao PDR.

297 Ms. Lekha Laxman, Asso. Prof Dr. Hishamuddin Md Som, Puan Maisarah Mohamed Saat, and Mr. Low Hock Heng, “A Study on Sexual Harassment in Small and Medium Enterprises of Malaysia,” VOT 71875, <http://eprints.utm.my/2682/1/71875.pdf> (accessed 13 July 2012).

298 The Penal Code, Section 509, as published in Online Burma/Myanmar Library, http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf (accessed 10 July 2012).

299 Labour Protection Act B.E. 2541 (1998), Section 16.

300 United States Department of State, *Country Reports on Human Rights Practices for 2010 – Thailand*.

301 Magna Carta of Women (Republic Act No. 9710), Section 4(k).

302 Amnesty International, *Left Without a Choice*, 18.

that discriminate against women and render them more vulnerable to violence, some of which are described here.

In Indonesia, despite vigorous advocacy against regional regulations that condone violence against women, Komnas Perempuan still found regulations that discriminate against women and enable violence against women to take place.³⁰³ Regional regulations enacted at provincial, municipality/regency, and village levels are said to mostly utilise unverified religious and moral reasoning in justifying the institutionalisation of discrimination against and criminalisation of women.³⁰⁴ In 2011, Komnas Perempuan found around 200 discriminatory regional regulations.³⁰⁵ Apart from regional regulations, Komnas Perempuan also identified several legislations and policies enacted at the national level of similar nature. These legislations and policies consist of, among others, 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.³⁰⁶

The Country Report on Malaysia also pointed out the need to ensure consistency of laws with CEDAW and CRC obligations. For instance, the Islamic Family Law Act makes it an offence for a wife to be disobedient to her husband.³⁰⁷ There is a danger that such a provision continues to affirm the notion that the Muslim wife is subservient and subordinate to the husband.

In Singapore, certain government immigration policies reportedly encourage the financial dependency of foreign wives on their local husbands. Marriage does not confer an automatic right to citizenship or permanent resident status; foreign wives depend on their husbands as visa or visit pass sponsors in order to stay in Singapore.³⁰⁸ This

303 Komnas Perempuan, 2010 Note, 1.

304 Komnas Perempuan, "Legal Opinion on the Judicial Review of Law No. 44/2008 on Pornography," 6 May 2009, 3.

305 UN OHCHR, 2012 Summary of Stakeholders' Reports, paragraph 21.

306 Komnas Perempuan, 2010 Note, 18.

307 Islamic Family Law (Federal Territories) Act 1984 (Cap 303), Section 129, available at <http://www.agc.gov.my/Akta/Vol.%207/Act%20303.pdf>, states as follows: "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."

308 AWARE, CEDAW Shadow Report, May 2011, paragraph 9.5. See

discourages foreign wives from leaving abusive husbands and makes them more vulnerable to coercion.

Corporal Punishment

Some Country Reports highlighted the fact that corporal punishment is allowed in certain circumstances in some countries.

In Malaysia, harm that is "done in good faith for the benefit of a person under 12 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 not an offence.³⁰⁹ Corporal punishment of male pupils in schools is permitted and is regulated under Education Regulations (Student Discipline) 2006. Judicial corporal punishment is also allowed for male children under 18 years old.³¹⁰ Female children are protected from school and judicial corporal punishment. There is, however, no such exemption for females, both children and adults, in the *Syariah* courts.

Corporal punishment is still lawful at home in Indonesia. There is no explicit prohibition of corporal punishment in schools or in penal institutions.³¹¹ The situation is aggravated by the adoption of regional regulations that tolerate corporal punishment on children. An example of such a regulation is the Regional Regulation in Aceh (Qanun) on the implementation of Sharia Law, which inflicts public flogging on anyone that violates Sharia Law, including people under the age of 18.³¹²

In Myanmar, the law 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."³¹³ The Penal Code also states, "Nothing which is done in good faith for the benefit of a person-under twelve years of age, or

also Singapore Council of Women's Organisations (SCWO), CEDAW Shadow Report, June 2011, 33; and Humanitarian Organization for Migration Economics (HOME). Shadow Report to 49th Session, 2011 CEDAW, paragraph 48.

309 Penal Code, Article 89.

310 The Child Act, Section 91(1).

311 UN OHCHR, 2008 Summary of Stakeholders' Reports, paragraph 13; and UN OHCHR, 2008 Summary of UN Documentations, paragraph 21.

312 NCWCR, 2011 Shadow Report I – UPR, paragraph 12.

313 Child Law (1993, revised 1999), Article 66 (d).

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.”³¹⁴ Corporal punishment is prohibited as a sentence for children below 16. However, corporal punishment is lawful as a disciplinary measure in prisons, including of children under the age of 16.³¹⁵

In Singapore, corporal punishment in institutional facilities for children and remand homes is permitted as a last resort for serious misconduct. Solitary confinement is permitted for children of and above 12 years of age, save in remand homes.³¹⁶ Corporal discipline at home is permitted. Force that is used to discipline a child less than 21 years of age is expressly provided to not amount to family violence.³¹⁷ Also, acts done in good faith for the benefit of a person under 12 years of age by a parent or guardian are a defence to certain crimes in the Penal Code.³¹⁸ The Child Care Centres Regulations specifically prohibits corporal punishment in child care facilities.³¹⁹

In Cambodia, Article 1045 of the Civil Code allows a “parental power holder to personally discipline the child to the extent necessary.” Article 8 of the Prevention of Domestic Violence and Protection of the Victims Law implicitly authorizes corporal punishment of children for disciplinary purposes.³²⁰

314 Penal Code, Article 89, cited from *Burma Lawyers’ Council*, <http://www.blc-burma.org/html/myanmar%20penal%20code/mpc.html> (accessed 29 May 2012).

315 Prison Act, Chapter XI, Articles 46, 47, 50, 53, cited in Peter Newell, “Myanmar: Briefing For the Human Rights Council Universal Periodic Review - 10th section, 2011,” *Global Initiative to End All Corporal Punishment of Children*, August 2010, www.endcorporalpunishment.org/pages/.../Myanmar%20UPR.pdf (accessed 10 January 2012).

316 Children and Young Persons (Government Homes) Regulations 2011 (Cap 38, Regulations 22-24, 2001 Rev Ed Sing), Regulations 22-24; Children and Young Persons (Licensing of Homes) Regulations 2011 (Cap 38, Regulations 25-27, 2001 Rev Ed Sing), Regulations 25-27; Children and Young Persons (Remand Homes) Regulations 2001 (Cap 38, Reg 20-21, 1993 Rev Ed Sing), Regulations 20-21.

317 Women’s Charter, Section 64.

318 Penal Code, Section 89.

319 Child Care Centres Regulations (Cap 37A, 2012 Rev Ed Sing).

320 Prevention of Domestic Violence and Protection of the Victims Law, Article 8: “Every disciplining by giving advice or reminding or appropriate measures taken to allow spouses or children or depend-

In Brunei Darussalam, corporal punishment is not expressly prohibited. The Children and Young Persons Order only prohibits injury that is “substantial and observable.”³²¹

Corporal punishment is also lawful at home in Thailand.³²² While corporal punishment is disallowed in schools,³²³ corporal punishment is lawful in alternative care settings.³²⁴

In Lao PDR, corporal punishment is lawful in the home.³²⁵

Reports identify several laws in the Philippines that protect children from neglect or negligent treatment, bullying, corporal punishment, and other degrading forms of punishment. One report however observed that the right given to parents to discipline children is not adequately limited. The laws refer to terms such as “may be required under the circumstances”, “moderately”, and “just and reasonable rules, suggestions and admonitions”. Thus, restrictions under the laws are said to be too subjective, general, and vague to protect the physical integrity and human dignity of children.³²⁶

ent persons to follow the good ways of living with dignity and the nation’s good custom and tradition, if the disciplining and teaching are conducted with the noble nature (consisting of compassion, pity, joy at other’s happiness, and sincerity) and in accordance with the principles of the United Nations Conventions on Human Rights and Child Rights recognized by the Kingdom of Cambodia, shall not be included as the use of violence or domestic violence.”

321 Children and Young Persons Order, 2006, Part I, 2(3), available at <http://www.agc.gov.bn/agc1/images/LOB/Order/ABC/C/Children%20and%20Young%20Persons%20Order,%202006/Children%20and%20Young%20Persons%20Order,%202006.pdf> (accessed 05 July 2012): “(a) a child or young person is physically injured if -there is substantial and observable injury to any part of his body as a result of the non-accidental application of force or an agent to the child’s...”

322 Civil and Commercial Code, Section 1567 (2).

323 Ministry of Education Regulation on Student Punishment B.E.2548 (2005); and National Committee on Child Protection Regulation on Working Procedures of Child Protection Officers Involved in Promoting Behaviour of Students B.E.2548 (2005).

324 Child Protection Act, Article 61.

325 Global Initiative to End All Corporal Punishment of Children, “Briefing For The Committee On The Rights Of The Child Pre-Sessional Working Group,” September/October 2010, 1. Provisions against violence and abuse in the Penal Law, the Family Law, and the Law on the Protection of Children and the Law on the Protection of Women are not interpreted as prohibiting all corporal punishment in child rearing.

326 Save the Children, *Philippine Laws related to the Discipline and Punishment of Children*, 2006, 90.

In Vietnam, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions.³²⁷ However, there is no explicit prohibition of corporal punishment in child rearing, in schools, as a disciplinary measure, or in alternative care settings.³²⁸

3. Implementation, Monitoring, and Prevention

a. Complaints Process

Aside from describing the agencies tasked with overseeing the implementation of policies and the units that are tasked to receive complaints, the Country Reports indicated literature that aimed to assess how accessible redress is to survivors of violence. As noted below, there are significant gaps in accurate data in this area.

For example, in Singapore, for family violence cases, a 2007 Ministry of Community Development, Youth and Sports survey indicated that 73% of Singaporeans were aware of where to go for help when they experience family violence. Seventy-four per cent of respondents indicated that they would approach the police for help, while 26% would approach the Family Service Centres.³²⁹

In Cambodia, 97% of the respondents in a survey identified commune authorities or the police as available resources in cases of crisis. However, personal experiences of women respondents in seeking help when faced with violence showed that women were more likely to go to the commune authorities or village elders (14%), followed by telling friends or relatives (11%), and going to the courts or police (4%). Keeping quiet and doing nothing was by far the most common response to physical abuse by a spouse.³³⁰

Preference to turn to family or community leaders was also observed in Vietnam. A 2010 study indicates that 87% of domestic violence victims never sought help from formal services or people in authority. Usually women first turn to family or community members, only some women go to the Vietnamese Women's Union, who assists them with legal procedure in filing complaint.³³¹

In Myanmar, the Myanmar Women's Affairs Federation (MWAFF) provides free legal assistance and advice to women filing complaints. As of 2008, the MWAFF in Myanmar had 60 counselling centres. However, a survey of 600 respondents showed that majority consider mothers (25%) and community leaders (50%) as the main people who provide support for survivors of violence. Only 9% indicated the MWAFF; and 6.7% indicated the police.³³² In Indonesia, a 2010 Komnas Perempuan Note shows that 95% of victims of spousal violence opt to bring their grievance to the Religious High Court.³³³

Reports indicate that Lao PDR does not have a comprehensive and effective system of receiving complaints.³³⁴ There is no clear complaints procedure for complaints made under the Law on the Protection of Women and the Implementation Decree.³³⁵

Hotlines to report cases of violence were identified in Brunei Darussalam, Malaysia (Talian NUR 15999, which also administers Childline Malaysia for children in need of assistance), Indonesia (Telepon Sahabat Anak 129 or TeSA 129), Singapore (Child Protection Hotline and National Family Service Centre Helpline), Thailand (Prachabodi Centre 1300), Lao PDR (child protection hotline, Lao National Tourism Police and the Tourism Police) and Vietnam (Centre for Women and Development).

327 See Law on the Protection, Care and Education of Children, Article 7; Penal Code, Article 298; Code of Criminal Procedure, Article 6; and Decree No.114/2006/ND-CP on punishment of administrative violations on population and children, Article 21.

328 Global Initiative to End All Corporal Punishment of Children: <http://www.endcorporalpunishment.org/pages/progress/reports/vietnam.html> (accessed 25 April 2012).

329 MCYS, *Protecting Families From Violence: The Singapore Experience*, 2009 <http://app1.mcys.gov.sg/ResearchRoom/ResearchStatistics/ProtectingFamiliesFromViolence.aspx>, 20.

330 Neary Rattanak (Ministry of Women's Affairs), *Violence Against Women 2009 Follow-Up Survey*, available at http://www.un.org.kh/undp/media/files/Violence_Against_Women_2009_Follow-Up_Survey-Executive_Summary.pdf, 30.

331 General Statistics Office of Viet Nam, "Keeping silent is dying: Results from the National Study on Domestic Violence against Women in Vietnam," 25

332 Women's Protection Technical Working Group, "Women's Protection Assessments: Post Cyclone Nargis, Myanmar," May 2010, <http://reliefweb.int/node/361181> (accessed 14 November 2011).

333 Komnas Perempuan, *2010 Note*, 14.

334 UN Committee on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Lao People's Democratic Republic*, 7 August 2009, CEDAW/C/Lao/CO/7, paragraph 13.

335 UNIFEM (now UN Women), "Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries," 2nd ed., March 2010, 153.

Some Country Reports also describe One-Stop Crisis Centres (OSCC), such as those in Malaysia and Thailand. Singapore also has a Family Violence Networking System. In Malaysia, the first one-stop crisis centre was established in 1986. By 1998, one-stop crisis centres were established at all major hospitals.³³⁶ Thailand also has OSCCs in all public hospitals to handle cases of violence against women and children.

In Singapore, the Family Violence Networking System comprises of the police, hospitals, Family Service Centres, the courts, and the Ministry of Community Development, Youth and Sports (MCYS). Family Service Centres are ran by voluntary welfare organisations and supported by the MCYS. They provide counselling, casework intervention, financial assistance and support groups.³³⁷ There are 38 Family Service Centres in Singapore.³³⁸

In the Philippines, the Department of Health has also institutionalized a Women and Children Protection Unit in all its hospitals nationwide to provide quick response for survivors of violence 24 hours of the day. A training program to enable doctors to do forensic work was also developed.³³⁹

As compared to literature assessing policies and laws as they are written, fewer studies assess the effectiveness of those laws and complaints processes. The Country Report on Lao PDR noted not only the absence of consolidated statistical data and information (no household surveys have been conducted in relation to violence against women), but data resulting from monitoring and evaluation of the effectiveness of government institutions, regulations, and other measures are also not available.

In 2006, the Philippine Government said that a study has

336 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination against Women: State Party Report, Malaysia*, 12 April 2004, CEDAW/C/MYS/1-2, paragraph 268.

337 MCYS, "Protecting Families From Violence: The Singapore Experience," 2009, available at <http://app1.mcys.gov.sg/ResearchRoom/ResearchStatistics/ProtectingFamiliesfromViolence.aspx>, 7-9.

338 Ministry of Community Development, Youth and Sports (MCYS) website, <http://app1.mcys.gov.sg/Policies/StrongandStableFamilies/SupportingFamilies/FamilyProtectionWelfare/PolicyonProtectionWelfareofFamilies.aspx>.

339 Grace N. Mallorca Bernabe, "A Deeper Look at Violence Against Women (VAW): The Philippines Case," available at <http://www.monitor.upeace.org/pdf/Violence%20Against%20Women%20in%20the%20Philippines.pdf> (accessed 05 July 2012), 8.

yet to be made on the effectiveness of the Family Courts, as well as of the Anti-Violence against Women and Their Children Act of 2004.³⁴⁰ It has been observed that the legal process in the Philippines is costly and survivors may not have the means to appear in court for a prolonged period of time. The survivors of physical violence had usually moved away from their homes. Thus, the financial costs of court proceedings discourage women from seeking relief and justice. This is in spite of the waiver of docket fees and other expenses in the domestic violence law when the survivor is "indigent or in cases of immediate necessity due to imminent danger or threat of danger."³⁴¹ It should be noted that the situation is such despite existing laws that protect survivors of rape and witnesses from harassment.

b. Protection and Rehabilitation

Protection Orders

Where available under domestic violence legislation, Protection Orders were prominently indicated as remedies in cases of domestic violence. To illustrate, a Protection Order, in this case under the Philippine law—which was found to contain the most detailed provisions on this remedy,³⁴² may cover the following:

- Prohibition of the respondent (perpetrator) from threatening to commit or committing personally or through another, any of the acts penalized by the Anti-VAWC law
- Prohibition of the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner (victim-survivor) directly or indirectly
- Removal and exclusion of the respondent from the residence of the petitioner whether temporarily or permanently
- Directing the respondent to stay away from the petitioner and any designated family or household member at a distance specified by the court
- Directing lawful possession and use by the petitioner

340 UN Committee on the Elimination of Discrimination against Women, *Responses to the list of issues and questions with regard to the consideration of the combined fifth and sixth periodic reports: Philippines*, 17 May 2006, CEDAW/C/PHI/Q/6/Add.1, 6.

341 WWTSAV, *Breaking the Silence*, 36-39.

342 UNIFEM (now UN Women), "Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries," 2nd ed., March 2010, 26.

of an automobile and other personal effects regardless of ownership

- Granting temporary or permanent custody of a child/children to the petitioner
- Directing the respondent to provide support to the woman and/or her child if entitled to legal support
- Prohibition of the respondent from any use or possession of any firearm or deadly weapon and order him to surrender the same... including revocation of license and disqualification to apply for any license to use or possess a firearm
- Restitution for actual damages caused by violence inflicted including property damage, medical expenses and loss of income
- Directing the Department of Social Welfare and Development or any appropriate agency to provide temporary shelter and other social services that the petitioner may need
- Provision of other forms of relief as may be necessary to protect and provide for the safety of the petitioner³⁴³

Aside from applying for a Protection Order, the Country Report on Malaysia states that Muslim wives have the alternative of applying to the Syariah Court for a restraining order against her own husband under the Islamic Family Law Act. The Act empowers the Syariah court to order any person to refrain from acts of molestation pending any matrimonial proceedings or on or after the grant of an order of divorce or annulment.³⁴⁴

In the Philippines, *barangay* protection orders may be issued at the village level. Unfortunately, a survey in 2006 showed that only 18.13% of the reported domestic violence complaints resulted to the issuance of a *barangay* protection order. This is despite the fact that 96.3% of *barangay* officials were familiar with the VAWC Law. The reasons for the low number of protection orders were not discussed.³⁴⁵

343 See Anti-Violence Against Women and Their Children Act of 2004 (Republic Act 9262), Section 8. See also RA 9262, Sections 9-23; and RA 9262 Implementing Rules and Regulations, Rule IV.

344 UN Committee on the Elimination of Discrimination against Women, *Responses to the list of issues and questions for consideration of the combined initial and second periodic report: Malaysia*, 27 March 2006, CEDAW/C/MYS/Q/2/Add.1, paragraph 458.

345 WWTSAW, *Breaking the Silence*, 30.

Protection of the Identification of the Complainant

Notably, in Singapore, several measures are taken to protect the identity of complainants. The office for lodging complaints of family violence is away from the busy traffic of the courts.³⁴⁶ For certain criminal proceedings, including for under-aged sex, exploitation and trafficking, the press are prohibited from publishing any material that would lead to the identification of the survivors.³⁴⁷ In all civil and criminal proceedings involving children under 16, the publication of material that would lead to identification is prohibited.³⁴⁸

Proceedings for commercial sexual exploitation of minors, sexual grooming, and child sex tourism abroad may be held in closed court. Where such proceedings involve a girl under the age of 16, proceedings must be held in closed court.³⁴⁹ Further, women and children who are victims of certain crimes may testify by live video or live television link during the proceedings.³⁵⁰ The 2012 repeal of a provision in the Evidence Act, which allowed the sexual history of victims of sexual assault and rape to be used against them in court, has been lauded.³⁵¹

Police and MCYS officers conduct joint interviews of child victims of sexual abuse. This is done to reduce repeated interviews, which can confuse a child victim and retard his or her recovery.³⁵² Police officers investigating cases involving children who may have been abused are provided with child sensitivity training.³⁵³

Shelters

The Country Reports also identified shelters or centres

346 Society Against Family Violence (SAFV), *Singapore's Response to Family Violence: 1997 to 2007 – What Comes Next? Accessibility & Dissemination*, April 2008, <http://www.restorativecommunityconcepts.com/singapores-response-to-family-violence.html>, 44.

347 Women's Charter, Section 153.

348 Children and Young Persons Act, Section 35.

349 Women's Charter, Section 153.

350 Criminal Procedure Code 2010, Section 281.

351 *Parliamentary Debates Singapore: Official Report*, vol 88, col 44 (14 February 2012).

352 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: 4th periodic report of States parties: Singapore*, 3 April 2009, CEDAW/C/SGP/4, paragraph 136.

353 *Ibid*, paragraph 105.

available to women and children suffering from violence. One notes a wide variation in ASEAN in the availability of such facilities.

Thailand has established free shelters called “Emergency Home for Children and Family”. The shelters are available in Bangkok and every province.³⁵⁴ A Centre in Nontaburi province provides compulsory education for women and girls, as well as career training in various areas e.g. culinary skills, hospitality services, and production of handicrafts.³⁵⁵

Malaysia reportedly has shelters for abused and battered women and children provided by both governmental as well as voluntary organisations.³⁵⁶ Notably, in 2010, the Malaysian government approved Social Work Competency Standards to serve as guidelines for social workers.³⁵⁷ More information, however, is required on the sufficiency of available shelters and accessibility of the same. In Singapore, three crisis shelters for women provide victims with temporary accommodation, protection, practical assistance programmes, and emotional support.³⁵⁸ Whether the shelters are enough has been of concern, as they reportedly have limited capacity and resources.³⁵⁹

The Country Report on the Philippines noted the gap between the demand for social welfare services and their availability. There are only 43 Department of Social Welfare and Development shelters in the country for 117 cities and 79 provinces. Social welfare offices under the administration of local government units were evaluated also as inadequate, especially for rural women.³⁶⁰

Some Country Reports identified shelters that specifically take in children. These include the All Children’s Homes in Malaysia, where children may stay for a specified period as determined by the Court for Children. There are currently 11 Shelter Homes for neglected, abused, abandoned and orphaned children under the purview of the Department of Social Welfare in Malaysia.³⁶¹ Notably, in 2010, the Department of Social Welfare of Malaysia developed minimum standards of care for children in care centres managed by NGOs to ensure that children are protected in institutional settings.³⁶² For abused children in Brunei Darussalam, a shelter home under the supervision of the Social Affairs Services Unit is provided.

In Myanmar, the Department of Social Welfare provides social care and protection to children in need. However, it was observed that children with various problems and specific needs, e.g., children with disabilities, survivors of abuse and exploitation, those affected by HIV/AIDS, those with behavioural problems, and street children, are placed together in one place.³⁶³ Literature pointed out the limited capacity of staff working with the children and a lack of professional social workers, both in public and private institutions.³⁶⁴ In Vietnam, a UN fact sheet stated that, “There is a lack of referral services for abused children and young people as well as services for out-of-home care in Viet Nam.”³⁶⁵ In Cambodia as well, it was

354 The UN Secretary-General’s database on violence against women, <http://webapps01.un.org/vawdatabase/countryIndex.action?countryId=1277> (accessed 15 November 2011).

355 Ministry of Foreign Affairs, “Thailand’s Policies and Initiatives on the Prevention of Violence against Women,” http://www.mfa.go.th/humanrights/index.php?option=com_content&view=article&id=68:thailands-policies-and-initiatives-on-prevention-of-violence-against-women-&catid=35:un-resolution&Itemid=73 (accessed 14 December 2011).

356 Malaysia’s CEDAW Report, paragraph 79.

357 Ministry of Women, Family and Community Development, *Child Protection and Child Welfare Services in Malaysia*.

358 Singapore’s Fourth CEDAW Periodic Report, paragraph 16.14.

359 AWARE, *CEDAW Shadow Report*, May 2011, paragraphs 19.40-19.43.

360 WWTSVAW, *Breaking the Silence*, 26.

361 United Nations, *Statement by the Honourable Gobalakrishnan Nagapan Member of Parliament and Representative of Malaysia on Agenda Item 65: Promotion and Protection of the Rights of Children*, available at www.un.int/malaysia/GA/66/66unga22_65children.pdf (accessed 25 July 2012).

362 Ministry of Women, Family and Community Development, *Child Protection and Child Welfare Services in Malaysia*, Beijing High Level Meeting, 4-6 November 2010, 10, available at http://www.unicef.org/eapro/Malaysia_Beijing_paper_26_Oct_2010_FINAL.pdf (accessed 25 July 2012).

363 CRC, *Concluding Observations 2012*, paragraph 44; Committee on the Rights of the Child (CRC), “Summary Record of the 960th Meeting Held at the Palais Wilson, Geneva, on Wednesday, 26 May 2004,” 8 June 2004, CRC/C/SR.960, paragraph 59; UNICEF East Asia and Pacific Regional Office, “Alternative Care for Children without Primary Caregivers in Tsunami-Affected Countries: Indonesia, Malaysia, Myanmar and Thailand,” 2006.

364 UNICEF, “Department of Social Welfare and UNICEF Jointly Lunches Report on the Situation of Children in Residential Care Facilities in Myanmar,” http://www.unicef.org/myanmar/media_17128.html (accessed 20 October 2011).

365 United Nations Viet Nam, “Fact Sheet: Young People and Protection,” available at http://www.un.org.vn/en/publications/cat_view/130-un-viet-nam-joint-publications/211-youth-joint-un-publications.html (accessed 10 July 2012).

found that “social services are limited and mainly found in Phnom Penh, limiting support, options, and redress for victims of violence against women.”³⁶⁶

In Lao PDR, the Country Report noted that information on the availability of shelters and health and social services for victims is very limited.³⁶⁷ Mechanisms to monitor decisions on placement of children in alternative care are observed to be absent.³⁶⁸ Rehabilitation and reintegration measures for child victims of abuse are reportedly lacking, and there are human and financial resource constraints.³⁶⁹

Treatment and Therapy

In Singapore, medical or psychological treatment and other forms of rehabilitative assistance for women and girls who are victims of violence are not statutorily provided for, however, these measures form part of the government’s protocol for dealing with violence cases. Counselling Orders may also be issued mandating the person against whom the order was made, the protected person, and their children to attend counselling.³⁷⁰

The Report on Singapore also noted that a neutral party, such as a counsellor from MCYS or the local NGO Beyond Social Services, usually convenes Family Group Conferences in child protection cases. The conference enables families to decide what needs to be done to ensure that children are safe and well cared for.³⁷¹

366 Ministry of Women’s Affairs, *Violence Against Women 2009 Follow-Up Survey*, 17.

367 UN Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Lao People’s Democratic Republic*, 7 August 2009, CEDAW/C/Lao/CO/7, paragraph 23.

368 CRC, *Concluding Observations: Lao PDR*, CRC/C/Lao/CO/2, paragraph 43.

369 *Ibid*, paragraph 47.

370 Women’s Charter, Section 65(5)(b). See also MCYS, *Protecting Families From Violence: The Singapore Experience*, 2009, <http://app1.mcys.gov.sg/ResearchRoom/ResearchStatistics/Protecting-FamiliesfromViolence.aspx>, 4.

371 UN Committee on the Rights of the Child, *Replies of Singapore to the list of issues (CRC/C/SGP/Q/2-3) concerning additional and updated information related to its second and third periodic reports (CRC/C/SGP/Q/2-3/Add.1*, 12 January 2011), paragraph 46; *Singapore’s Second and Third Periodic Report to the United Nations Committee on the Rights of the Child (CRC/C/SGP/2-3*, 6 January 2009), paragraphs 256-257.

c. Prevention Strategy

The Country Reports identified awareness-raising campaign as the most common prevention strategy being undertaken by Governments. Only some will be described here.

Malaysia has launched various campaigns to counter problems of gender-stereotyping and cultural biases. In Myanmar, working groups formed at the grass-root level under the MWAFF conducted educational talks on violence against women as preventive measure. In 2008, MWAFF provided 4,051 educational talks on violence.³⁷² Further, according to the national report to the Human Rights Council under the UPR process, human rights education are taught at primary, middle, high school and university levels.³⁷³

In Singapore, the MCYS takes a “life-cycle approach” in preventing family violence. This starts from premarital and marriage workshops to equipping parents to nurture and protect their children. Social service agencies run parent education and marriage enrichment programmes.³⁷⁴ MCYS promotes these programmes through advertisements, articles in the media, and popular personalities. The focus has largely been preventive in nature, emphasising the identification of signs of family violence and the need to seek help early. Public education materials like pamphlets and collateral have also been distributed.³⁷⁵

Some areas for improvement were however noted. In Vietnam, while there are awareness campaigns on domestic violence, it was observed that the education program does not always provide clear, step-by-step guidance on the complaint process. In Brunei Darussalam, while the CRC welcomed the passage of Children’s Order 2000 and the establishment of a special unit of the police to deal with child victims of abuse and violence, it remained concerned that there was insufficient information and

372 CEDAW, “Information provided in follow-up to the concluding observations of the Committee: Response by Myanmar,” paragraph 15.

373 Human Rights Council, “National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Myanmar,” 10 November 2010, A/HRC/WG.6/10/MMR/1, paragraphs 94, 111.

374 MCYS, *Protecting Families From Violence: The Singapore Experience*, 2009, 22.

375 Singapore’s Fourth Periodic Report, paragraph 24.12.

awareness on the ill-treatment and abuse of children within the family and institutions.³⁷⁶

The CRC Committee observed that Myanmar's awareness-raising programs have to be made systematic, sustained, widespread, participatory, and reach out to people from all walks of life.³⁷⁷ Effective advocacy programs need to be developed to influence policies and to mobilize communities from all sectors. Thus, comprehensive data collection and analysis needs to be made regarding the situation of children.³⁷⁸ Furthermore, the involvement of society, including children, has to be ensured in the design and implementation of preventive strategies.³⁷⁹ The lack of comprehensive data also makes it difficult to assess the outcome and impact of the government's policies and programs in reducing gender-based violence and violence against children.

In Singapore, NGOs have indicated the need for the government to implement a policy of gender mainstreaming.³⁸⁰ A gender mainstreaming approach, and gendered curriculum in schools and tertiary institutions, is reportedly lacking.³⁸¹

4. Progress Indicators and Challenges

Aside from those already mentioned, the Country Reports indicated more areas where progress was noted. Some Country Reports also identified available studies that measured effectiveness of the programs protecting women and children.

As an example, a 2008 Society Against Family Violence report assessed the responses to family violence in Singapore from 1997 to 2007. It found that 1) reporting increased due to strengthened legislation and protocols; 2) communication, understanding and trust among various stakeholders, such as Voluntary Welfare Organisations and the police, increased; 3) public awareness among survivors of available resources increased; 4) social

service delivery underwent innovation and expansion; 5) awareness by stakeholders of the use of safety planning with victims as a tool.³⁸²

In Cambodia, to gather data to help assess violence against women and children and formulate effective solutions, the Ministry of Women's Affairs, with assistance from East West Management Institute, UN Women, and the GTZ PWR project, conducted a baseline survey in 2005. A follow up survey was conducted in 2009. Among the findings relating to change in attitude on domestic violence were as follows: 1) recognition of violent acts as illegal was higher for all categories of violence compared to 2005; 2) women respondents were generally expressing a much lower tolerance for all categories of violence; and 3) both men (55%) and women (52%) reported that women's attitudes are greatly influenced by the lack of law enforcement.³⁸³

Challenges to Addressing Violence

Numerous challenges were indicated in literature; some of the notable ones are described below.

Review of Legislation

In most countries, as the CEDAW Committee had recommended for the Philippines, a systematic review of relevant legislation is necessary to ensure full compliance with international standards.³⁸⁴ This also applies to laws relative to children. UN Women has given in-depth assessments of domestic violence and gender equality laws. Comprehensive assessments of legislation protecting children would also be useful. To illustrate, in Malaysia, it was observed that despite enactment and revision of laws protecting women, such as the Domestic Violence Act and expanding the laws on rape, related laws, such as the Evidence Act, Criminal Procedure, and Penal Codes, have yet to be amended. The Country Report on Indonesia indicated absence of a comprehensive study mapping out the implementing legislations on violence against women and children or a study analysing the effectiveness of national legislations and policies that protect women and children from violence.

376 UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Brunei Darussalam*, 27 October 2003, CRC/C/15/Add.219, paragraph 43.

377 CRC, *Concluding Observations 2012*, paragraphs 25-28, 53.

378 *Ibid*, paragraph 24.

379 *Ibid*, paragraph 54(d).

380 SCWO, *CEDAW Shadow Report*, June 2011, 41; AWARE, *CEDAW Shadow Report*, May 2011, 22.

381 AWARE, *CEDAW Shadow Report*, May 2011, 5.

382 Society Against Family Violence, "Singapore's Response to Family Violence: 1997 to 2007 – What Comes Next? Accessibility & Dissemination," April 2008, 15.

383 Ministry of Women's Affairs, *Violence Against Women 2009 Follow-Up Survey*, xvi.

384 CEDAW, *CEDAW Concluding Comments*, August 2006, paragraph 12.

Strengthen Mechanisms

Literature indicated that, in some countries, there is a lack of coordination among agencies addressing issues affecting women and children. For instance, in Brunei Darussalam, it was noticed that the Ministry of Culture, Youth and Sports, as well as the National Children's Council, are tasked with monitoring the implementation of the CRC. This may lead to duplication and lack of effectiveness.³⁸⁵ In Myanmar, lack of information on mutual relationships among agencies and organizations that focus on women's issues was cited.³⁸⁶

In its reply to issues raised by the CEDAW Committee, the Philippine government was unable to provide the number of prosecutions of cases involving violations of women's human rights perpetuated by police officers, military personnel, and other public officials as no inter-agency mechanism was in place to keep track of the information.³⁸⁷ Requests for information on the number of protection orders issued for women and children were also unanswered.³⁸⁸

Lao PDR has no independent organization to specifically protect the rights of the child.³⁸⁹ Further, although a coordination mechanism has been set up among the National Commission for the Advancement of Women, the Lao Women's Union, and the Women Parliamentarian Group, the CEDAW Committee remains concerned at their unclear mandates and the lack of coordination among their various organizations and entities.³⁹⁰

There also needs to be an assessment of the gaps in

385 UN Convention on the Rights of the Child, Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 44 of the Convention*, CRC/C/15/ADD.219, October 27, 2003.

386 CEDAW, *Concluding Observations 2008*, paragraph 16.

387 UN Committee on the Elimination of Discrimination against Women, *Responses to the list of issues and questions with regard to the consideration of the combined fifth and sixth periodic reports: Philippines*, 17 May 2006, CEDAW/C/PHI/Q/6/Add.1, available at http://www.un.org/women_watch/daw/cedaw/cedaw36/pdf/36PHL.pdf (accessed 15 July 2012), 12.

388 *Ibid.*, 14-16.

389 CRC, *Consideration of reports submitted by States: Lao PDR*, CRC/C/LAO/2, paragraph 20.

390 UN Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Lao People's Democratic Republic*, 7 August 2009, CEDAW/C/Lao/CO/7, paragraph 17.

programs and address them responsively. For instance, in Cambodia, it was observed that efforts have been made to strengthen the policy framework; however, implementation was found to be uneven and poorly monitored, "largely due to ineffective institutional arrangements at all levels and structural barriers to the effective application of VAW principles and norms."³⁹¹ Prevention and protection efforts were also found to be weak.³⁹²

The low prosecution rate, as was found in Malaysia, was also noted with concern. For rape, there were only 184 prosecutions in 2008 and 162 in 2009. The low rate of prosecution may make it appear that perpetrators can commit violence against women with impunity.³⁹³

Some countries are financially constrained from addressing the issues adequately. For instance, in Myanmar, the effectiveness of agencies and organizations that focus on women's issues is reportedly impeded by insufficient budget allocations and their composition being of exclusively voluntary members.³⁹⁴ Human resources of MWAFF are mainly voluntary members from the various Ministries.³⁹⁵ In Indonesia, the government has established Unit Pelayanan Perempuan dan Anak (Special Women and Children Unit) in each district police office. However, limited funding and lack of continuation in the special handling mechanism for psychological rehabilitation were indicated as some of the challenges faced by Special Women and Children Unit.³⁹⁶ It was also noted that the presence of Special Women and Children Unit is still scarce in some provinces such as Maluku, which only has two units in the whole province.³⁹⁷ Lack of financial commitment in eliminating gender inequality was indicated as a challenge in Vietnam. The Asian Development Bank found that, in Vietnam, domestic

391 Ministry of Women's Affairs, *Violence Against Women 2009 Follow-Up Survey*, 17.

392 *Ibid.*

393 Malaysia, *The Millennium Development Goals at 2010*, (April 2011), 58.

394 CEDAW, *Concluding Observations 2008*, paragraph 16.

395 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Responses to the list of issues and questions with regard to the consideration of the combined 2nd and 3rd periodic report: Myanmar*, 14 October 2008, CEDAW/C/MMR/Q/3/Add.1, paragraphs 18-19.

396 CEDAW, *Indonesia 6th & 7th Report*, paragraph 48.

397 *Ibid.*, paragraph 49.

violence is addressed by NGOs, INGOs, and the VWU, rather than the government.³⁹⁸

Lack of training was also indicated in many of the Country Reports. For instance, in Indonesia, it was found that the implementation of the Child Protection Law, especially on children in conflict with the law, is “hampered by a lack of understanding among law enforcement officers, judges, and attorneys, who have been accustomed to using the Indonesian Criminal Code (KUHP) rather than the new Law on Child Protection.”³⁹⁹

Corruption also impedes progress in several of the countries. For instance, in Myanmar, corruption was cited as a key barrier in effectively implementing programs under the National Plan.⁴⁰⁰ Corruption was also cited in Vietnam as a barrier to the effectiveness of the judiciary in addressing domestic violence.⁴⁰¹ In Indonesia, particularly in relation to protection of children in conflict with the law, incidences of bribery with regard to out-of-court settlement are said to be common.⁴⁰²

In the Philippines, in 2005, all government institutions were mandated by law to formulate Gender and Development (GAD) Plans and allocate at least 5% of their respective annual budgets for the implementation of these plans;⁴⁰³ however, it was found that many barangays and other government agencies do not do so.⁴⁰⁴ As advocates have pointed out, the Philippine domestic violence law needs a specific budget appropriation for effective implementation.⁴⁰⁵

Culture and Traditional Attitudes (Violence in the Home)

The Country Reports indicate that the perception in many countries that violence at home is an internal family problem leads to reluctance on the part of the victim to

seek help or even to admit that there is a problem. Aside from reluctance on the part of survivors, some police officers still consider domestic violence to be a private matter and would sometimes ask the abused wives to go back home.⁴⁰⁶ Further, a 2008 study in Malaysia showed that there is a lack of understanding and positive practices even among health care providers towards persons who suffer from domestic violence. About 28% of clinicians and 51.1% of nursing staff interviewed tended to see victims of domestic violence as blameworthy.⁴⁰⁷

Culture and Traditional Attitudes (Violence Outside the Home)

Social misconceptions about rape and rape victims sometimes blame the survivor rather than see it as a violent crime against the woman.⁴⁰⁸ Literature indicates that in Myanmar, having sex outside marriage is traditionally regarded as shameful and brings disgrace on the woman and her family. Thus, women survivors feel too ashamed to report sexual harassment and rape cases and, consequently, foster “a culture of silence.”⁴⁰⁹ In Cambodia, as in some other countries, police corruption may inhibit effective investigation and prosecution of sexual violence, where payments to police and, in some cases, the victim’s family serve to end the matter.

In Thailand, sex workers who experienced violence find that if they report any crime, even very violent crimes like rape, they are threatened with arrest on prostitution charges and frequently turned away from the police station. They also find that they struggle to have

398 ADB, “Viet Nam: Gender Situation Analysis.”

399 UN HRC, *Indonesia UPR National Report 2008*, 12.

400 CRC, *Concluding Observations 2012*, paragraphs 13, 19, 20.

401 Diane Gardsbane, “Gender-Based Violence. Issue Paper,” 47; and Bourke-Martignoni, “Violence against Women in Vietnam,” 17.

402 UNICEF, 2008 UNICEF-UPR, 4.

403 Republic Act 9336 or General Appropriations Act of 2005.

404 WWTSVAW, *Breaking the Silence*, 27.

405 Inter-Parliamentary Union and A Parliamentary Response to Violence against Women, *Conference of Chairpersons and Members of Parliamentary Bodies Dealing with Gender Equality*, 2-4 December 2008, Geneva, 2009, 68.

406 See “The Domestic Violence Act (DVA) in Malaysia,” Women’s Action Organisation, http://www.wao.org.my/Domestic+Violence_37_5_1.htm; Regina Lee, “Concern over Effective Implementation of Domestic Violence Act,” *The Star* (27 December 2011), <http://thestar.com.my/news/story.asp?file=/2011/12/27/nation/10160395&sec=nation>.

407 Sajaratulnisah Othman and Noor Azmi Mat Adenan, “Domestic violence management in Malaysia: A survey on the primary health care providers,” *7:2 Asia Pacific Family Medicine* (29 September 2008), <http://www.apfmj.com/content/7/1/2>.

408 Women’s Centre for Change (Penang), *Myth and Reality of Rape*, <http://www.wccpenang.org/rape/myth-vs-reality1/>.

409 CEDAW, *Concluding Observations 2008*, at paragraphs 20, 21, 22; Irish Center for Human Rights, “Crimes against Humanity in Western Burma”; Women of Burma, *CEDAW Shadow Report: Burma*; The Women’s League of Chinland (WLC), “Unsafe State: State-sanctioned sexual violence against Chin Women in Burma,” 2007, http://peacewomen.org/portal_resources_resource.php?id=619 (accessed 10 November 2011).

complaints taken seriously.⁴¹⁰ The CEDAW Committee has also stated that “negative social attitudes towards sex workers make it difficult for the Government to act against the perpetrators” in Malaysia.⁴¹¹

In this regard, criminalization of prostitution is said to have increased the vulnerability of sex workers through contributing to stigma and marginalization.⁴¹² In the ASEAN Region, acts of prostitution are criminalized in Lao PDR, Philippines, Thailand, Brunei Darussalam, Cambodia,⁴¹³ Myanmar, and Vietnam. Prostitution in itself is not illegal in Singapore and Malaysia; only exploitation of prostitution is criminalized. In Indonesia, the laws do not explicitly prohibit prostitution, although they do prohibit persons from facilitating or causing obscene acts or obtaining economic gain from obscene acts.⁴¹⁴ However, at the local level, some municipalities have enacted regional regulations banning prostitution. These regional regulations do not classify prostitution as a crime; however, women alleged as sexual commercial workers are subject to police raids, arrest, and even detention.⁴¹⁵

Culture and Traditional Attitudes (Violence Against Children)

Social acceptability of physical violence against children and discrimination against lesbian and gay children has to be overcome; social and cultural norms must give in to basic human rights. Active advocacy should be conducted; children need to be encouraged to express their views and actively participate in finding the solutions to these issues.

410 Planned Parenthood Association of Thailand and Sexual Rights Initiative, *Joint UPR Submission on the Human Rights of Sex Workers in Thailand*, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRTHStakeholdersInfoS12.aspx> (accessed 11 January 2012), paragraph 6.

411 Malaysia's CEDAW Report, paragraph 107.

412 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.

413 “A person who willingly *solicits another in public* for the purpose of prostituting himself or herself shall be punished with imprisonment for 1 to 6 days and a fine of 3,000 to 10,000 riel. A minor shall be exempted from punishment of the offense stipulated in this article.” (*Emphasis supplied.*) Law on Suppression of Human Trafficking and Sexual Exploitation, Article 24.

414 Criminal Code, Articles 296 and 506.

415 See e.g. Tangerang Regional Regulation No. 8 of 2005 on Prohibition of Prostitution, 23 November 2005, Article 6.

Need for Comprehensive and Accurate Data

The Country Reports all indicated literature stressing the need for systematic and desegregated data collection and analysis. Besides gathering and analysing data, data gathered should be made publicly available. For instance, as was previously indicated, Lao PDR does not have a central crime database, nor does it issue public statistics on crimes.⁴¹⁶ Further, according to the government, agencies (including the Lao Women's Union and Lao People's Revolutionary Youth Union) appointed to collect data on the implementation of the CRC and information about children, have not done so regularly and systematically.⁴¹⁷ This lack of adequate data collection, analysis, and dissemination is not confined to Lao PDR but is a serious concern in a number of ASEAN countries. This lack of data has far reaching consequences in a variety of areas impacting the rights and protection of women and children.

Broad dissemination of collected information would facilitate effective participation of non-state actors in addressing issues that concern the community. On a positive note, Malaysia has developed a Gender Desegregated Information System (GDIS) to monitor the progress of women's program and activities.⁴¹⁸ Information available in the GDIS include data on child abuses, drug addicts, incest, rape, molest, domestic violence and sodomy; however, available information are only from 1997 to 2004.⁴¹⁹ The GDIS should continue to be usefully applied to gather, analyse, and make available data on the problem of violence against women and children. Coordination with non-state actors in this aspect would also be helpful. As was observed in the Philippines, many non-governmental organizations assist children who are victims of violence but systematic data collation is weak.⁴²⁰

416 U.S. State Department, “2010 Human Rights Report: Laos,” 14.

417 CRC, *Concluding Observations: Lao PDR*, CRC/C/Lao/CO/2, paragraph 30.

418 Malaysia's CEDAW Report, paragraph 83.

419 Responses to the list of issues and questions for consideration of the combined initial and second periodic report, Malaysia, Committee on the Elimination of Discrimination Against Women, 35th session, (15 May -2 June 2006), (27 March 2006), CEDAW/C/MYS/Q/2/Add.1, (“Responses to CEDAW Questions”), 12.

420 Plan Philippines, *Toward a Child-Friendly Education Environment: A Baseline Study on Violence Against Children in Public Schools*, February 2009, 5.

C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

In the ASEAN Region

An HRRC compilation of Universal Periodic Reviews, CRC Committee Reports, and CEDAW Committee Reports⁴²¹ identified trafficking of women as a concern in Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. Trafficking of children was identified as a concern in Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand, and Vietnam.

Exploitation of women and children in general, and sex tourism in particular, were identified as a concern in Thailand. Sexual exploitation or prostitution of women was also mentioned in the Committee Reports of Cambodia, Indonesia, Myanmar, Philippines, and Vietnam. Sexual exploitation of children was indicated in the Committee Reports of Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, and Vietnam.

Exploitation of domestic workers within Indonesia and exploitation of domestic migrant workers from Indonesia were indicated as concerns. Exploitation of migrant women, particularly domestic workers, within Malaysia and Singapore was also indicated. Exploitation of children domestic workers is reportedly a concern in Malaysia as well. Concern over child labour was particularly expressed in the Committee Reports of Cambodia, Lao PDR, and the Philippines.

The Committee Reports also mentioned children involvement in armed conflict in Myanmar, Philippines, and Thailand.

In Each ASEAN Member State

ECPAT International, states that there is insufficient reliable data on Brunei Darussalam, making the number of trafficking victims indistinguishable. The report says that because of the presence of numerous domestic or low skilled workers, a marginal group may

be subjected to involuntary labour after their arrival.⁴²² The US Trafficking in Persons (TIP) Report indicates that persons are trafficked into Brunei Darussalam for forced prostitution and forced labour.⁴²³ Persons from Indonesia, Malaysia, the Philippines, Pakistan, India, Bangladesh, China, and Thailand migrate to Brunei Darussalam for domestic work or other low-skilled employment, “but sometimes face conditions of involuntary servitude after arrival.”⁴²⁴ To a lesser extent, it also serves as transit point to Malaysia. Recorded incidents of exploitation mostly involve non-nationals.

Singapore is also primarily said to be a destination country and, to a lesser extent, transit point for trafficking. The Philippines, Indonesia, and Vietnam have been flagged as origin countries of significance for trafficking in Singapore.⁴²⁵ Trafficking of Cambodian women and children to Singapore is said to be a growing phenomenon.⁴²⁶ The most commonly identified forms of exploitation are prostitution and domestic work. An additional sector of exploitation may be the purchase of foreign brides by Singaporean men.⁴²⁷ Reports also suggest that there is significant incidence of Singaporean child sex tourism.⁴²⁸

The Country Report on Singapore notes a striking discrepancy between unofficial and official figures on trafficking. The government has highlighted that it has received very few reports from foreign embassies of trafficking cases, despite the high figures provided by these embassies.⁴²⁹ The discrepancy has also been attributed to

421 See Annex A: Baseline Study on the Protection and Promotion of the Rights of Women and Children in ASEAN Fact sheet.

422 The Body Shop and ECPAT, “Stop Sex Trafficking of Children and Young People.”

423 United States Department of State, *Trafficking in Persons Report 2011 – Brunei*.

424 *Ibid*.

425 AWARE, *CEDAW Shadow Report*, May 2011 at paragraph 6.1; United States Department of State, *2011 Trafficking in Persons Report – Singapore*; ECPAT, “Stop Sex Trafficking of Children and Young People – Sex Trafficking of Children in Singapore.”

426 ECPAT International Research Report, *Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore*, 2010, 18.

427 “4 human traffickers jailed for selling 86 women,” *Sunday Times*, 3 January 2010, <http://www.voy.com/221063/8.html>.

428 AWARE, *CEDAW Shadow Report*, May 2011, paragraph 6.1; ECPAT International Research Report, *Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore*, 2010, 18.

429 “Singapore’s Detailed Response to the Allegations in the 2010 US State Department’s Trafficking in Persons Report,” paragraph 9.

the adoption by authorities of a narrower definition of trafficking that may ignore situations of coercion and deception.⁴³⁰ The CRC Committee has expressed concern over the insufficient data on child victims of trafficking and the sexual exploitation of children, noting that, based on statistics provided by the government, cases of sexual exploitation and abuse of children may be under-reported.⁴³¹

According to the US Trafficking in Persons Report, Malaysia is mainly a destination country, and to a lesser extent, a source and transit country for men, women, and children who end up being subjected to conditions of forced labour. There are women and children who fall victims of sex trafficking. The “overwhelming majority of trafficking victims are among the two million documented and 1.9 million undocumented foreign workers in Malaysia” who migrate willingly from countries that include Indonesia, Nepal, India, Thailand, China, the Philippines, Burma, Cambodia, Bangladesh, Pakistan, and Vietnam.⁴³² There are incidences of women being trafficked to Malaysia to sell their children for illegal adoptions.⁴³³ There are no official statistics to show the number of children (under 15 years) who work in Malaysia. However, it was noted that there are children who work informally for their families, whether in markets, hawker centres, plantations or farms. Many middle and lower class families in Malaysia are said to view child labour as not abusive and even necessary for the welfare and prosperity of the family.⁴³⁴

Thailand is reportedly a source, transit, and destination country for trafficking of children and women. Exploitation is said to take many forms: forced labour, child soldiers, illegal migration for the purpose of forced labour, and trafficking in persons for sexual purposes. Thailand has reduced the prevalence of child labour and child prostitution over the past 15 years;⁴³⁵ however

forms of child labour still persist. These include exposure to hazardous working conditions and various forms of abuse by employers. It was indicated that, in general, child labourers were paid less than adults even when they carried out the same tasks.⁴³⁶ Prevalence of internal trafficking of women also appears to have declined due to prevention programs and better economic opportunities. However, the number of women and children reportedly trafficked to Japan, Malaysia, South Africa, Bahrain, Australia, Singapore, Europe, Canada, and the United States for sexual and labour exploitation is increasing gradually.⁴³⁷ The estimated number of child prostitutes in Thailand varies depending on the source of the figures and the method of estimation.⁴³⁸ Remarkably, among those statistics, an estimate of 60,000 children under 18 are involved in prostitution.⁴³⁹ There were no reports of persons under the age of 18 conscripted or recruited into governmental armed forces. However, children have reportedly been recruited by non-state armed groups in a variety of roles, including direct participation in hostilities.⁴⁴⁰ The scale and exact nature of children’s involvement in non-state armed groups remains unclear. “Precise and current patterns of recruitment and use of children by non-state armed groups in southern Thailand is difficult to access in the absence of domestic and international monitoring.”⁴⁴¹

<http://www.nationmultimedia.com/2011/05/27/national/Child-labour-remains-a-problem-DLPW-30156288.html>.

430 AWARE, *CEDAW Shadow Report*, May 2011, paragraph 6.11.

431 UN Committee on the Rights of the Child, *Concluding Observations: Singapore*, 2 May 2011, CRC/C/SGP/CO/2-3, paragraphs 16, 17, and 64.

432 United States Department of State, *2011 Trafficking in Persons Report - Malaysia*, 27 June 2011, available at: <http://www.unhcr.org/refworld/docid/4e12ee633c.html> (accessed 23 July 2012).

433 Malaysia’s CEDAW Report, paragraph 15.

434 Samantha Wronski, ‘Child Labor: The Perspective from Malaysia’, Helium (15 September 2007), <http://www.helium.com/items/597531-child-labor-from-a-malaysian-perspective>.

435 The Nation 2011-05-27 *Child labour remains a problem: DLPW*

436 ILO, *Overview of Child Labour in Thailand*, 2008, accessed March 2, 2012, http://www.ilo.org/public/english/region/asro/bangkok/download/yr2008/cl08_overview.pdf.

437 National Operation Centre for the Prevention and Suppression of Human Trafficking (NOCHT), *Policies, Strategies and Measures in Prevention and Suppression of Human Trafficking (2011-2516)*, accessed January 20, 2012, <http://www.nocht.m-society.go.th/human-traffic/policy/strategy.php>. See also Heather Montgomery, “Defining Child Trafficking & Child Prostitution: The Case of Thailand,” *Seattle Journal for Social Justice* Volume 9 (2011), 775.

438 Carmen Lau, “Child Prostitution in Thailand,” *Journal of Child Health Care* 12 (2008), 145.

439 United States Department of State, *2009 Country Report on Human Rights Practice - Thailand*.

440 See e.g. Child Soldiers International (CSI), *Report to the Committee on the Rights of the Child in advance of Thailand’s Initial Report on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* (London, 2011); and United States Department of State, *Country Reports on Human Rights Practices for 2011 - Thailand*.

441 Coalition to Stop the Use of Child Soldiers, *Report to the Committee on the Rights of the Child in advance of Thailand’s initial report on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, September 2011, 9.

In Cambodia, every year, more than 900 children are reportedly forced or in other ways pushed to have sex with men for money. Most of these children are females between 14 and 18 years. Foreign sex tourists often want to buy sex with young girls, while paedophiles seek sex with immature girls or boys.⁴⁴² Recent government and NGO campaigns against sex tourism with minors have attracted media attention in notorious cases where foreign men have received long prison sentences. Reliable data on the statistical effectiveness of such campaigns, however, is lacking. Just like other countries in the Greater Mekong Sub-region (GMS), trafficked girls and women are exploited in diverse activities including manufacturing, agriculture, domestic service, and seafood processing.⁴⁴³ Thousands of children reportedly work as domestics, mainly in Phnom Penh, in slavery-like conditions.⁴⁴⁴ Within Cambodia, an estimate of almost 1.5 million children (7-17 year-olds) is economically active. Around 250,000 children (15-17 years-old) are in the seven of 16 nationally-identified hazardous sectors for which data are available or are working for 43 or more hours per week. This estimate does not include involvement in nine of the 16 nationally-identified hazardous sectors or involvement in unconditional worst forms of work.⁴⁴⁵ It was observed that, even though a definition of trafficking is commonly accepted, the use of the term for statistical purposes varies; therefore, estimates of the population concerned differ considerably.⁴⁴⁶ Some studies consider only women and children, while others include men. Generally, statistical estimates for victims of trafficking are based on small-scale surveys or a few geographical locations.⁴⁴⁷

Woman and children from Myanmar are reportedly trafficked mainly to Thailand, China,⁴⁴⁸ Bangladesh, India, Pakistan, Malaysia, South Korea, and Macau for the purposes of forced labour, sexual exploitation and domestic work.⁴⁴⁹ At the domestic level, concerns mainly include forced labour,⁴⁵⁰ land confiscation,⁴⁵¹ child labour, child prostitution, and child soldier recruitment. Young teenage girl prostitutes are reportedly found in Yangon and Mandalay.⁴⁵² In most cases, internal trafficking of women and girls occurs from poor agricultural and urban centres to trucking routes, mining areas, military bases, industrial areas, and borders with Thailand and China, where prostitution flourish. As regards child labour, according to a survey conducted by UNDP and the government, child labour (ages 10-14) participation rate between the poor and non-poor is at 18% and 10%, respectively.⁴⁵³ ILO indicates that they received 194 complaints for recruitment of child soldiers in 2010; which is two-fold over the complaints in 2009.⁴⁵⁴ Aside from being recruited as child soldiers, children are reportedly forced to render services in support of military garrisons or military operations and of non-State armed

442 John L. Vighen with contributions by Anoushka Jeronimus, *A Joint Research Project: Situation Analysis of the Commercial Sexual Exploitation of Children*, December 2007, 13.

443 ILO, Meeting the Challenge, Proven Practices for Human Trafficking Prevention in the Greater Mekong Sub-region, *Trafficking in children and women in the Great Mekong Sub-region*, 2008, 7.

444 CRC Committee, *Concluding Observations 2011*, paragraph 67.

445 UNICEF, *Children's Work in Cambodia: A Challenge for Growth and Poverty Reduction*, December 2006, available at http://www.unicef.org/eapro/Children_work_in_Cambodia.pdf (accessed 24 July 2012), ii.

446 Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report on International Migration in East and South-East Asia*, Bangkok (2008), 17.

447 *Ibid.*

448 See e.g. Palaung Women's Organization (PWO), "Stolen Lives: Human Trafficking from Palaung Areas of Burma to China," 2011, <http://eng.palaungwomen.com/Report/StolenLives-final%20Eng.pdf> (accessed 2 January 2012); KWAT, "Eastward Bound: An Update on Migration and Trafficking of Kachin Women on the China-Burma Border," 2008; and Thant Myint-U, *Where China Meets India*, 110-111.

449 Asia Regional Trafficking in Persons Project (ARTIP), "Trafficking in Persons: Country Profiles," 2011, <http://www.artipproject.org/artip-tip-cjs/tip-country-profiles.html#myanmar> (accessed 29 December 2011); U. S Department of State, "Trafficking in Persons Report 2011: Burma."

450 UN General Assembly, "Report of the Special Rapporteur," September 2011, paragraphs 31 and 35; Human Rights Council, "Progress report of the Special Rapporteur," March 2012, paragraphs 59 and 60; U.S Department of States, "Trafficking in Persons Report 2011: Burma."

451 ERI, "Energy Insecurity;" ERI, "The Human Cost of Energy;" ERI, "The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy;" 2011, <http://www.earthrights.org/sites/default/files/documents/the-burma-china-pipelines.pdf> (accessed 10 January 2012).

452 U.S Department of State, "2009 Country Reports on Human Rights Practices: Burma."

453 IHLCA Project Technical Unit, "Integrated Household Living Conditions," 51.

454 U.S 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.

groups.⁴⁵⁵ A study in Chin State indicates that 92% of over 600 households surveyed mentioned at least one episode of a household member subjected to forced labour, mostly by the military.⁴⁵⁶

Many Laotians start their journeys as voluntary labour migrants, only to be caught into trafficking situations.⁴⁵⁷ Victims are far more commonly deceived or threatened by their employers rather than their transporters.⁴⁵⁸ Thailand is the primary destination.⁴⁵⁹ A majority of the migrants are under 18. Studies indicate a strong link between age and gender: the younger the migrant, the greater the likelihood of being a female migrant.⁴⁶⁰ Girls engage in domestic services or work in manufacturing, construction, entertainment, agriculture, or the sex industry. Boys engage in construction, factories, agriculture, domestic services, and fisheries.⁴⁶¹ There are also incidences of women and girls sold as brides.⁴⁶² Internal trafficking, usually of girls under 18 years of age, also takes place from rural to urban areas like Vientiane.⁴⁶³

455 CRC, *Concluding Observations 2012*, paragraph 81; Human Rights Education Institute of Burma (HREIB), "Forgotten Future: Children Affected By Armed Conflict in Burma," September 2008, http://www.hreib.com/index.php?option=com_abookandview=bookandcatid=andid=1%3Aforgotten-future-children-affected-by-armed-conflict-in-burmaandItemid=410 (accessed 10 January 2012).

456 U.S Department of State, "Trafficking in Persons Report 2011: Burma."

457 ASEAN, "Progress Report on Criminal Justice Responses to Trafficking in the ASEAN Region," July 2011, 33.

458 James Haughton, "Situational Analysis of Human Trafficking in the Lao PDR. With an emphasis on Savannakhet," World Vision, 2006, 39, citing Ministry of Labour and Social Welfare and UNICEF, "Broken Promises, Shattered Dreams," 2004; ILO-IPEC, "Rapid Assessment of Trafficking in Children into the Worst Forms of Child Labour," 2001; and MLSW, UNICEF, UNIAP, "TRACE: Trafficking from Community to Exploitation. Lessons Learnt Through TRACE," 2004.

459 UNIAP, *The Mekong Region Country Datasheets, Human Trafficking 2010*, available at http://www.no-trafficking.org/story_2010ht_datasheets.html (accessed 8 May 2012), 13 and 14.

460 Roy Huijsmans, "Children, Childhood and Migration," Institute of Social Studies, June 2006, Working Paper Series No. 427, 20.

461 UNIAP, *The Mekong Region Country Datasheets, Human Trafficking 2010*, 13 and 14.

462 United States Department of State, "Trafficking in Persons Report – 2011"; Danielle Tan and Didier Bertrand, "How illegal migration turns into trafficking for sexual and labor exploitation? Raising voices of girls and women from Lao PDR," 2007, 5; Ministry of Labour and Social Welfare and UNICEF, "Broken Promises, Shattered Dreams," 2004, 8.

463 Ministry of Labour and Social Welfare and UNICEF, "Broken Promises, Shattered Dreams," 2004, 36.

The Country Report on Lao PDR found that substantial studies have been conducted in relation to trafficking and exploitation. However, more information is needed with regard to internal trafficking, trafficking to countries other than Thailand, and profiling of children who are vulnerable to child labour.

The US Trafficking in Persons Report states that Vietnam is a source and, to a lesser extent, a destination country for men, women, and children subjected to sex trafficking and conditions of forced labour. There are Vietnamese women and children who are reportedly subjected to sex trafficking throughout Asia. They are often misled by fraudulent labour opportunities and sold to brothels on the borders of Cambodia, China, and Lao PDR; some are eventually sent to other countries, including Thailand and Malaysia. Some Vietnamese women are forced into prostitution in Thailand, Malaysia, Singapore, and in Europe.⁴⁶⁴ Sale of children appears to also be a concern. It is said that it is common perception that Vietnamese boys are trafficked to China for illegal adoption; however, no specific statistics have been reached at the moment.⁴⁶⁵ There are also reported cases of Vietnamese women being exploited as surrogate mothers in Taiwan⁴⁶⁶ and Thailand.⁴⁶⁷ Incidences of exploitation, such as forced prostitution, child labour, and forced labour are also evident at the national level. Only in HCM City in 2009, 62 of 173 production factories were inspected and found to use illegal child labour. Official inspections reported that 96% of all child labour is not documented; 75% of them were found in the central coast and Mekong Delta provinces.⁴⁶⁸ The Country Report noted that data on trafficking mostly focus on women and children. They tend to range a period of time with varying statistics, including those provided by national agencies. The British Embassy in Hanoi, in conjunction with Child Exploitation and Online Protection Centre, identified

464 United States Department of State, "2012 Trafficking in Persons Report - Vietnam," 19 June 2012, available at: <http://www.unhcr.org/refworld/docid/4fe30c83c.html> (accessed 23 July 2012).

465 UNICEF, "Reversing the Trend: Child Trafficking in East and Southeast Asia," (Bangkok: UNICEF East Asia and Pacific Regional Office, 2009).

466 Child Exploitation and Online Protection Centre in association with the British Embassy, "The Trafficking of Women and Children from Vietnam," 2011, 12.

467 UNICEF, "Reversing the Trend: Child Trafficking in East and Southeast Asia."

468 United States Department of State Human Rights Report 2010.

that, within 2005-2009, there were 6,000⁴⁶⁹ trafficking victims, resulting in 3,190 court cases. However, there were approximately 40,000 women and children reported missing during this period of time and there was a high suspicion that they may have been trafficked. Due to the lack of a nation-wide record of missing people, it is difficult to track exact figures.⁴⁷⁰

In Indonesia, literature indicates that the following forms of exploitation of women and children are prevalent: labour exploitation (including forced labour, debt bondage, slavery or slavery-like practice), sexual exploitation (including forced prostitution and sale of brides), and sale of infants for illegal adoptions.⁴⁷¹ Exploitation of women and children in Indonesia is closely related to issues of trafficking in persons and migration for work.⁴⁷² ILO indicated that almost 35% of 2.6 million domestic workers in Indonesia are below the age of 18 and at least 25% of domestic workers are below the age of 15.⁴⁷³ These children are reportedly often made to work 14-18 hours a day, seven days a week.⁴⁷⁴ Some of them suffer from physical and sexual abuse and then prevented from accessing essential medical care. The Country Report on Indonesia indicated that varying numbers were given by different organizations on the prevalence of trafficking-- even when sources claimed that they retrieved their information from Indonesia's police force. Further, information provided by the

reports represent aggregated data related to the handling of trafficking cases in Indonesia, they do not distinguish internal from external trafficking.

While the "significant efforts" of the Philippines have been noted, the country reportedly continues to be a "source, transit, and destination country for cross-border trafficking of women and children for sexual exploitation and forced labour."⁴⁷⁵ Government and non-governmental organizations estimate that 300,000 to 400,000 women and 60,000 to 100,000 children are trafficked annually.⁴⁷⁶ Within the Philippines, people from rural areas have been trafficked into urban centres.⁴⁷⁷ Children are reportedly engaged in the drug trade. Traffickers choose them because they are obedient and, further, because of their minority status, "they cannot be arrested and if imprisoned, they can easily be released."⁴⁷⁸ There were also reports of children engaged in hazardous work. An estimated 23.8% of all economically active children suffered an injury during one year, which totals to 882,440 workplace injuries.⁴⁷⁹ Further, an NGO estimated that there were at least 2.5 million domestic workers in the Philippines, and 1 million of them were children who work in exploitative conditions.⁴⁸⁰ Around 60,000 to 100,000 children are said to be involved in the sex industry in the Philippines.⁴⁸¹ There are also reports of children being recruited by armed groups to serve as

469 Statistics differ depending on the source and scope of reports. The data from the Vietnamese Ministry of Justice says that during the period of 2004-2010 there were 4,973 victims of human trafficking: "Báo cáo tổng quan hoạt động di cư của công dân Việt Nam ra nước ngoài - [General Report of Activities of Vietnamese citizens migrating abroad]," (paper presented at the The First Conference on International Migration, Hanoi June 1-2, 2011 2011).

470 "The Trafficking of Women and children from Vietnam," (Hanoi: Child Exploitation and Online Protection Centre in association with the British Embassy, 2011), 10

471 UN HRC, *Indonesia UPR National Report 2008*; CEDAW, *Indonesia 6th & 7th Report*; UN HRC, *2008 Compilation of UN Documentation*; UN HRC, *2008 Summary of Stakeholders' Reports*; UN HRC, *2008 RWG-UPR*; UNICEF, *2008 UNICEF-UPR*; United States Department of State, *2011 Trafficking in Persons Report*; ECPAT International, *2011 Global Monitoring: Status of Action against Commercial Sexual Exploitation of Children - Indonesia*; USAID, *2006 Anti-Trafficking Technical Assistance*; and UNODC, *2009 Global Report on Trafficking in Persons*.

472 Asia Regional Trafficking in persons Project (ARTIP Project), "Country Profile: Indonesia," www.artipproject.org (accessed 23 February 2012).

473 ILO, *Recognising Domestic Work*, 4.

474 *Ibid.*

475 UN Committee Against Torture (CAT), *Concluding observations of the Committee against Torture: the Philippines*, 29 May 2009, CAT/C/PHL/CO/2, paragraph 26.

476 "Philippines: The Situation," *HumanTrafficking.org: A Web Resource for Combating Human Trafficking*, <http://www.humantrafficking.org/countries/philippines> (accessed 7 July 2012).

477 United States Department of State, *Trafficking in Persons Report - 2011*.

478 Magdalena Lepiten, "Children's Involvement in the Production, Sale and Trafficking of Drugs in Cebu City: A Rapid Assessment," (International Labour Organization International Programme on the Elimination of Child Labour (IPEC) Philippines, Geneva, 2002), 75.

479 C. Castro: "Measuring hazardous work and identifying risk factors for non-fatal injuries among children working in Philippine agriculture," Washington, DC (2010), unpublished document, cited in *Children in hazardous work: What we know, What we need to do*, ILO 2011 International Programme on the Elimination of Child Labour (IPEC), 11.

480 Roland Pacis, Ma. Cecilia Flores-Oebanda, Rebecca Ballesteros, Janis Montanez, Marietta Culibao, *Selected Case Studies on Forced Labor: Trafficking of Domestic Workers in the Philippines*, Visayan Forum Foundation, Inc., May 2006 6.

481 United Nations Children's Fund, "Factsheet: Child Trafficking in the Philippines."

combatants, spies, guards, cooks, or medics.⁴⁸² Research also suggests that paramilitary forces, such as barangay (village) defence forces, have enlisted children into their ranks.⁴⁸³ The Country Report noted that not many information on the prevalence of exploitation have been disaggregated according to age, gender and diversity of the survivors. The CAT Committee had lamented the “absence of comprehensive and disaggregated data” on trafficking.⁴⁸⁴ The Country Report noted there is a need for more studies to determine prevalence of other specific types of exploitation, such as harvesting of body organs and sale of children. There were, however, news reports of foreigners who came to the Philippines to buy kidneys for as low as \$2,000 and an estimated 800 kidneys were being sold annually to foreigners before the organ sale ban was implemented in 2009⁴⁸⁵ in the Philippines.⁴⁸⁶

Means Employed

Deceit and Debt Bondage

The Country Reports highlighted that, in most cases, those trafficked were tricked into believing they were getting a decent job or deceived about the nature of their employment or salary and the conditions they would face in destination countries. In some cases, some were aware that they would be engaging in sex-related activity, but were deceived about the conditions attached and subjected to forced prostitution under the threat of serious harm. Migrant workers faced confiscation of their passports, restrictions on their movement, and illegal withholding of their pay, making them vulnerable to forced labour. The situations of trafficked person

are exacerbated by their lack of familiarity with either language, geography, law or other relevant information of the destination country. Thus, they abide by the rules of traffickers.

Voluntary Migration

The Country Reports indicated the high incidences of voluntary migration that led to involuntary servitude. This is true for women, but more apparent in cases of children migrants because of their vulnerability. In Lao PDR, studies show that there were no cases of the selling or kidnapping of children in the pre-departure stage; rather, the movement is initiated independently.⁴⁸⁷ In the Burmese-Thai context, as well, women and girls have been observed to move voluntarily largely for economic and human rights reasons, with exploitation occurring during or after the movement.⁴⁸⁸ Officials in the Ranong and Sakaew provinces in Thailand, bordering Myanmar and Cambodia respectively, believe trafficking cases to be very rare; instead, they describe the current situation as a labour and migration issue.⁴⁸⁹

Literature indicates that, indeed, children are not just passive victims of circumstances. The motivation to migrate stems from the child’s desire to earn an income, whether at their own or their family’s instigation.⁴⁹⁰ Most poor rural families see it as desirable to send a child to the city or abroad to work. It has been put forward that the Trafficking Protocol’s definition is “irrelevant to deal with the reality of the situation in the [Greater Mekong Sub-region].”⁴⁹¹ The focus on movement rather than exploitation does not go very well with the fact that majority of cases involve voluntary movement that ends in exploitation at the destination. It is difficult to distinguish among voluntary irregular migrants, those

482 3rd and 4th Periodic Report to the CRC, 2008, paragraph 69.

483 Gary Risser, *Children Caught in Conflicts: The Impact of Armed Conflict on Children in Southeast Asia* (Bangkok: Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, 2007), 76.

484 CAT, *Concluding Observations 2009*, paragraph 27.

485 “The ban on trafficking of persons for the purpose of removal or sale of organs is contained in Section 3(a) of Republic Act 9208 or the Anti-Trafficking in Persons Act of 2003. However, the particular section of the law has not been fully implemented due to lack of implementing rules and regulations (IRR).” An IRR on said Section took effect June 21, 2009. Tetch Torres, “Philippines says no to organ trafficking,” *Inquirer Global Nation*, <http://globalnation.inquirer.net/news/breakingnews/view/20090624-212208/Philippines-says-no-to-organ-trafficking> (accessed 4 August 2012).

486 RasheedAbou-Alsamh, “Cabral warns: No more organs for sale in Philippines,” *Arab News* (26 June 2009), <http://archive.arabnews.com/?page=4§ion=0&article=124049> (accessed 7 July 2012).

487 Roy Huijsmans, “Children, Childhood and Migration,” Institute of Social Studies, June 2006, Working Paper Series No. 427, 14.

488 Christa Foster Crawford, “Cultural, Economic and Legal Factors Underlying Trafficking in Thailand and Their Impact on Women and Girls from Burma,” *Thailand Law Journal 2009 Spring Issue 1 Volume 12*, available at <http://www.thailawforum.com/articles/Trafficking-in-Thailand%20.html> (accessed 3 August 2012).

489 UNICEF, “Reversing the Trend: Child Trafficking in East and Southeast Asia,” 63.

490 IOM, *World Migration Report 2008: Managing Labour Mobility in the Evolving Global Economy*, 184, citing Anarfi et al., 2007.

491 Danielle Tan and Didier Bertrand, “How illegal migration turns into trafficking for sexual and labor exploitation? Raising voices of girls and women from Lao PDR,” 2007 at 15.

who are smuggled, and those who are trafficked. These are distinctions that migrants would rarely make.⁴⁹² The label of “voluntary” may also not be appropriate where the child migrates because of family pressure fuelled by economic need. In-depth study to explore the merits of this argument and propose alternative and appropriate solutions and policy reforms would be valuable.

For the purpose of this Study, however, such voluntary migration of children who end up in exploitative circumstances will be included in discussions on trafficking in line with the Trafficking Protocol, which considers the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation as trafficking even when deception, coercion, or force is not used.⁴⁹³

Information Technology

The Country Reports indicated that information technology is increasingly being used to facilitate exploitation. For instance, In Singapore, an increasing number of Singaporean teenagers are said to use the Internet or mobile phones to advertise or sell sex services.⁴⁹⁴ The Country Report on Thailand also noted that the Internet has facilitated the recent rise of child sex tourism. Websites provide potential child sex tourists with pornographic accounts and information on how to procure child prostitutes. Reportedly two per cent of Internet users in Thailand aged between 15-24 years old used chat rooms to meet unknown persons; 13% of them then engaged in sexual activities with such individuals.⁴⁹⁵

492 *Ibid.*

493 Article 3 of the Trafficking Protocol provides: (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation...; (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.

494 ECPAT International Research Report, *Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore*, 2010, 22-23.

495 Ministry of Foreign Affairs, *Answer to questionnaire on the protection of children from sexual exploitation*, http://www.mfa.go.th/humanrights/index.php?option=com_content&view=article&id=78:answer-to-questionnaire-on-the-protection-of-children-from-sexual-exploitation&catid=35:un-resolution&Itemid=73 (accessed 04 August 2012).

b. Root Causes and Aggravating Factors of Exploitation

Socio-Economic Difficulties

Widespread poverty, high unemployment, low levels of literacy, and few income-earning opportunities were commonly indicated as contributory causes of exploitation. Related to lack of livelihood opportunities, unchecked development was also cited as a root cause. Rapid economic growth results in unequal distribution of wealth skewed largely towards urban areas. Rural and remote areas experience rising unemployment, which pushes people to job-related migration. Perceived greater income opportunities in rapidly developing urban areas may provide an additional incentive. In Cambodia, the presence of land mines has also reduced livelihood opportunities in rural areas.⁴⁹⁶ In the case of Myanmar, protracted armed-conflicts on border areas and political instability are also main driving forces. Poor economic conditions and human rights violations forced many to seek employment in neighbouring countries through both legal and illegal means.

It should be noted, however, that migrating children, including trafficked victims, are not necessarily the poorest or the least educated.⁴⁹⁷ Trafficking takes place out of a desire, especially among the young, to obtain better employment for a better lifestyle.⁴⁹⁸ Some migrants who return migrate again because their villages appear too small and backward.⁴⁹⁹ Remittances also play an important role in improving livelihoods and positively changing migrants’ identities within families and communities.⁵⁰⁰

496 ILO, Mekong Sub-regional project to combat trafficking in Women and Children “Preventing Human Trafficking in the GMS,” available at <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/wherewework-cambodiadetail.htm>.

497 See Roy Huijsmans, “Children, Childhood and Migration,” Institute of Social Studies, June 2006, Working Paper Series No. 427, 21-22.

498 Asian Development Bank, “Cumulative Impact Analysis. Government of Lao PDR,” Annex 7: Drugs and Human Trafficking,” 2004, 10.

499 Ministry of Labour and Social Welfare and UNICEF, “Broken Promises, Shattered Dreams,” 2004, 53.

500 N. Southiseng and J. Walsh, “Remittances and the Changing Roles of Women in Laos,” *International Journal of Human and Social Sciences*, 6:1, 2011, 24.

Demand for Cheap Sex, Cheap Labour, Brides, and Children

The demand for cheap sex and labour fuels exploitation. For instance, Singaporean men who engage in child sex tourism are mostly from the working class who are attracted by prices of sex services that are lower than in Singapore.⁵⁰¹ The reported growing presence of paedophiles in Indonesia boosts the increasing demand for child sex workers and creates the opportunity for internal trafficking in children to bloom.⁵⁰² Similarly, Thailand is one of the most popular countries of destination for child sex tourism because child prostitutes can be obtained cheaply and easily.⁵⁰³ The imbalanced gender-ratio in China and strong demand for male child in a one-child policy country makes trafficking in women and children from Vietnam to China a predominant trend.

It was also found that some girls from Indonesia, who were trafficked as mail-order brides to Taiwan, Hong Kong, and Singapore, were forced to work for free, usually in factories, or sold into the sex industry.⁵⁰⁴ Some survivors who returned to Indonesia were allowed to go based on the condition that they would help the mail order bride syndicate.⁵⁰⁵ Thus, survivors were implicated in drawing in more girls to feed the demand for free or cheap sex and labour.

Inefficiencies and Corruption

The Country Reports cited weak law enforcement and corruption as causes that give rise to exploitation. For example, reports indicate weaknesses in law enforcement and the labour regulatory framework in Lao PDR.⁵⁰⁶ Legal channels for labour migration are costly and time consuming. This leads to illegal migration and exposure

to exploitative work situations and trafficking.⁵⁰⁷ There is reportedly corruption on both sides of the Laotian and Thai officers.⁵⁰⁸ In Malaysia, news reports indicated incidences where Immigration Officers are themselves complicity in human trafficking activities. Nine individuals, including seven Immigration Officers, were reportedly detained for their involvement in human trafficking.⁵⁰⁹ Deportees have reportedly indicated that Immigration officials collude with human smugglers or traffickers.⁵¹⁰

Lack of Proper Birth Registration

Some Country Reports indicated the absence of a birth certificate as an aggravating factor for exploitation. For instance, there are 800,000 to 900,000 hill tribe people living in the border region of northern Thailand who live in extreme poverty and do not have Thai or any other citizenship.⁵¹¹ Due to lack of citizenship, they do not have access to government services such as education and health care. Hence, they are extremely vulnerable to exploitation and trafficking both within and outside the country.

In Indonesia, many women face difficulties getting birth certificates for their children. This includes women who give birth out of wedlock, women in unregistered religious or 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.⁵¹² Without official birth certificates, both children and adults are at higher risk for being trafficked since the laws do not protect them and they will find

501 ECPAT International Research Report, *Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore*, 2010, 25, citing Michele Ford & Lenore Lyons, "Living like kings. Inside Indonesia," January – March 2008.

502 ECPAT International, "Sex Trafficking of Children in Indonesia," http://ecpat.net/EI/Publications/Trafficking/Factsheet_Indonesia.pdf (accessed 4 August 2012).

503 Carmen Lau, "Child Prostitution in Thailand," *Journal of Child Health Care* 12 (2008), 147.

504 International Council on Social Welfare (ICSW), *Trafficking and Related Labour Exploitation in the ASEAN Region*, November 2007, 58.

505 CEDAW, *Indonesia 6th & 7th Report*, paragraph 66.

506 UNIAP, "SIREN Human Trafficking Datasheet," March 2008.

507 Zoe Meier, "A Critical Analysis of the Legal Framework for Human Trafficking in Laos PDR," Village Focus International, 28 July 2009, 17.

508 United States Department of State, "2008 Human Rights Report – Lao PDR"; US State Department, "2009 Trafficking in Persons Report – Lao PDR."

509 "Press Statement: Combating Human Trafficking Must Not Be at the Expense of Human Rights," *Suara Rakyat Malaysia (SUARAM)*, 3 November 2010, <http://idcoalition.org/suara-rakyat-malaysia-press-statement-combating-human-trafficking-must-not-be-at-the-expense-of-human-rights/>.

510 UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – Malaysia, 27 October 2008, A/HRC/WG.6/4/MYS/3, paragraph 49.

511 End Child Prostitution Pornography and Trafficking UK (ECPAT), *Child Sex Tourism in Thailand*, accessed November 1, 2011, <http://www.ecpat.org.uk/downloads/Thailand05.pdf>.

512 CEDAW, *Indonesia 6th & 7th Report*, paragraph 68.

difficulties in proving their age and nationality or residency.⁵¹³

In some countries, for instance the Philippines⁵¹⁴ and Cambodia, the proliferation of stolen or spurious birth certificates and travel documents was observed. Agents reportedly forge birth certificates to recruit children.⁵¹⁵ In Cambodia passports and other documents with falsified birth information are readily available.

Culture and Traditional Attitudes

Culture and gender roles were also indicated as a factor in exploitation. For instance, in some ethnic minorities in Thailand, based on the concept of karma and merit making in Theravada Buddhist society, girls may show gratitude and gain merit by helping their families. With the rising incidence of poverty and increasing demand for females in the growing sex industry, daughters can fulfil their obligations to contribute to the family income by working as prostitutes.⁵¹⁶ Child prostitution may also exist as a family trade where children live with their parents and sell sex as part of the household economy. In this sense, prostitution may seem to be the best choice available for children and families who believe it to be morally acceptable.⁵¹⁷

Pertaining to the worst forms of child labour, literature highlights the challenge posed by the societal perception that working is a part of the education process to prepare a child to become an adult; that work is seen as a form of his/her service to the parents; and that a child is a family

asset.⁵¹⁸

Other Factors

The widespread use of the Internet, consumerism, ease of travel, poorly implemented development policies,⁵¹⁹ and geographic proximity were also indicated as factors that facilitate exploitation. Aside from these factors, other additional causes cited by the Country Reports included lack of perspectives, lack of awareness of dangers involved, lack of access to financial institutions, lack of safety nets, and shattered or dysfunctional families.

Policies that Facilitate Exploitation

(Addressed in Assessment of State Policies of this Section.)

c. Impact of Exploitation

Poor Physical and Mental Health

Poor health was indicated as a common impact. This includes malnutrition, exposure to sexually transmitted diseases, unwanted pregnancies and abortions, infections due to unhygienic conditions and overcrowding, and occupational health risks. Hazardous working conditions also negatively affect the growth of children and result to poor mental and psychological health.

For instance, literature indicates that in Myanmar, around 18% of female sex workers are infected with HIV.⁵²⁰ Research also found various health problems that are widespread in the poor migrant communities, such as tuberculosis, malaria, parasitic diseases, and respiratory and gastro-intestinal conditions.⁵²¹ In the same vein, a 2010 ECPAT International field research in Singapore found that some trafficking victims suffered from health

513 *Ibid*; see also ADB, Indonesia Country Gender Assessment, 65; and IRIN, Indonesia: Trafficking Fuels Commercial Sex Work. Humanitarian News and Analysis, 3 June 2009, www.irinnews.org (accessed 6 March 2012).

514 Celia Leones and Donna Caparas, "Trafficking in Human Beings from the Philippines: A Survey of Government Experts and Law Enforcement Case Files: Executive Summary (Coalitions against Trafficking in Human Beings in the Philippines - Phase 1 of the United Nations Global Programme against Trafficking in Human Beings)," available at http://www.childtrafficking.com/Docs/enforcement_aase_files_0807.pdf (accessed 7 July 2012).

515 Human Rights Watch, "They Deceived Us at Every Step" Abuse of Cambodian Domestic Worker Migrating to Malaysia, November 2011, 11.

516 Carmen Lau, "Child Prostitution in Thailand," *Journal of Child Health Care* 12 (2008), 145.

517 Heather Montgomery, "Defining Child Trafficking & Child Prostitution: The Case of Thailand," *Seattle Journal for Social Justice* Volume 9 (2011), 775 – 776.

518 Government of Indonesia, *Report of the State Party Pursuant to Article 44 of the Convention: Third and Fourth Periodic Report of the State Party 2007 – Indonesia*, undated, CRC/C/IDN/3 – 4, paragraph 179

519 Asian Development Bank, *Broken Lives. Trafficking in Human Beings in the Lao People's Democratic Republic*, 2009, 36.

520 USAID, "HIV/AIDS Health Profile: Asia," 2011, http://www.usaid.gov/our_work/global_health/aids/Countries/asia/hiv_summary_asia.pdf (accessed 12 January 2012).

521 Mary J. Ditton, and Leigh Lehane, "Towards Relinquishing the Health-Related Millennium Development Goals for Migrants From Burma in Thailand," *Journal of Empirical Research on Human Research Ethics* (2009), 43-44.

issues that included HIV/AIDS, vaginal bleeding, and sexually transmitted infections resulting from their sex work. Some experienced stress, anxiety and depression, nausea and vomiting.⁵²² Some ASEAN countries, such as Thailand and Cambodia have been credited with notable success in their campaigns to reduce the rate of HIV infection.

Cultural and Social Impact

The Country Reports show that victims of trafficking often suffer from stigmatization and non-acceptance by their communities after their experiences. Exploitation was also found to prevent women and children from full social, economic, and political participation.

Particularly in Cambodia, the NGO-CEDAW Shadow report pointed out that in situations of trafficking, sexual exploitation, and sexual harassment, there is an unequal and unfair distribution of the consequences for men and women. While perpetrators may continue their lives without social stigma, the survivor is marked as a used and worthless woman.⁵²³

Discriminatory attitudes were also noted in Myanmar. Trafficked survivors who managed to get back home face the community's discrimination and lack of understanding. Local community members assume that trafficked women have been doing sex work. Family members do not want them back home since their daughters bring "shame" on the family. As a result, it is difficult for the survivors to return to a normal life. Further, due to stigma, women are also unwilling to seek medical help for sexually transmitted diseases contracted after being trafficked.⁵²⁴ HIV positive children are stigmatized, making it a challenge for them to attend schools in the communities they belong.⁵²⁵

522 ECPAT International Research Report, "Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore," 2010, 55-56.

523 NGO-CEDAW and CAMBOW, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women In Cambodia*, 2010, March 2011, 63.

524 PWO, "Stolen Lives," 26-27.

525 See UNICEF, "Thailand: HIV-positive children battle fear and discrimination," updated 14 December 2005, http://www.unicef.org/aids/Thailand_30479.html (accessed 3 August 2012); and Rachel Stevens, "HIV and school children in Thailand," *Tearfund International Learning Zone*, last updated 5 December 2012, <http://tilz.tearfund.org/Publications/Footsteps+61-70/Footsteps+61/HI>

Economic exploitation and sexual exploitation of children at young ages have negative impacts not only on their health, but also education and development. In Myanmar, a study shows that enrolment rates for child labour participants (aged 10-14) is at 11.6%, which is significantly lower than that of non-labour participants (78.3%). This indicates that children in the labour force lack access to education and are, consequently, likely to be trapped in a poverty circle.⁵²⁶

Child prostitutes and sexually active children are at high risk of complicated pregnancies and backstreet abortions. As found in Thailand, when the pregnancy is not terminated, there is a risk of a "chain effect" where mothers tend to be at great risk of perpetuating the behavioural cycle of physical, emotional, or sexual abuse with their children.⁵²⁷

V+and+school+children+in+Thailand.htm (accessed 3 December 2012).

526 IHLCA Project Technical Unit, "Integrated Household Living Conditions," 51.

527 Carmen Lau, "Child Prostitution in Thailand," *Journal of Child Health Care* 12 (2008), 150.

2. De Jure State Responses

Assessment of State Policies

Trafficking Law

The various definitions of trafficking and exploitation are reflected in the chart below.

Country	Legislation on “Exploitation” and/or “Trafficking” in Persons
Brunei Darussalam	<p>The Trafficking and Smuggling of Persons Order, 2004, stipulates as follows: <i>In this Order, unless the context otherwise requires – ...“exploitation” includes all forms of sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;</i> <i>Offence of people trafficking.</i> <i>Any person who recruits, transports, transfers, harbours or receives any person or persons for the purpose of exploitation by one or more of the following means -</i></p> <ul style="list-style-type: none"> • <i>threat;</i> • <i>use of force or other forms of coercion;</i> • <i>abduction;</i> • <i>fraud;</i> • <i>deception;</i>
Cambodia	<p>Article 10 of the Law on Suppression of Human Trafficking and Sexual Exploitation states that: <i>The terms “any form of exploitation” in this Article and Article 12, 15, 17, and 19 of this law shall include the exploitation of the prostitution of others, pornography, commercial sex act, forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labour or the removal of organs.</i></p>
Indonesia	<p>The definition of “exploitation” is provided in Article 1(7) of TIP Law: <i>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</i> The definition of “trafficking in persons” is contained in Article 1(1) of TIP Law: <i>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.</i></p>
Lao PDR	<p>Article 134 of the Penal Law defines human trafficking as the “recruitment, moving, transfer, harbouring, 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 the person in forced labour, prostitution, pornography.” If these acts are committed against children under 18 years of age, they are considered as human trafficking even if there is no deception, threat, use of force, or debt bondage.</p>
Malaysia	<p>Trafficking in persons is defined under Anti-Trafficking in Persons Act 2007 (Act 670) as “recruiting, transporting, transferring, harbouring, providing or receiving of a person for the purpose of exploitation.”⁵²⁸ 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.”⁵²⁹ In 2010, the Act was amended 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.⁵³⁰</p>

528 Anti-Trafficking in Persons Act, Section 2.

529 *Ibid.*

530 United States Department of State Trafficking in Persons Report 2011; Amendment to the Anti-Trafficking in Persons Act, DR 22/2010, http://www.cjlaw.com/membersentry/bills/MY_FS_BIL_2010_22.asp.

Country	Legislation on “Exploitation” and/or “Trafficking” in Persons
Myanmar	<p>According to Section 3(a) of the Anti Trafficking in Persons Law: <i>Trafficking in Persons means recruitment, transportation, transfer, sale, purchase, lending, hiring, harbouring or receipt of persons after committing any of the following acts for the purpose of exploitation of a person with or without his consent:</i></p> <ul style="list-style-type: none"> • <i>threat, use of force or other form of coercion;</i> • <i>abduction;</i> • <i>fraud;</i> • <i>deception;</i> • <i>abuse of power or of position taking advantage of the vulnerability of a person;</i> • <i>giving or receiving of money or benefit to obtain the consent of the person having control over another person.</i> <p><i>Exploitation includes receipt or agreement for receipt of money or benefit for the prostitution of one person by another, other forms of sexual exploitation, forced labour, forced service, slavery, servitude, debt-bondage or the removal and sale of organs from the body.</i> The Penal Law, particularly Sections 366-367 and 370-374, also deal with trafficking and exploitation.⁵³¹</p>
Philippines	<p>The Anti-Trafficking Act (Republic Act 9208) provides as follows: <i>Section 3 (a) Trafficking in Persons - refers to the recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, servitude or the removal or sale of organs.</i></p> <p><i>The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall also be considered as “trafficking in persons” even if it does not involve any of the means set forth in the preceding paragraph.</i></p>
Singapore	<p>Singapore does not have a specific anti-trafficking legislation. The following offences, among others, are relevant to exploitation and trafficking:</p> <p>Selling, letting for hire, or otherwise disposing of any woman or girl for prostitution within or outside Singapore, or attempting to do the same⁵³²</p> <p>Buying, hiring, or otherwise obtaining possession of any woman or girl for prostitution, or attempting to do the same⁵³³</p> <p>Living or trading in the prostitution of another⁵³⁴</p> <p>Buying, selling, procuring, trafficking in, or bringing into or taking out of Singapore for the purpose of such traffic, any woman or girl, whether or not for the purpose of present or subsequent prostitution⁵³⁵</p> <p>Bringing into or taking out of Singapore, or assisting in the same, by or under false pretence, false representation or fraudulent or deceitful means made or used either within or without Singapore, any woman or girl, with intent that she shall be employed or used for the purpose of prostitution either within or without Singapore; knowing or having reason to believe that she will be so employed or used; or whether or not for the purpose of present or future prostitution⁵³⁶</p> <p>Procuring or bringing into Singapore any woman or girl, or attempting to do so, carnal connection except by way of marriage with any male person or for the purpose of prostitution either within or without Singapore⁵³⁷</p>
Thailand	<p>The Prevention and Suppression of Human Trafficking B.E 2551 (2008) stipulates as follows: Section 4: <i>“Exploitation” means seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.</i></p> <p>Section 6: <i>Whoever, for the purpose of exploitation, does any of the following acts: procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving a child, is guilty of trafficking in persons.</i></p>

Country	Legislation on “Exploitation” and/or “Trafficking” in Persons
Vietnam	<p>The Law on Prevention, Suppression Against Human Trafficking does not give the definition of “trafficking” or “exploitation”, although it does define “sexual exploitation”, “sexual slave”, and “forced labour”. It enumerates “prohibited acts” as follows:</p> <p><i>Article 3. Prohibited Acts</i></p> <ul style="list-style-type: none"> • <i>The trafficking in persons as stipulated in Article 119 and Article 120 of the Penal Code.</i> • <i>The transfer or receipt of persons for sexual exploitation, forced labour, the removal of organs, or for other inhuman purposes.</i> • <i>The recruitment, transportation, harbouring of persons for sexual exploitation, forced labour, the removal of organs or for other inhuman purposes, or for the commission of the acts as stipulated in paragraphs 1 and 2 of this Article.</i> • <i>Coercion of persons to commit any of the acts stipulated in paragraphs 1, 2 and 3 of this Article.</i> • <i>Conducting brokerage to help other persons commit any of the acts stipulated in paragraphs 1, 2 and 3 of this Article.</i> • <i>Revenge or the threat of revenge of victims, witnesses, denunciators, their relatives or persons who deter the acts stipulated in this Article.</i> • <i>Misuse of the prevention, suppression against human trafficking for illegally obtaining profits or committing illegal acts.</i> • <i>Obstruction against denunciation, notification and handling of the acts stipulated in this Article.</i> • <i>Differentiation or discrimination against victims.</i> • <i>Disclosure of the information of victims without their consent, or their lawful representatives.</i> • <i>Assuming false position as victims.</i> • <i>Other acts of violation of the provisions in this Law</i> <p>The Penal Code of Vietnam provides the following:</p> <p><i>Article 119 - Trafficking in women:</i></p> <ul style="list-style-type: none"> • <i>Those who traffic in women shall be sentenced to between two and seven years of imprisonment.</i> • <i>Committing the crime in one of the following circumstances, the offenders shall be sentenced to between five and twenty years of imprisonment:</i> <ul style="list-style-type: none"> » <i>Trading in women for the purpose of prostitution;</i> » <i>In an organized manner;</i> » <i>Being of professional characters;</i> » <i>For the purpose of sending them overseas;</i> » <i>Trafficking in more than one person;</i> » <i>Trafficking more than once.</i> • <i>The offenders may also be subject to a fine of between five million and fifty million dong, to probation or residence ban for one to five years.</i> <p><i>Article 120 - Trading in, fraudulently exchanging or appropriating children</i></p> <ul style="list-style-type: none"> • <i>Those who trade in, fraudulently exchange or appropriate children in any form shall be sentenced to between three and ten years of imprisonment.</i> • <i>Committing such crimes in one of the following circumstances, the offenders shall be sentenced to between ten and twenty years of imprisonment or life imprisonment:</i> <ul style="list-style-type: none"> » <i>In an organized manner;</i> » <i>Being of professional character;</i> » <i>For despicable motivation;</i> » <i>Trading in, fraudulently exchanging or appropriating more than one child;</i> » <i>For the purpose of sending them abroad;</i> » <i>For use for inhumane purposes;</i> » <i>For use for prostitution purposes;</i> » <i>Dangerous recidivism;</i> » <i>Causing serious consequences.</i> • <i>The offenders may also be subject to a fine of between five million and fifty million dong, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years or subject to probation for one to five years.</i>

Other than the trafficking law of Vietnam, which came into effect only in January of 2012, the laws that penalize trafficking and its various forms of exploitation have been the subject of considerable reviews. Thus, Country Reports were able to cite various assessments on them, only some of which are discussed here.

The government of Vietnam has yet to complete its implementation of its new trafficking law by issuing all related decrees and circulars.⁵³⁸ However, as regards the law itself, the 2011 US TIP Report stated that, “While the government states that most trafficking acts, including labour trafficking, are already covered under Vietnam’s Criminal Code, *other acts of trafficking require additional legislation and implementing regulations before Vietnam’s laws have criminal penalties for all forms of trafficking.*”⁵³⁹ It is also unclear how the provisions of the trafficking law are intended to interact with the trafficking offence provisions in the Penal Code, though it was indicated that the list of prohibited acts in the TIP law is meant to provide guidance as to the types of conduct that may constitute trafficking under the Penal Code.⁵⁴⁰

In Singapore, the definition of “trafficking” in the Trafficking Protocol has not been incorporated into local laws. The existing laws under the Women’s Charter, Penal Code, and Children and Young Persons Act have been described as “too piecemeal.”⁵⁴¹ Consolidation may give needed clarity and consistency. There also has

been disagreement over the scope of certain offences. Singapore’s trafficking laws have been described by one NGO as “comprehensive,”⁵⁴² and by another as “highly restrictive” and narrower in scope than the Trafficking Protocol’s definition.⁵⁴³ There has been disagreement over whether the laws cover situations of debt bondage and other non-physical coercion.⁵⁴⁴

Lao PDR does not have separate legislation on trafficking in persons; instead a 2005 amendment was made to prohibit human trafficking through its Penal Code.⁵⁴⁵ In cases where the trafficking offence involves women and children, the Law on the Protection of Women will be applied, as provided by the Penal Code. National laws against trafficking are said to define human trafficking in a way that generally reflects the internationally accepted definition.⁵⁴⁶

The law in some ASEAN Member States, including Indonesia, Malaysia, Myanmar, Philippines and Thailand states that victims of trafficking shall not be prosecuted for criminal acts committed as part of the trafficking process.⁵⁴⁷ The laws in Brunei Darussalam, Cambodia, Lao PDR, Singapore and Vietnam do not contain

531 The Penal Code, available at http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf (accessed 2 August 2012).

532 Women’s Charter, Section 140.

533 *Ibid.*

534 *Ibid.*, Section 146.

535 *Ibid.*, Section 141.

536 *Ibid.*, Section 142.

537 *Ibid.*, Section 140.

538 United States Department of State, “Trafficking in Persons Interim Assessment,” <http://www.state.gov/j/tip/rls/reports/2012/188427.htm> (accessed 25 April 2012).

539 US Trafficking in Persons Report 2011, 384.

540 David, Fiona, Anne Gallagher, Paul Holmes and Albert Moskowitz, *Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region*, (Association of Southeast Asian Nations, 2011), available at http://www.artipproject.org/progress-report/Progress%20Report_Criminal%20Justice%20Responses%20to%20TIP%20in%20the%20ASEAN%20Region_2011.pdf (accessed 13 March 2012), 13.

541 Esther Ng, “New Plan to Tackle Human Trafficking,” *TODAY*, 22 March 2012.

542 SCWO, *CEDAW Shadow Report*, June 2011, 26.

543 Transient Workers Count Too and the Global Alliance Against Traffic in Women, *Singapore Shadow Report: 4th Periodic Review*, June 2011, 16.

544 Section 140 has been interpreted by the United States Department of State in its 2011 TIP report as not prohibiting non-physical forms of coercion, such as debt bondage or threat of abuse of the legal process. The Inter-agency Task Force on Trafficking in Persons has disagreed with this interpretation, taking the position that Section 140 covers a wide variety of situations, including where there is no threat of physical injury. Ministry of Foreign Affairs, Singapore, “Singapore Inter-Agency Taskforce’s Detailed Response to the 2011 US State Department’s Trafficking In Persons Report,” 1 August 2011, paragraph 23. Separately, local NGO, Transient Workers Count Too, together with the Global Alliance against Traffic in Women, have in their 2011 CEDAW Shadow Report taken the view that Section 140(c)(iii) of the Women’s Charter does appear to offer an avenue for prosecuting those who trap women into sex work by using their indebtedness. The said NGOs, however, note that the provision seems little used.

545 Asia Regional Trafficking in Persons Project, “Trafficking in Persons and the Criminal Justice Sector,” <http://www.artipproject.org/artip-tip-cjs/laws-policies-national-ams.html>, (accessed 25 May 2012).

546 UNIAP SIREN, “The Criminal Justice Response to Human Trafficking: Recent Developments in the Greater Mekong Sub-Region,” May 2010, 3.

547 ASEAN Progress Report on Criminal Justice Responses to TIP, 23.

specific provisions on this matter.⁵⁴⁸ The trafficking law in Indonesia, Philippines and Thailand “very clearly provides all victims of trafficking with the right to immediate protection and support.”⁵⁴⁹ More limited services and supports are available to some victims of trafficking under the laws of Lao PDR, Myanmar and Vietnam. Measures for protection and support are found in Cambodian policy documents that do not have the force of law.⁵⁵⁰ The laws of Brunei Darussalam, Malaysia and Singapore were found to establish varying forms of detention of victims of trafficking.⁵⁵¹

It was noted that in Myanmar’s Anti-Trafficking in Persons Law (2005), limited protection from prosecution is offered to specific categories of survivors as it provides 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.” Since prostitution is illegal, trafficking survivors who were forced into the sex industry might possibly be subjected to prosecution. The CRC Committee also raised its concern about the alleged prosecution of children engaged in prostitute.⁵⁵²

Related to this is the concern of inadequate protection from sexual exploitation. In Myanmar, child prostitution is prohibited under the Penal Code. The Child Law penalizes offenses related to child prostitution and child pornography. 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.” This law has been deemed inadequate in protecting children from commercial and sexual exploitation.⁵⁵³

In Lao PDR, the Law on the Protection of Women provides that victims of trafficking have the right to not be “prosecuted and detained on any charge of trafficking in women and children, prostitution, or illegal immigration.” However, this 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. Singapore’s current laws relating to trafficking and exploitation are said to be lacking in provisions for victim support.⁵⁵⁴ The existing framework has been described as a “predominantly transnational criminal justice framework,” as opposed to a “human rights framework.”⁵⁵⁵

The Anti-Trafficking in Persons Act of Malaysia provides for the custody of victims in shelters and provision of medical treatment, however “the law provides no choice or autonomy to the victim in relation to their treatment.”⁵⁵⁶ An enforcement officer may take a suspected trafficking victim into custody and present the victim to a Magistrate to make a 14-day protection order authorising the victim to be kept in custody.⁵⁵⁷

In Singapore, the Director of Social Welfare may receive a trafficked woman or girl into a place of safety when he is satisfied that the woman or girl is in need of a refuge. The Director may also exercise his or her discretion to order a woman or girl victim of trafficking detained for the purposes of an enquiry. According to the Government of Singapore, this power is not mandatory and used only in exceptional circumstances. During the period of detention the victim is provided with medical, psychological and counselling services.⁵⁵⁸

The trafficking law of Brunei Darussalam does not specify an obligation on the part of the State to provide victims with immediate protection and support. The Women and Girls Protection Act, however, provides that women and girls who may be considered in “moral danger” or who are believed to have been ill-treated and in need of protection may be detained in a “place of safety”. The Act also authorises the competent authority to make rules for the care, detention, maintenance, and education of women and children detained. Additional literature,

548 *Ibid*, 24.

549 *Ibid*, 21.

550 *Ibid*, citing Prakas on Minimum Standards for Protection of the Rights of Victims of Human Trafficking, No: 857S.VY (2009) (Cambodia).

551 *Ibid*, 22.

552 CRC, *Concluding Observations 2012*, paragraph 87.

553 *Ibid*, paragraphs 86 and 87.

554 Imelda Saad, “HOME to set up anti-human trafficking centre in Spore,” *Channel News Asia*, 27 November 2011, <http://www.channel-newsasia.com/stories/singaporelocalnews/view/1167812/1/>.html.

555 SCWO, *CEDAW Shadow Report*, June 2011, 28.

556 ASEAN Progress Report on Criminal Justice Responses to TIP, 23.
557 *Ibid*.

558 *Ibid*, 22-23, citing Sections 155, 161, 163 and 179 of the Women’s Charter (Chapter 353).

however, is necessary to establish how and whether or not this Act has been applied in TIP cases.⁵⁵⁹

It was pointed out that routine detention of victims of trafficking is not an appropriate way to provide victims with protection and support.⁵⁶⁰

A concern that arises in cross-border trafficking is whether or not carefully crafted anti-trafficking laws can hold perpetrators accountable. For example, since penal laws of the Philippines are essentially territorial in nature, acts of trafficking executed outside its territory, though involving its citizens, are not punishable under its laws. The government of Indonesia has also indicated that the handling of trafficking in persons has become more difficult since its trafficking in persons law is not equipped with extra-territorial jurisdiction.⁵⁶¹ However, the *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons* has pointed out that, given the international commitments of the Philippines, trafficking has become an extraditable offense in certain cases.⁵⁶² Indonesia, as well, has signed several such agreements. Nonetheless, calls have been made for an expansion of jurisdiction of the courts to allow the apprehension and conviction of traffickers found in the Philippines, where some openly participate in sex trade.⁵⁶³

Brunei Darussalam, Cambodia, Malaysia, Myanmar, and Thailand have included specific provisions on jurisdiction in their trafficking laws to ensure extra-territorial application in certain circumstances.⁵⁶⁴ The respective Penal Codes of Lao PDR, Singapore, and Vietnam include provisions that appear to allow prosecution for trafficking-related conduct outside of the territory in certain circumstances.⁵⁶⁵ Brunei Darussalam, Indonesia, Malaysia, Myanmar, Singapore, Thailand, and Vietnam

have their own domestic laws on mutual legal assistance that can potentially be applied in requests for mutual legal assistance concerning trafficking investigations.⁵⁶⁶

ASEAN Member State's national mutual legal assistance laws ⁵⁶⁶	
Brunei Darussalam	Mutual Assistance in Criminal Matters Order (2005)
Cambodia	No national mutual legal assistance law.
Indonesia	Law Concerning Mutual Legal Assistance in Criminal Matters (Law No. 1 of 2006)
Lao DPR	Law on Criminal Procedure (2004), Part XI
Malaysia	Mutual Assistance in Criminal Matters Act 2002
Myanmar	Mutual Assistance in Criminal Matters Law (Law No. 4/2004)
Philippines	No national mutual legal assistance law, however some mutual legal assistance provisions in the Anti-Money Laundering Act 2001.
Singapore	Mutual Assistance in Criminal Matters Act (Chapter 190A)(Act 12 of 2000, as amended)
Thailand	Act on Mutual Assistance in Criminal Matters BE 2535 (1992)
Vietnam	Law on Mutual Legal Assistance (Law No. 08/2007/QH12)

There is no specific law on mutual legal assistance in Cambodia, Lao PDR, or the Philippines.⁵⁶⁷ Among ASEAN Member States, the Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries may, however, be used. Some ASEAN Member States also have bilateral mutual legal assistance arrangements with treaty partners outside the region.

559 *Ibid*, 23.

560 *Ibid*, citing UN Trafficking Principles and Guidelines; and Commentary to the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, 133-139.

561 UN HRC, *Indonesia UPR National Report 2008*, paragraph 37.

562 ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases 2010, 111.

563 Fr. Shay Cullen, "Universal Jurisdiction Needed to Convict Child Traffickers," *PhilNews.com*, <http://www.philnews.com/2005/va.html> (accessed 4 August 2012).

564 ASEAN Progress Report on Criminal Justice Responses to TIP, 17.

565 *Ibid* citing Penal Code (Lao PDR) Article 4; Penal Code (Singapore) Article 3; Penal Code (Vietnam), Article 6(1).

566 ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases 2010, 43.

567 ASEAN Progress Report on Criminal Justice Responses to TIP, 17.

568 See ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases 2010, 36.

569 Law No. 3 of 2012 on the Ratification of the Agreements between the Government of the Republic of Indonesia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China Concerning Mutual Legal Assistance in Criminal Matters, State Gazette No. 2012:85, 28 March 2012.

570 Treaty between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Vietnam on Mutual Legal Assistance in Criminal Matters. "EM - UK and Vietnam on Mutual Legal Assistance in Criminal Matters," *Foreign and Commonwealth Office*, <http://www.fco.gov.uk/en/publications-and-documents/treaty-command-papers-ems/explanatory-memoranda/explanatory-memoranda-2009/100Vietnam-MLA> (accessed 3 August 2012).

Asean Member States' Bilateral MLA Arrangements ⁵⁶⁸	
Brunei Darussalam	-
Cambodia	-
Indonesia	Australia; PR China; Hong Kong ⁵⁶⁹
Lao DPR	Vietnam
Malaysia	Australia; Hong Kong; United States of America.
Myanmar	-
Philippines	Australia; Hong Kong; PR China; Switzerland; United States of America
Singapore	Hong Kong; India
Thailand	Australia; Belgium; Canada; PR China; France; India; Korea; Norway; Peru; Poland; Sri Lanka; United Kingdom; United States of America
Vietnam	Korea; Lao PDR; Mongolia; PR China; United Kingdom ⁵⁷⁰

ASEAN does not have a regional treaty on extradition. However, with the exception of Thailand,⁵⁷¹ all ASEAN Member States are parties to the United Nations Convention against Transnational Organized Crime (UNTOC), which can provide a legal basis for extradition.

Child Soldiers

Reports indicate that recruitment of child soldiers occurs in Myanmar, Philippines, and Thailand. Gaps in the legal system penalizing child soldiers were indicated in Thailand and the Philippines. In Thailand, every Thai male is required to enlist in the military reserve force at the age of 18 years. At the age of 21 years, they are screened for physical disabilities and recruited for two years of military service as private soldiers. However, neither the Penal Code nor the Child Protection Act explicitly criminalises the recruitment of children under the age of 18.⁵⁷² In the Philippines as well, it was observed that there was lack of prosecution of perpetrators of recruitment of child soldiers. This was found to be partly due to the ambiguity of the law prohibiting it, as it does not provide for punitive sanctions for the violations.⁵⁷³

⁵⁷¹ Thailand, however, has signed the UNTOC.

⁵⁷² Coalition to Stop the Use of Child Soldiers, *Report to the Committee on the Rights of the Child in advance of Thailand's initial report on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, September 2011, 10.

⁵⁷³ UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: Concluding Observations: the Philippines*, 22 October 2009, CRC/C/PHL/CO/3-4, paragraph 69.

Migration Policies that Facilitate Exploitation

The South East Asia National Human Rights Institutions Forum (SEANF) stated that registration systems restricting workers to only the employer who brought them into the country may also fuel irregular migration because migrant workers experiencing difficulties will flee into the underground economy when they are not permitted to change their employer.⁵⁷⁴ Thus, even migrant workers with proper documentation may become vulnerable to exploitation. Following are some policies which literature indicates may influence prevalence of exploitation.

The government of Singapore favours contractual over statutory protection. NGOs have expressed concern that the lack of regulation exposes foreign workers to situations of exploitation. All employment agencies placing foreign domestic workers must be accredited, and these accredited agencies are required to facilitate the signing of standard contracts issued by accreditation bodies.⁵⁷⁵ It was noted, however, that foreign domestic workers do not have sufficient bargaining power when making such arrangements.⁵⁷⁶ Further, government policies that make the foreign worker's employment in Singapore dependent on her current employer may compel her to comply with orders and deter her from making complaints. There is no minimum wage or salary in Singapore.⁵⁷⁷ The matter is left to market forces and mutual negotiations between the employer and the employee or representing trade union.

Thailand is said to be at the centre of increasing migratory movements in the region and there is a blur in the distinction between asylum-seekers and those coming predominantly for economic reasons.⁵⁷⁸ It is reportedly without dispute that many migrants in Thailand remain

⁵⁷⁴ South East Asia National Human Rights Institutions Forum (SEANF), *South East Asia National Human Rights Institutions Forum (SEANF) Paper on Migrant Workers 2010*, 12-13. See also Regional Thematic Working Group on International Migration Situation Report 2008, 123.

⁵⁷⁵ *Singapore's Fourth Periodic Report (CEDAW/C/SGP/4*, 3 April 2009), paragraphs 11.49 and 11.52.

⁵⁷⁶ AWARE, *CEDAW Shadow Report*, May 2011, paragraph 11.79.

⁵⁷⁷ "Salary," MOM, last updated on 8 May 2012, <http://www.mom.gov.sg/employment-practices/employment-rights-conditions/salary/Pages/default.aspx>.

⁵⁷⁸ "Legally, refugees have no right to employment." UNHCR, "2012 UNHCR country operations profile – Thailand," <http://www.unhcr.org/pages/49e489646.html> (accessed 3 August 2012).

undocumented.⁵⁷⁹ Efforts by the government to regularize undocumented workers have been recognized.⁵⁸⁰ However, Thailand's *Nationality Verification and Granting an Amnesty to Remain in the Kingdom of Thailand to Alien Workers Program* is said to offer inadequate legal rights to Burmese and other migrant workers and binds their immigration status to Thai employers.⁵⁸¹ Thailand's migration management policies have been attributed to short-term reactions to employer demands,⁵⁸² economic considerations, and even prejudice.⁵⁸³ Unregistered workers and their employers have to pay authorities every month to avoid arrest; nonetheless, many employers choose this arrangement over the complexity and cost of registration.⁵⁸⁴ For migrants, regularized status means increased confidence to assert rights against employers, better protection against arrest or extortion, and access to health and social security services. However, difficulty in accessing rights accorded to migrants and the necessity

to register with and be bound to one employer make registration unattractive for many.⁵⁸⁵ Incentives for migrants and employers to register remain weak due to the expense of registration, lack of understanding, complexity, lack of enforcement against unregistered workers and employers, and continued extortion by officials.⁵⁸⁶

Malaysia practices a restricted registration system, which permits migrant workers to enter Malaysia on work permits that restrict them to be employed only by their sponsor employer.⁵⁸⁷ The CEDAW Committee noted the lack of legislation or policies protecting the rights of migrant workers, particularly migrant domestic workers who are mostly women.⁵⁸⁸ Laws or regulations concerning the status of asylum-seekers and refugees are also lacking.⁵⁸⁹ A migrant worker's employment can be terminated, and the worker's work permit cancelled, by the employer at any time.⁵⁹⁰ Without the permit, the migrant worker becomes immediately subject to deportation. Under the current system, companies are not responsible for sending unwanted migrant workers back to their countries of origin.⁵⁹¹ There are no strict laws prohibiting agents from imposing heavy administrative fees on workers and this entraps workers in a system of debt bondage.⁵⁹² Malaysia does not have a minimum wage for domestic workers; instead, employment agencies and employers typically set salaries based on country of origin instead of workers' education and experience.⁵⁹³ The extent of protection from discriminatory practices depends primarily on the

579 "Those documented are either semi-legal awaiting Nationality Verification (350,000), fully-legal having completed Nationality Verification (400,000) or fully legal with glitches (150,000 have passed Nationality Verification but have no work permits)." Andy Hall, "Migration management in Thailand reaches a crossroads," *The Nation*, <http://www.nationmultimedia.com/2011/05/04/opinion/Migration-management-in-Thailand-reaches-a-crossro-30154495.html> (accessed 3 August 2012).

580 See e.g. ASEAN Inter-Parliamentary Myanmar Caucus, "ASEAN Must Move Swiftly to Implement a Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers," *Burma Partnership*, 26 April 2012, <http://www.burmapartnership.org/2012/04/asean-must-move-swiftly-to-implement-a-framework-instrument-on-the-protection-and-promotion-of-the-rights-of-migrant-workers/> (accessed 6 August 2012).

581 United States Department of State, *2011 Trafficking in Persons Report - Thailand*, 27 June 2011.

582 *Ibid.*

583 "Thailand restricts the flow of regular migration from Burma to Thailand due to economic considerations and long standing prejudice. This puts the vast majority of people suffering from abuse and poverty in Burma in the situation of becoming irregular migrants and, thus, makes them vulnerable to all forms of exploitation and trafficking. In fact, it is women from the Shan State who now make up a large portion of women and girls in the most exploitative forms of prostitution in Northern Thailand and many of them are or have been victims of trafficking." Christa Foster Crawford, "Cultural, Economic and Legal Factors Underlying Trafficking in Thailand and Their Impact on Women and Girls from Burma," *Thailand Law Journal 2009 Spring Issue 1 Volume 12*, available at <http://www.thailawforum.com/articles/Trafficking-in-Thailand%20.html> (accessed 3 August 2012).

584 Andy Hall, "Migration management in Thailand reaches a crossroads," *The Nation*, <http://www.nationmultimedia.com/2011/05/04/opinion/Migration-management-in-Thailand-reaches-a-crossro-30154495.html> (accessed 3 August 2012).

585 *Ibid.*

586 *Ibid.*

587 See Philip S. Robertson Jr., 'Migrant Workers in Malaysia – Issues, Concerns and Points for Action' Commissioned by the Fair Labor Association, October 2008, http://www.fairlabor.org/fla/_pub/SyncImg/fla_occasionalpaper_migrantworkersinmalaysia.pdf.

588 CEDAW Committee Concluding Comments, paragraphs 25-26.

589 CEDAW Committee Concluding Comments, paragraphs 28-29.

590 See Philip S. Robertson Jr., 'Migrant Workers in Malaysia – Issues, Concerns and Points for Action' Commissioned by the Fair Labor Association, October 2008, http://www.fairlabor.org/fla/_pub/SyncImg/fla_occasionalpaper_migrantworkersinmalaysia.pdf.

591 Stephanie Sta Maria, "HRW: Malaysia has 'excellent' human trafficking system," Human Rights Watch, 2 August 2010, <http://www.hrw.org/news/2010/08/02/hrw-malaysia-has-excellent-human-trafficking-system>.

592 *Ibid.*

593 "Malaysia MoU fails to provide needed safeguards for migrant workers," *The Jakarta Post* (Jakarta), 6 January 2011, <http://www.thejakartapost.com/news/2011/06/01/ri-malaysia-mou-fails-provide-needed-safeguards-migrant-workers.html>.

ability of source countries to negotiate for better terms with the Malaysian government. Filipino domestic workers are said to have best protection, with the highest salary and guaranteed rest days because of requirements imposed by the Philippines government.⁵⁹⁴

In Myanmar, tight restrictions on movement and access to information are said to have increased young people's vulnerability to exploitation. "There are no laws explicitly protecting freedom of movement within the country, foreign travel, emigration, and repatriation."⁵⁹⁵ Even within the country, regional and local orders, directives, and instructions restricted freedom of movement.⁵⁹⁶ A study conducted in 2008 found that around 75% of Myanmar migrants travelled to Thailand without legal documents.⁵⁹⁷ Young migrants, who are without the proper travel documents or knowledge about their destination, become more reliant on people with prior travel experience and are more susceptible to being tricked into trafficking.⁵⁹⁸

On the other hand, in Vietnam, it was noted that the Government encourages the unemployed to seek employment abroad. However, the movement has been poorly regulated and this creates opportunity for trafficking.⁵⁹⁹ The Cambodian government, as well, is encouraging migrant work as a strategy to increase foreign remittances, cope with unemployment and alleviate poverty. However, safeguards to protect

migrants are inadequate.⁶⁰⁰ For instance, literature indicates the insufficiency of Cambodia's Sub-Decree on Migrant Labour to protect against, among other things, debt bondage and ensure minimum wage.⁶⁰¹ Private labour recruitment agencies in Cambodia are said to control most aspects of the migration process, including recruitment of prospective domestic workers, training, employment placement, transit and return.⁶⁰² The existence of irregular channels makes it difficult for the Government of Cambodia and the governments of the receiving countries to give Cambodian migrant workers protection, access to health care and education, and leaves the migrants more vulnerable to various types of exploitation.⁶⁰³

In Lao PDR, although opportunities to migrate legally to Thailand have increased through the implementation of the MoU on Employment Cooperation, the process is said to be time-consuming and expensive. Lao workers, thus, choose irregular migration channels over the legal channels.⁶⁰⁴ Further, Lao 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.⁶⁰⁵ Domestic work has not been recognised and approved officially as a work sector for recruitment and sending under the MOU.⁶⁰⁶ There is no established practice of signing comprehensive contracts between domestic

594 *Ibid.*

595 United States Department of State, *2011 Country Reports on Human Rights Practices - Burma*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fc75ab3c.html> (accessed 14 August 2012).

596 *Ibid.*

597 Social Environmental Research Consultant, "A Comparative Picture of Migration in Laos, Myanmar, Cambodia, Vietnam and Thailand: Summary," 6, available at http://www.burmalibrary.org/docs08/A_Comparative_Study_of_Migration-SERC.pdf (accessed 2 August 2012).

598 Child Rights Forum of Burma (CRFB), *CRC Shadow Report Burma: The Plight of Children under Military Rule in Burma*, 29 April 2011, available at <http://www.childrightscoalitionasia.org/crc-shadow-report-on-burma-the-plight-of-children-under-military-rule> (accessed 7 November 2011), 24.

599 Nguyen Huu Chi et al., "Thị trường lao động và kinh tế phi chính thức ở Việt Nam trong thời gian khủng hoảng và phục hồi 2007-2009 [The labour market and the informal economy in Vietnam in the time of crisis and recovery 2007-2009]" (Hanoi: The World Bank, General Statistics Office, Institute de recherche pour le développement, UK aid, 2010), 24.

600 Human Rights Watch, "They Deceived Us at Every Step" Abuse of Cambodian Domestic Worker Migrating to Malaysia, November 2011, 15.

601 Cambodian League for the Promotion and Defense of Human Rights (LICADHO), "New Sub-Decree on Migrant Labor Fails Dismally on Workers Rights," 31 August 2011, <http://www.licadho-cambodia.org/pressrelease.php?perm=257> (accessed 15 May 2012).

602 Human Rights Watch, "They Deceived Us at Every Step" Abuse of Cambodian Domestic Worker Migrating to Malaysia, November 2011, 6.

603 Regional Thematic Working Group on International Migration Situation Report 2008, 11.

604 *Ibid.*, 47.

605 IOM, *The Mekong Challenge: An Honest Broker - Improving cross-border recruitment practices for the benefit of Government, Workers and Employers*, 2008, 16, citing Part 2 of document 3824/Ministry of Labour and Vocational Training (MOLVT).

606 Inthasone Phetsiriseng, *Gender Concerns in Migration in Lao PDR. Migration Mapping Study: A Review of Trends, Policy and Programme Initiatives*, UNIFEM (now UN Women), February 2007, 5.

workers and the employers.⁶⁰⁷ Thus, despite demand in the Thai domestic work sector, no formal migrants are being sent; significant numbers of Laotians, particularly women and girls, however, are said to be working in this sector without protection.⁶⁰⁸

The Indonesian legal framework on protection of its migrant workers is said to need further strengthening.⁶⁰⁹ There reportedly is a lack of regional regulations protecting migrant workers and there is no clear definition of the role of local governments in the issue of overseas employment.⁶¹⁰ This gap in protection is exacerbated by the “centralistic” approach of governance. The responsibility on the placement of migrant workers mainly lies on the central Government, but adequate attention to the protection of migrant workers is still lacking. Further, this centralistic approach can be problematic since 80% of problems faced by migrant workers occur in their places of origin.⁶¹¹

The Philippines has been described as a “quintessential out-migration country,” with low rates of domestic economic growth and foreign investment prompting the Government to rely on overseas employment to reduce unemployment in the country and for remittances.⁶¹² The Philippines is reportedly advanced in forging bilateral agreements, ratifying treaties relating to migrant worker rights, and has established support mechanisms and policies to assist overseas migrants and their families.⁶¹³ It thus becomes a matter of implementation and fulfilment

of commitments.⁶¹⁴ Unfortunately, the Government’s 88 offices protecting foreign workers abroad are “meagrely staffed and lack the resources to serve the country’s millions of migrants.”⁶¹⁵ Literature points to a “mismatch” or “ratio-distortion” between Government personnel and the needs of overseas Filipino workers.⁶¹⁶

Compared to other ASEAN Member States, there are few assessments on the impact of Brunei Darussalam’s migration policy on exploitation. The government’s immigration policies reportedly tend to maintain a stable level of immigration, with policies decreasing the level of immigration of skilled workers. There is no specific government policy regarding the integration of non-citizens.⁶¹⁷ The country never adopted an open door policy out of concern that immigrants would easily overwhelm the local population.⁶¹⁸ Literature indicates that there were employers who subjected female domestic workers to abuse, but the workers were incapable or reluctant to complain to authorities, as they were highly dependent on their employers.⁶¹⁹ More recent publications, however, indicate that Brunei Darussalam has adopted policies to better protect foreign workers. For instance, the government forbade wage deductions to agencies or sponsors and mandated that employees receive their full salaries. Nevertheless, foreign workers reportedly continued to pay high fees to manpower agents to obtain work in the country.⁶²⁰ The government now

607 Regional Thematic Working Group on International Migration Situation Report 2008, 47.

608 IOM Mekong Challenge: An Honest Broker, 20.

609 IOM, *Labour Migration from Indonesia: an Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*. Jakarta: 2010, 17. See also Palmira PermataBachtiar, “The Governance of Indonesian Overseas Employment in the Context of Decentralization,” Discussion Paper Series No. 2011-25, Philippine Institute for Development Studies, December 2011, 34.

610 *Ibid.*, ix. See also Komnas Perempuan, “Membangun Peraturan Daerah tentang Buruh Migran yang Berperspektif HAM dan Berkeadilan Gender (Developing Human Rights and Gender Oriented Regional Regulations on Migrant Workers),” Information Sheet 4th Ed, September 2006, 1 – 2.

611 *Ibid.*, 7.

612 Regional Thematic Working Group on International Migration Situation Report 2008, 75.

613 Melanie M. Reyes, “Migration and Filipino Children Left-Behind: A Literature Review,” Miriam College – Women and Gender Institute (2007), http://cwww.unicef.org/philippines/Synthesis_StudyJuly12008.pdf (accessed 6 March 2012).

614 UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding Observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 22 May 2009, CMW/C/PHL/CO/1, 2.

615 Ellene Sana and Rhodora Alcantara Abano, “Labor Migration in Southeast Asia,” in Ellen Laipson and Amit Pandya (eds.), *On the Move: Migration Challenges in the Indian Ocean Littoral* (Washington, D.C.: The Henry L. Stimson Center, 2010), 62.

616 Julyn Ambito and Melissa Suzette L. Banzon, *Review of Philippine Migration Laws: Gains, Gaps and Prospects (Discussion Paper Series No. 2011-37)* (Manila: Philippine Institute for Development Studies, 2011), 20-21.

617 “Integration, Building Inclusive Societies – Asia,” United Nations Alliance of Civilizations, <http://www.unaoc.org/ibis/worldwide/asia/> (accessed 3 August 2012).

618 Regional Thematic Working Group on International Migration Situation Report 2008, 8.

619 International Trade Union Confederation (ITUC), *Internationally – Recognized Core Labour Standards in Brunei Darussalam*, Geneva, 27 and 29 February 2008, http://www.ituc-csi.org/IMG/pdf/Brunei.final_1_.pdf (accessed 13 March 2012), 6.

620 United States Department of State, *2011 Country Reports on Human Rights Practices – Brunei*, 24 May 2012.

requires recruiting agencies to be registered. There were reported cases of non-payment of salaries, majority of which involved domestic workers. In many cases, judicial penalties including convictions and fines were imposed against employers found to not pay wages.⁶²¹

3. Implementation, Monitoring, and Prevention

a. Complaints Process

The Country Reports identified government mechanisms that are mainly tasked to implement and monitor laws against exploitation. The Asia Regional Trafficking in Persons Project (ARTIP) said that, in recent years, “Governments in South East Asia have developed a range of legal and policy responses to the crime of trafficking in persons.”⁶²² In most instances, governments have established inter-agency collaborations to specifically address trafficking. Nine of the ten ASEAN Member States have established specialist anti-trafficking units within their law enforcement structures or assigned such cases to an existing specialist unit.⁶²³ The remaining ASEAN Member State, Brunei Darussalam, has recently indicated its intention to establish such a unit in the near future.⁶²⁴ Information on their roles and functions were readily available. National Human Rights Institutions, in countries where one has been established, were also credited for receiving complaints, providing assistance to victims, monitoring implementation, and compliance with international standards, and awareness campaigns relative to exploitation.

Collaboration among ASEAN Member States, such as that manifested in the 2011 ASEAN Leaders Joint Statement in Enhancing Cooperation against Trafficking in Persons in Southeast Asia, is crucial. The Country Reports indicated many instruments that foster cooperation between and among countries; one that was often mentioned is the 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). (See

Annex D.) Another means by which ASEAN countries address cross-border exploitation is through informal cooperation, such as that existing between Myanmar’s Border Liaison Offices at the China and Myanmar border. Informal cooperation between the police in Singapore, the Criminal Investigation Division Anti-trafficking Unit in Indonesia, and police in Malaysia has also been fostered.

The ASEAN Training Program on Trafficking in Persons for Front Line Law Enforcement Officials is credited with improving front line officials’ awareness of the crime of trafficking.⁶²⁵ In the region, significant progress was noted in the development of generic trafficking-specific procedures through the Heads of Specialist Trafficking Units (HSU) process. The respective heads of the specialist units formally adopted the Generic Standard Operating Procedures for the Investigation of Trafficking in Persons Cases. However, adaptation at the national level and thorough application of these procedures has not yet been achieved. Assessment of current operational investigative practice amongst the specialist units confirms that “unacceptably low-levels of investigative quality jeopardise the whole goal of specialisation.”⁶²⁶

While there have been significant national and regional anti-trafficking initiatives and major investment in training and cross-border cooperation, there is a lack of accurate quantitative data to indicate how effective such measures have been in reducing the incidence of trafficking. The ASEAN Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region provides an extensive assessment of what the region has achieved so far. However, the Progress Report emphasizes a lack of reliable data on the extent of the trafficking problem and the ways in which States have responded to it; thus, given this constraint, the publication states that it cannot provide a “basis from which to draw strong and verifiable conclusions about the quality of national criminal justice responses.”⁶²⁷

b. Protection and Rehabilitation

The Country Reports indicated numerous legislations, programmes, and mechanisms to provide protection

621 *Ibid.*

622 Asia Regional Trafficking in Persons Project, “National Legal and Policy Framework around Trafficking in Persons,” <http://www.artipproject.org/artip-tip-cjs/laws-policies-national-ams.html> (accessed 15 May 2012).

623 ASEAN Progress Report on Criminal Justice Responses to TIP, 33.

624 *Ibid.*

625 *Ibid.*, 64.

626 *Ibid.*, 39.

627 *Ibid.*, 4-5.

and rehabilitation to survivors. Gaps were, however, also indicated.

There is no reliable base-line data on rates of victim-identification to measure progress; however, case analysis confirmed that front line law enforcement officials within the ASEAN region are regularly identifying victims of trafficking.⁶²⁸ Some ASEAN Member States have also developed and are currently using victim identification methodologies, such as Thailand's *Preliminary Checklist for Identifying Trafficked Persons*, Singapore's "TIP Card" for the police, Vietnam's inter-ministerial circular *Guidelines on Process and Procedures of Identification and Reception of Trafficked Women and Children from Abroad*, and the Philippine *Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases*. Confusion over interpretation of the law, however, continues to hamper the quality of the response.⁶²⁹ In Singapore, for instance, reports suggest that authorities are not making active efforts to search for and identify victims of trafficking. Instead, some law enforcers raided, punished, detained and deported trafficked victims.⁶³⁰ Brunei Darussalam reportedly has yet to develop or implement formal procedures to identify victims of trafficking. In 2010, the government did not identify or assist any trafficking victims.⁶³¹

Cambodia reportedly refers victims to NGO shelters and provides transportation assistance to return victims to their home communities, but lacks the resources to provide further assistance.⁶³² Insufficiency in the assistance provided to victims was also observed in Vietnam. "There is a lack of polices and resources for integration of repatriates into communities. There is a lack of government support centres to receive and provide services needed."⁶³³ Lao PDR reportedly relies "almost completely" on NGOs and international

organizations to provide victim assistance.⁶³⁴ National victim identification guidelines were drafted with support from UN agencies and NGOs,⁶³⁵ however they remain unenforced due to lack of funding, human resources, and government endorsement.⁶³⁶

Particularly pertaining to child soldiers in Myanmar, the Government has mentioned that programmes on disarmament, demobilization and reintegration have been carried out since 2002. It appears, however, that those activities have not yet reached child soldiers in the non-state armed groups. It was pointed out that Myanmar needs to take proactive approach to identify all children in the armed forces, register, and demobilize them with full family tracing, reunification and reintegration support.⁶³⁷

In Malaysia, women who have been involved in prostitution or have been sexually exploited are housed in centres called 'RumahNur'.⁶³⁸ Women below 18 years of age who have been involved in prostitution are placed in rehabilitation centres.⁶³⁹ Malaysia has set up at least three shelter homes for survivors of trafficking where they can stay until they are sent back to their countries of origin.⁶⁴⁰ In January 2012, the Ministry of Home Affairs announced a policy allowing victims of labour exploitation to work in Malaysia after their cases have been resolved and they are released from the shelters.⁶⁴¹

In Thailand, the government refers survivors of trafficking to one of nine long-stay regional shelters, where they receive psychological counselling, food, board, medical

628 *Ibid*, 60.

629 *Ibid*.

630 United States Department of State, "2011 Trafficking in Persons Report – Singapore".

631 United States Department of State, *Trafficking in Persons Report 2011 – Brunei*.

632 United States Department of State, *Trafficking in Persons Report 2010 – Cambodia*.

633 "Sale of Children, Child Prostitution & Child Pornography - a complementary report from NGOs in Viet Nam to the Vietnamese government's report on OPSC." Quoted from the Phu Nu (Women Magazine), March 12th, 2006).

634 US State Department, "2011 Trafficking in Persons Report – Laos."

635 UNIAP, *The Mekong Region Human Country Datasheets on Human Trafficking 2010*, available at http://www.no-trafficking.org/story_2010ht_datasheets.html (accessed 8 May 2012), 16; US State Department, "2011 Trafficking in Persons Report – Laos."

636 IRIN Asia, "LAO: Domestic trafficking goes undetected," 6 October 2010, <http://www.irinnews.org/report.aspx?ReportId=90684> (quoting an IOM representative).

637 CRC, *Concluding Observations 2012*, paragraph 82.

638 Malaysia's Responses to the list of issues and questions for consideration of the combined initial and second periodic report, 27 March 2006, CEDAW/C/MYS/Q/2/Add.1, 19.

639 Malaysia's CEDAW Report, paragraph 109.

640 UN Human Rights Council, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Malaysia*, 19 November 2008, A/HRC/WG.6.4/MYS/1/Rev.1, paragraph 92.

641 "First Batch of 32 Victims of Human Trafficking to Work Here – Lee," *Bernama*, 7 March 2012, <http://mapo.bernama.com/news.php?id=650486> (accessed 24 July 2012).

care, and legal assistance. It was noted, however, that the shelters did not always have adequate human resource capacity to provide adequate assistance.⁶⁴² In Vietnam, currently there are 54 rehabilitation centres managed by MOLISA for sex workers. Literature noted that while the government of Brunei Darussalam reported funding three shelters that may be used to assist victims of trafficking, none of these shelters had actually been used.⁶⁴³ Cambodia reportedly still lacks shelter facilities to accommodate survivors of trafficking.⁶⁴⁴ In Singapore, trafficked women and children may stay at the shelters in the Family Violence Networking System, which are the same as those for victims of family violence.

Singapore facilitates the return of victims who express their desire to return home. It has been reported however that the government of Singapore did not provide victims of sex or labour trafficking with legal alternatives to removal to countries where they may face hardship or retribution.⁶⁴⁵ China reportedly returned trafficking victims to Vietnam as part of general deportations without distinguishing victims of trafficking, other irregular migrants, and traffickers, making it difficult for Vietnam to provide appropriate services for victims.⁶⁴⁶ Positively, within Vietnam itself, victims may obtain one-time “difficult allowance” as well as start-up loans from the Bank for Social Policy or the Poor Women Support Fund. Funding has been received from the Alliance Anti-Trafficking in Persons, the IOM, Pacific Links Foundation, and the UNIAP.⁶⁴⁷

c. Prevention Strategy

The Country Reports indicate that most of the ASEAN countries are actively pursuing campaigns to prevent exploitation. NGOs are also indicated to be highly active in pursuing prevention campaigns. Various strategies were described; the most common of which

is awareness-raising through newspaper articles, magazine advertisements, television and radio shows, films, workshops and seminars. For instance, Singapore conducts sexuality education in schools and training of teachers on issues relating to sexual crimes. Sexuality education has proved to be an effective strategy in preventing prostitution-related practices such as “compensated dating”.⁶⁴⁸ Information dissemination on safe migration was also indicated. As example, in Lao PDR, with foreign funding and UNIAP’s cooperation, efforts were made to publicise the dangers of trafficking and explain the harmful consequences and risks of illegally looking for work abroad.⁶⁴⁹ The Country Report on Lao PDR, however, highlights the need to promote the formation of social networks of friends, family and fellow community members who have migrated previously so as to create an effective network of information and recruitment.

In Thailand, aside from numerous information campaigns, strict measures against travel and transportation agencies involved in sex tourism have been taken. Additionally, police officers have been designated to carry out surveillance and investigation, and to notify the Tourist Police of any suspected cases of child-sex tourism.⁶⁵⁰ The government conducted random interviews with Thai migrants at overland border-crossing checkpoints and prevented 171 potential victims of trafficking or other forms of exploitation from traveling.⁶⁵¹

Programs that address the root causes of exploitation were also mentioned. For instance, in Lao PDR, the government has, with the assistance of ILO-IPEC, given grants to villagers to help them generate additional income.⁶⁵² One project, in collaboration with the

642 United States Department of State, *2012 Trafficking in Persons Report - Thailand*, 19 June 2012.

643 United States Department of State, *Trafficking in Persons Report 2011 - Brunei*.

644 United States Department of State, *Trafficking in Persons Report 2010 - Cambodia*.

645 United States Department of State, *Trafficking in Persons Report 2011 - Singapore*.

646 UNICEF, “Reversing the Trend: Child Trafficking in East and Southeast Asia,” 63.

647 UNIAP, “Mekong Region Country Datasheets Human Trafficking,” 33.

648 ECPAT International Research Report, *Commercial Sexual Exploitation and Trafficking of Children and Young People in Singapore*, 2010, 28.

649 CRC, *Consideration of reports submitted by States: Lao PDR*, CRC/C/LAO/2, paragraph 152(a); US State Department, *Trafficking in Persons Report 2010: Lao PDR*.

650 Ministry of Foreign Affairs, *Answer to questionnaire on the protection of children from sexual exploitation*, http://www.mfa.go.th/humanrights/index.php?option=com_content&view=article&id=78:answer-to-questionnaire-on-the-protection-of-children-from-sexual-exploitation&catid=35:un-resolution&Itemid=73 (accessed 04 August 2012).

651 United States Department of State, *2011 Trafficking in Persons Report - Thailand*, 27 June 2011.

652 CRC, *Consideration of reports submitted by States: Lao PDR*, CRC/C/LAO/2, paragraph 152(a).

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.⁶⁵³ In Indonesia, the government has developed, among others, the National Community Empowerment Programme (PNPM) in trafficking-prone regions.⁶⁵⁴ Additionally, in Indonesia, to address the lack of birth certificates, regencies and municipalities have been providing birth certificates free of charge for the poor.⁶⁵⁵ Indonesia also adopted a Ministerial Decision on the Establishment of the Coordinating Forum for the Acceleration of the Issuance of Birth Certificates.⁶⁵⁶

It has been observed, however, that Brunei Darussalam has shown limited efforts in preventing trafficking in persons. It is reported that there had been efforts by the government to prompt the publication of articles in the newspapers on problems experienced by foreign workers, such as non-payment of salaries, but there were no efforts on the part of the government to conduct any public awareness campaigns on trafficking.⁶⁵⁷

4. Progress Indicators and Challenges

The Country Reports highlighted increased political will and collaboration among countries through signing of treaties, bilateral and multilateral agreements, and declarations as significant steps to addressing cross-border exploitation. Notable among these are the Treaty on Mutual Legal Assistance in Criminal Matters by ASEAN Countries and the 2011 ASEAN Leaders Joint Statement in Enhancing Cooperation against Trafficking in Persons in Southeast Asia. Only recently, on 8 June 2012, Vietnam ratified the United Nations Convention against Transnational Organized Crime⁶⁵⁸ and acceded to the Trafficking Protocol.⁶⁵⁹ Malaysia and Myanmar

also recently acceded to the Optional Protocol to the Convention on the Rights of the Child Protocol on Sale of Children, Child Prostitution and Child Pornography.⁶⁶⁰ (See Annex D.)

Progress at the domestic level was also indicated. Except for Brunei Darussalam, all the ASEAN Member States have established specialized units to address trafficking; Brunei Darussalam has indicated its intention to establish such a unit soon. In March 2011, the Vietnamese National Assembly adopted the Law on Prevention, Suppression Against Human Trafficking; it came into force on 01 January 2012. The government also finalized a five-year national plan of action on human trafficking and provided an estimated \$12 million in funding for anti-trafficking activities.⁶⁶¹ In Myanmar, the government showed “unprecedented cooperation” with the ILO and other international partners in discussing remedies for forced labour and child soldier conscription by members of the military or civilian administrators.⁶⁶² It made progress in ensuring that victims of trafficking were identified and received access to services by, for instance, inaugurating a national trafficking hotline in September 2011 that led to the rescue of 57 victims of trafficking.⁶⁶³ The Country Report on Singapore noted the increase in reported and acknowledged official cases of exploitation, which signals a greater openness of the government to acknowledge and address the problem. The setting up of the Inter-agency Taskforce against Trafficking in Persons and launch of the National Action Plan against Trafficking in Persons are recent laudable developments.

653 *Ibid.*

654 CEDAW, *Indonesia 6th & 7th Report*, paragraph 51. See also UNICEF, 2008 UNICEF-UPR, 1.

655 *Ibid.*, paragraph 134.

656 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.

657 United States Department of State, *Trafficking in Persons Report 2009 – Brunei*.

658 See “12. United Nations Convention against Transnational Organized Crime,” *United Nations Treaty Collection*, status as at 14-08-2012, http://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12&chapter=18&lang=en (accessed 14 August 2012).

659 See “12.a Protocol to Prevent, Suppress and Punish Trafficking
Faith Suzzette Delos Reyes-Kong

in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,” *United Nations Treaty Collection*, status as at 14-08-2012, http://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en (accessed 14 August 2012).

660 Malaysia acceded to the Protocol on 12 April 2012, while Myanmar acceded on 16 January 2012. “11 .c Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,” *United Nations Treaty Collection*, status as at 14-08-2012, http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-c&chapter=4&lang=en (accessed 14 August 2012).

661 United States Department of State, “Trafficking in Persons Interim Assessment,” <http://www.state.gov/j/tip/rls/reports/2012/188427.htm> (accessed 25 April 2012).

662 United States Department of State, *2012 Trafficking in Persons Report – Burma*, 19 June 2012, available at: <http://www.unhcr.org/ref-world/docid/4fe30cdc3c.html> (accessed 14 August 2012).

663 *Ibid.*

Gaps in Policies

The Country Reports highlight the absence of adequate legal protection to women and children who are vulnerable to exploitation, such as domestic workers. For instance, in the Philippines, domestic workers are not given the same protections as other workers under labour laws.⁶⁶⁴ Cambodia's labour law does not adequately protect domestic workers.⁶⁶⁵ In Lao PDR, aside from the absence of protection of the domestic work sector, labour migration to Thailand remains unregulated; there is no requirement for employment contracts for domestic workers.⁶⁶⁶ Indonesia has also been urged to adopt and implement a law on the protection of domestic workers. Further, in Indonesia, local governments reportedly lack the capacity to draft or to implement local laws on the prevention of trafficking in women and children.⁶⁶⁷ The Country Report also indicated the need to harmonise contradicting and overlapping laws that leave women and children vulnerable.

In Thailand, the Labour Protection Act provides protection to all employees, including migrant workers. However, the Act excludes from protection agricultural work, marine fishing, the loading or unloading of goods on and from maritime vessels, work to be performed at home and transportation. The rights of domestic workers and agricultural workers are protected under the Ministerial Regulation on the Protection of Home Workers B.E. 2547

(2004) and the Ministerial Regulation on the Protection of Agricultural Workers B.E. 2548 (2005). However, there are reportedly no enforcement mechanisms. There is no job security; neither is there a fair wage standard (except for those covered by the Home Workers Act). Some jobs are risky and hazardous, with longer work hours than the labour standard. In addition, the worker cannot access the Social Security Fund and other relevant public services.⁶⁶⁸ Domestic workers, however, are protected under the Home Workers Protection Act B.E. 2553 (2010); this Act provides that wages should not go lower than that provided in the Labour Protection Act, as well as the responsibility of the hirer (employer) for health and safety of the work. The definition of "Home based work" has been criticized as it is confined to the industrial sector and ignores "contract farming" in the agriculture sector, which is actually another form of "home-based work." Those involved in contract farming, therefore, cannot be protected by this new Act.⁶⁶⁹

The Country Reports, particularly on Vietnam, also indicated the vulnerability of women who migrate for marriage. Literature indicates that arranging marriages between Vietnamese women and foreign men, especially from China, the Republic of Korea, and Taiwan, has grown rapidly and with very little control by the government.⁶⁷⁰ With few regulations in either Vietnam or the destination countries, the women can become vulnerable to exploitation as the brides move to countries where they usually do not know the language and are not familiar with the culture.⁶⁷¹ Organized group marriages between Korean men and Cambodian women have also led to similar problems.

The Country Reports noted that strategies do not focus enough on addressing the root causes of exploitation. UNICEF has pointed out that some governments focus more on the justice dimensions of cross-border trafficking, such as strengthening law enforcement, mutual legal assistance, capacity of border guards and progressing prosecutions. However, this has not been balanced by

664 "Background: Forced Labour and Exploitation of Domestic Workers in the Philippines," *Anti-Slavery International*, http://www.antislavery.org/english/campaigns/take_action/background_to_forced_labour_and_exploitation_of_domestic_workers_in_the_philippines.aspx (accessed 11 August 2012).

665 Article 15 of the Labour Code, however, includes a general prohibition of forced and compulsory labour, which states that the prohibition applies to everyone, including domestic workers. Further, Article 2 of the Prakas on the Prohibition of Hazardous Child Labour, provides that a child who has attained 12 years of age, but not 15 years of age shall not be employed during school hours and for more than eight hours a day including schooling hours. They must enjoy a daily rest period of 12 uninterrupted hours, including the interval between 21:00 pm and 06:00 am, and they may not work on Sundays and public holidays. ILO, *Effective Protection for Domestic Workers: A Guide to Designing Labour Laws*, International Labour Office, Conditions of Work and Employment Programme, Industrial and Employment Relations Department – Geneva: ILO (2012), 29 and 91.

666 Inthasone Phetsiriseng, "Gender Concerns in Migration in Lao PDR. Migration Mapping Study: A Review of Trends, Policy and Programme Initiatives," February 2007, 6.

667 UN HRC, *Indonesia UPR National Report 2008*, paragraph 37.

668 Civil Society and Human Rights Coalition of Thailand (CHRC-Thailand), *A Joint Submission for the Universal Periodic Review of Thailand*, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRTHStakeholdersInfoS12.aspx> (accessed 11 January 2012).

669 *Ibid.*

670 Regional Thematic Working Group on International Migration Situation Report 2008, 105.

671 *Ibid.*, 108.

parallel social welfare institutional reform, particularly aimed at prevention, recovery and reintegration into communities.⁶⁷²

For instance, as was noted in the Country Report on Malaysia, there are insufficient efforts to weaken demand for forced labour and commercial sexual acts;⁶⁷³ there is a lack of strong laws and strict enforcement of laws against persons who use the services of trafficked women and children. In Thailand as well, it was observed that the government conducted awareness-raising campaigns targeting tourists' demand for child sex tourism, however, it did not make any other efforts to reduce the demand for commercial sexual acts or forced labour.⁶⁷⁴ In Vietnam, social welfare policy in general, and child protection approaches in particular, is reportedly characterized by a "charitable" rather than right-based approach. The provision of social services to vulnerable groups mostly relies on voluntary efforts and non-profit organizations, instead of trained, paid professionals.⁶⁷⁵

Several other issues were raised in the Country Reports—including lack of adequate legislation penalizing child soldiers, lack of protection from debt bondage, absence of minimum wage in vulnerable sectors, inadequate protection to street children, and the argument that criminalizing prostitution leads to sex workers being subjected to stigma and the sex industry to be outside the regulation of the government. The Country Reports indicate that the ASEAN countries have enacted laws that penalize the forms of exploitation. There is, however, a need for in-depth country-specific studies to identify gaps in policies and ensure that the legal systems do not only penalize, but also adequately prevent, vulnerable sectors from exploitation.

Strengthen Mechanisms

The Country Reports highlighted a wide range of factors that contribute to weak and inadequate protection and

require strengthening: weak law enforcement, poor implementation of laws, inadequate training, insensitivity, and lack of understanding of women's and children's rights, failure to effectively investigate and prosecute, inability of officials to identify trafficking cases, and lack of coordination among the agencies tasked to address exploitation.

More also needs to be done to ensure victims' access to legal redress. For instance, in Lao PDR, it was observed that victims are not made aware of available legal resources. Further, there is no easily accessible manual on legal rights or a central location to access national laws. Legal resources may be obtained through online portals, however, such are inaccessible to majority of the population.⁶⁷⁶

Throughout the ASEAN region, prosecutors reportedly have noted that victims in trafficking cases frequently disappear prior to trial or file affidavits of desistance to withdraw their complaints.⁶⁷⁷ The lack of cooperation may be attributed to the following factors: lengthy delays in the adjudication process, failure to adequately protect victims from intimidation or inducement by the accused or their lawyers, police corruption, and failure to keep victims informed on the progress regarding their case.⁶⁷⁸ For instance, in Cambodia, the lengthy legal process, credible fears of retaliation, and the lack of witness protection hinder victims' from cooperating in cases.⁶⁷⁹ Authorities failed to provide child and victim-friendly space for those waiting to give testimony; victims had to share spaces with their traffickers.⁶⁸⁰ Further, within the ASEAN region, cooperation between investigators and prosecutors from the early stages of the investigation to help ensure that investigative strategies are well conceived, arrests supported by sufficient evidence, and that the right evidence is collected is said to be very rare.⁶⁸¹ Procedural rules or long standing practice that seem to encourage separation of the investigative and prosecutorial functions are often cited as the basis for the

672 UNICEF, "Reversing the Trend: Child Trafficking in East and Southeast Asia," 63.

673 United States Department of State, *2011 Trafficking in Persons Report - Malaysia*, 27 June 2011; see also United States Department of State, *2011 Trafficking in Persons Report - Singapore*.

674 United States Department of State, *2011 Trafficking in Persons Report - Thailand*, 27 June 2011.

675 MOLISA, "Creating a Protective Environment for Children in Vietnam: An Assessment of Child Protection Laws and Policies, Especially Children in Special Circumstances in Vietnam," 13.

676 Zoe Meier, "A Critical Analysis of the Legal Framework for Human Trafficking in Lao PDR," Village Focus International, 28 July 2009, 3.

677 ASEAN Progress Report on Criminal Justice Responses to TIP, 77.

678 *Ibid.*

679 United States Department of State, *Trafficking in Persons Report 2010 - Cambodia*, 14 June 2010.

680 United States Department of State, *2011 Trafficking in Persons Report - Cambodia*, 27 June 2011.

681 ASEAN Progress Report on Criminal Justice Responses to TIP, 75.

absence of cooperation.⁶⁸²

The need to develop comprehensive monitoring mechanisms was highlighted by the Country Reports. For instance, Myanmar is said to lack systematic labour inspections in the sectors where children are being exploited.⁶⁸³ It has also been suggested that labour inspectors in Thailand should be more proactive in monitoring work places.⁶⁸⁴ In the Philippines, reports indicate incidences of trafficking of internally displaced women in conflict areas in Central Mindanao; there is, however, no comprehensive monitoring of these incidents.⁶⁸⁵

The Report on Vietnam mentioned lack of organization, tight coordination, and clear division of accountability among the agencies, particularly MOLISA, Border Policy Force, Regular Police Force, local governments, and other agencies. Audience surveys by the UNICEF in 2005 and 2007 found frequent duplication and overlapping of parallel information, education and communication programs funded by different donor organizations, conflicting, confusing and unclear messages, variances in focus (safe migration vs. anti-trafficking), and a general lack of attention to behaviour change.⁶⁸⁶

Corruption was mentioned as a concern in the Country Reports of Indonesia, Cambodia, Myanmar, Lao PDR, Malaysia, Philippines, Thailand, and Vietnam. Lack of funding was noted as hindrances to several undertakings. Few ASEAN Member States would consider that they have adequate financial, personnel, and equipment resources to do their job properly.⁶⁸⁷ For instance, in countries where the specialised unit to address trafficking is part of a department with a wider investigative mandate, the trafficking units do not have a separate and specific budget to fund their operations and, instead, rely on their

allotted portion of the overall departmental budget.⁶⁸⁸

Inadequate Survivor Support and Protection

The Country Reports indicate the need to strengthen support for survivors. For example, in Malaysia, negative media imaging suggests that women involved in prostitution, even those who have been trafficked, corrode public morality and are even responsible for their own predicament.⁶⁸⁹ In the Country Report of Vietnam, it was pointed out that it is difficult to prosecute the employers who violate children's rights when, in many cases the employers are relatives or family members of the exploited child. There is, thus, a need to study and propose mechanisms that will provide support and protection to children in these situations.

Cambodian women reportedly do not find an environment of psychological support nor a community that empathizes with their situation. The lack of prosecutions for rape and sexual trafficking leads perpetrators to feel that it is permitted to commit such crimes.⁶⁹⁰ Further, survivors fear criminal prosecution, as the Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation does not directly address the issue of victim immunity. Thus, the threat of prosecution may override a victim's right to seek justice.⁶⁹¹ Victims who testify against their traffickers are reportedly not afforded any form of witness protection, nor do courtrooms employ visual screens and audio facilities to protect the identity of the victim.⁶⁹² On a promising note, it was observed that there are currently more than 200 organizations involved in anti-trafficking projects in Cambodia; while this can lead to a lack of communication, coordination and inconsistent standards, their efficient collaboration could substantially improve victim identification, the number of successful repatriations, and preventive efforts.⁶⁹³

682 *Ibid.*

683 CRC, *Concluding Observations 2012*, paragraph 69.

684 Regional Thematic Working Group on International Migration Situation Report 2008, 94.

685 Mary Fe B. Arquiza and Arnel P. Santander, *Women and Conflict: Trafficking in Persons in Internally Displaced People Camps in Mindanao* (Davao: Mindanao Migrants Center for Empowering Actions, Inc., January 2011), 11.

686 UNICEF, "Reversing the Trend: Child Trafficking in East and Southeast Asia," 58.

687 ASEAN Progress Report on Criminal Justice Responses to TIP, 43.

688 *Ibid.*, 43.

689 NGO Shadow Report Group, *Malaysia Shadow Report on 1st & 2nd Periodic Report*, article 6.

690 NGO-CEDAW and CAMBOW, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women In Cambodia, 2010*, March 2011, 63.

691 Joint Cambodian NGO Torture, Inhuman or Degrading Treatment Report, paragraph 112.

692 *Ibid.*, paragraph 113.

693 Regional Thematic Working Group on International Migration Situation Report 2008, 11, *citing* Hugué and Ramangkura, 2007.

In Singapore, women and children caught in brothel and vice raids are reportedly treated as immigration offenders and immediately deported.⁶⁹⁴ For instance, in 2009, nearly all of the 7,614 women and children detained in anti-vice sweeps in 2009 were deported after arrest.⁶⁹⁵

The Country Reports also mentioned that survivors, who may not wish to approach authorities, are not always made aware of other avenues for recourse available to them. In relation to this, the predicament of exploited persons with irregular status was highlighted. Survivors may also be deterred from filing complaints because of the burdensome inconvenience it will post on them. To illustrate, in Thailand, adult trafficking victims identified by authorities were sometimes detained in government shelters for several years. Foreign victims could not opt to reside outside the shelters or leave before Thai authorities were prepared to repatriate them.⁶⁹⁶ Foreign victims of trafficking are reportedly not given the same opportunities as other foreign nationals to work in Thailand. There were reports of survivors who fled shelters.⁶⁹⁷

International Commitments and Collaboration

While significant steps in forging cooperation within the international community have been made, there are still gaps that have to be closed. For instance, not all ASEAN countries are parties to the Trafficking Protocol⁶⁹⁸ and to the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography.⁶⁹⁹ ASEAN Member States may also perhaps consider ratifying ILO Convention 189 on Domestic Workers, and even campaign for its ratification.

694 AWARE, *CEDAW Shadow Report*, May 2011 at paragraph 6.19; Transient Workers Count Too and the Global Alliance Against Traffic in Women, *Singapore Shadow Report: 4th Periodic Review*, June 2011, 18 and 21.

695 United States Department of State, *2010 Trafficking in Persons Report – Singapore*.

696 United States Department of State, *2011 Trafficking in Persons Report – Thailand*, 27 June 2011.

697 *Ibid.*

698 Cambodia, Indonesia, and the Philippines have signed and ratified the Trafficking Protocol, Lao PDR, Malaysia, Myanmar, and Vietnam have acceded to the Protocol; and Thailand has signed the Protocol.

699 Cambodia, the Philippines, and Vietnam have signed and ratified the Optional Protocol; Brunei Darussalam, Lao PDR, Malaysia, Myanmar, and Thailand have acceded; and Indonesia has signed the Optional Protocol.

There is also a need to intensify international, regional, and bilateral cooperation between and among countries of transit and destination for trafficked women and girls. In addition to forging cross-border agreements, use of the remedies afforded by such agreements should be urged. For instance, literature indicates a failure to seek to identify or take action against suspects located beyond national borders. Investigative efforts have often been confined to events within the investigator's own national borders and on the suspects within that jurisdiction.⁷⁰⁰ Investigators were found to often not engage in cross border operational cooperation and specialist units do not take advantage of facilities that were uniquely created to facilitate key investigative activities.⁷⁰¹ The need for collaboration as regards return of victims is also highlighted in the literature. For instance, In Myanmar, the government has been credited for progress in managing the return of victims of trafficking, especially from Thailand. However, the cooperation occurs in the absence of formal guidelines and agreements internally and at the bilateral and regional levels. Moreover, there is no initiative to facilitate the return of victims from China, the second main destination country.⁷⁰²

Lack of Adequate Disaggregated Data

The Country Reports highlighted the need to implement programs that responsively address the root causes of exploitation. To be able to do the same, sufficient understanding of the issues, including clarity in the use of terminologies, is indispensable. The Country Reports consistently mention inadequacy of accurate disaggregated data, striking discrepancies in official and unofficial data, and lack of indicators to monitor progress. For example, as the Country Report on Vietnam indicated, one of the biggest problems is the lack of nation-wide index or study that would comprehensively aggregate available data. Existing literature and statistics offer different numbers, often without specific indicators of measurement. Therefore, the extent of the problem is difficult to capture and address. To cite another example, despite reports of recruitment and use of children by non-state armed groups, Thailand “has not put in place any systematic monitoring of the issue.”⁷⁰³ Thus, no

700 ASEAN Progress Report on Criminal Justice Responses to TIP, 47.

701 *Ibid.*, 49.

702 Regional Thematic Working Group on International Migration Situation Report 2008, 69.

703 Coalition to Stop the Use of Child Soldiers, *Report to the Committee*

comprehensive strategies to protect and prevent the recruitment and use of children have been developed.

D. ABUSE AND DISCRIMINATION IN MIGRATION

This section is intimately intertwined with the sections on Violence and Exploitation. Issues already previously covered shall not be reiterated. Some acts mentioned herein, when taken together as a whole, will undoubtedly indicate exploitation. However, this section deals with situations where it cannot be concluded that migrant women and children are being exploited but are, nonetheless, not given adequate protection, discriminated against by reason of their sex, or not extended fair and equal treatment as afforded to nationals.

1. Description of the Problem

a. Prevalence of Abuse and Discrimination in Migration

An Economic & Social Commission for Asia & the Pacific (ESCAP) publication stated that one of the most evident forms of integration among ASEAN economies is the growing flow of migrant labour.⁷⁰⁴ Most of the region's labour migrants come from other ASEAN countries. The main sources for labour within the region are Indonesia and Myanmar, followed by Cambodia and Vietnam; the main destinations are Brunei Darussalam, Malaysia, Singapore and Thailand.⁷⁰⁵ Only the Philippines sends most of its migrants to countries outside of the ASEAN Region.⁷⁰⁶ An increasing number of migrants are

on the Rights of the Child in advance of Thailand's initial report on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, September 2011, 9.

704 Economic & Social Commission for Asia & the Pacific (ESCAP), *Striving Together: ASEAN and the UN*, 22 July 2009, 41.

705 "In Malaysia, around 75 per cent of an estimated 1.9 million foreign workers are from other ASEAN countries, particularly Indonesia which supplies around 60 per cent of foreign workers in Peninsular Malaysia and more than 90 per cent of those in Sabah (Kanapathy, 2004). Thailand has around 1.8 million migrant workers, 75 per cent from Myanmar, with most of the rest from Cambodia and the Lao PDR (Martin, 2007). In Brunei Darussalam and Singapore, about 30 per cent of the labour migrants are from ASEAN countries." *Ibid.*

706 *Ibid.* Philippines, Cambodia, Burma, Lao People's Democratic Republic, Viet Nam and Indonesia are "mainly emigration" countries; Singapore and Brunei Darussalam are "mainly immigration" coun-

women.⁷⁰⁷ These facts particularly highlight the need to understand issues facing migrant women from a regional level, since it affects both the country of origin and the country of destination.⁷⁰⁸

The Country Reports also describe the "push factors" and "pull factors" to migration. The most common push factors were lack of livelihood, high unemployment, low wages or earnings, and government policies encouraging labour migration. The most common "pull factors" included rapid growth or urbanization, better pay, demand for labour, and social networks. The Country Reports all indicated literature describing the industries migrants usually enters at the countries of destination.

Conditions Faced by Labour Migrant Women

Reports indicate that there are labour migrant women who suffer through unpaid wages, employers terminating contracts without notice, illegal deduction of wages, unpaid overtime, and failure to provide return passage at the end of a contract. Some migrants are reportedly made to work long hours without rest breaks or days off.

At places of destination, abuses range from physical abuse, sexual abuse and harassment, to psychological abuse, verbal abuse and threats, including in the form of isolation, inadequate provision of food and accommodation, and absence of safety measures. There were also reports of migrants being restricted from religious fasting or praying. Some are deprived of privacy, due to poor accommodation arrangements and surveillance. Some foreign workers were also confined and had their movements and communication avenues restricted.⁷⁰⁹ The reports on abuses against Cambodian and Indonesian domestic workers in Malaysia led Cambodia and Indonesia to stop sending its citizens to

tries; while Malaysia and Thailand are "both emigration and immigration" countries. Malaysia receives more migrant workers than it sends and is the largest labour importer in the region. Amarjit-Kaur, "Migration Matters in the Asia-Pacific Region: Immigration Frameworks, Knowledge Workers and National Policies," *Migration and Integration in the Asia-Pacific Region, International Journal on Multicultural Societies (IJMS)*, Vol.9, No. 2, 2007: 135 & 138.

707 *Ibid.*, 5-6.

708 *See Ibid.*, 43.

709 *Solidarity for Migrant Workers, Singapore: A joint submission by members of Solidarity for Migrant Workers for the 11th Session of the Universal Periodic Review, May 2011*, paragraph 15.

be hired as domestic workers in Malaysia.⁷¹⁰ Indonesia lifted its ban in 2011 after Malaysia signed a Memorandum of Understanding guaranteeing more protection for Indonesian domestic workers.

In Thailand, there were police and other officials who reportedly subjected woman and children migrants to sexual abuse. Some police officers conduct excessive body searches that include groping, demands to disrobe, and even unnecessary and invasive cavity checks. While in detention, some migrant women have suffered rape and harassment by officials.⁷¹¹ Police and immigration officials were also said to have cut women's hair as a way of marking migrant women from Myanmar who have been deported. For women from Myanmar, this is a denigration of their culture and is personally humiliating.⁷¹² While in detention centres in Malaysia, some men, women and children reportedly experienced torture in various forms – mauling, beating, prolonged exposure to the sun, being kicked at forcefully – and verbal abuse. Threats and brutality like caning are said to have occurred as well.⁷¹³

Some migrants also have to deal with abuse and discrimination from the community. In Saudi Arabia, Indonesian women migrant workers have even been convicted for allegedly practicing witchcraft against their employer's family.⁷¹⁴ An Indonesian female domestic

worker convicted of witchcraft was sentenced to 10 years in prison and 200 lashes.⁷¹⁵ Filipino deportees indicated that their homes were destroyed or demolished while in Malaysia.⁷¹⁶ In Thailand, there are migrants who become victims of systematic violence (including torture and killings), extortion, unlawful arrest, detention and other kinds of exploitation in their everyday lives.⁷¹⁷

Some migrant women have limited basic labour protection and access to social services, as they are non-nationals in the workplace.⁷¹⁸ Some countries impose conditions on the continued employment and stay of low-skilled workers⁷¹⁹—for instance, that they do not marry local citizens, that they do not change employers, that they do not get pregnant, or that they do not contract certain diseases. Those who enter through irregular channels or lose their legal status in foreign countries are more vulnerable to gender-based violence and exploitation.⁷²⁰

The Country Reports point to a pressing need for a comprehensive database and research on migration issues. For example, in terms of remittances from international migration in 2006, the World Bank estimated that Vietnam received USD 4.8 billion, whereas according to the Vietnam Household Living Standards Survey, the sum was only USD 1.8 billion in the same year.⁷²¹ Such

710 Karishma Vaswani, "Indonesia Acts in Maid Abuse Row," *BBC News Jakarta* (United Kingdom), <http://news.bbc.co.uk/2/hi/8118806.stm> (accessed 10 November 2011); and Isabelle Lai and Lim Wey Wen, "Cambodia bans its citizens from working as maids in Malaysia," *The Star/Asia News Network*, (15 October 2011), <http://news.asiaone.com/News/AsiaOne+News/Malaysia/Story/A1Story20111015-305100.html>.

711 Raks Thai Foundation, MPA Foundation, Foundation for AID Rights, Human Rights and Development Foundation, Friend of Women Foundation, Pattanarak Foundation, AIDSNet Foundation and the Labour Right Protection Net Work (Raks Thai Foundation, et. al), *A Joint Submission on Migration Workers and Their Families in Thailand for the 12th Session of the Universal Periodic Review, October 2011*, paragraph 41.

712 *Ibid*, paragraph 42; and Mekong Migration Network (MMN) and Asian Migrant Centre (AMC), *Migration in the Greater Mekong Sub-region Resource Book – In-depth Study: Arrest, Detention and Deportation*, 3rd ed., Hong Kong: Clear-Cut Publishing & Printing Co. (2008), 136.

713 Bagain Aleyssa A. Acmad-Abdulkarim, "Life Histories of Filipino Deportees from Malaysia: Changes in the Dimension of Life" (Doctoral dissertation, Xavier University-Ateneo de Cagayan (XU), March 2010), 132.

714 CEDAW, *Indonesia 6th & 7th Report*, paragraph 37. See also ICSW, *Trafficking and Related Labour Exploitation in the ASEAN Region*, 56.

715 ICSW, *Trafficking and Related Labour Exploitation in the ASEAN Region*, 56.

716 Acmad-Abdulkarim, *Life Histories of Filipino Deportees from Malaysia*, 131.

717 See Amnesty International (AI), "Thailand: The plight of Burmese migrant workers," Amnesty International, Bangkok, <http://www.amnesty.org/en/library/info/ASA39/001/2005> (accessed 20 December 2011); Human Rights Watch (HRW), "From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand" (2010), http://reliefweb.int/sites/reliefweb.int/files/resources/DEDE8A9A06410401C12576D3004B73E0-Full_Report.pdf (accessed 4 January 2012); and Kritaya Archavanitkul and Andy Hall, "Migrant Workers and Human Rights in a Thai Context," in *Thailand Migration Report 2011*, eds. Jerrold W. Huguet and Aphichat-Chamrathirong (Bangkok: IOM Thailand, 2011).

718 IBON Foundation, *IBON Facts and Figures: OFWs, Remittances and Philippine Underdevelopment (Vol. 31, Nos. 9 and 10)*, (Manila: IBON Foundation, 15 and 31 May 2008), 12.

719 See e.g. Regional Thematic Working Group on International Migration Situation Report 2008, 90.

720 See e.g. *Ibid*; and UN Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Malaysia*, 27 October 2008, A/HRC/WG.6/4/MYS/3, 49.

721 Abella and Ducanes, "The Economic Prospects of Viet Nam and what it means for Migration Policy," Hanoi (December 2011), 33.

disparity points to the need for more accurate research and clearer data presentation. The Country Reports on Myanmar, Cambodia, and Lao PDR indicated inadequate legal framework, mechanisms, and institutions relative to migration—this greatly contributes to the absence of sufficient data on migrant abuse and discrimination.

Children of Migrants

Literature states that, although the migration of adults impacts children who are left behind in the home country, it is those who migrate with their parents who are more vulnerable and seriously affected.⁷²² Children who migrate internationally and children born to irregular migrants often face difficulty accessing social services or securing a legal identity.⁷²³ Policies to assist child migrants are difficult to implement, often because of the children's irregular status in the host country.⁷²⁴

Sources indicate that there are many undocumented or stateless children who are born to Filipino and Indonesian immigrants of irregular status in Sabah, Malaysia, or to prostitutes in Kuala Lumpur's red light district. 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.⁷²⁵ Neglected by the parents, they are exposed to the risk of child labour, child trafficking, sex work, and exploitation. These children are also targets for arrest and detention by immigration and police. In 2006 for instance, Sabah police arrested around 160 street children for unknown reasons.⁷²⁶ Further, in Malaysia, children of Filipino descent and children with *orang asing* in their birth certificates were found to be unable to go to government schools. Many separated

and unaccompanied children of Filipino deportees end up living and working on the streets at a very young age, often in fish markets.⁷²⁷ The Department of Social Welfare and Development of the Philippines has noted incidents of abuse, trafficking, and illegal recruitment committed among the deportees.⁷²⁸

The Country Report on Thailand also mentions that children of migrants born in Thailand find it difficult to obtain a birth certificate. Further, many children of migrants do not go to school, despite the fact that the government makes education available to even those with illegal status.⁷²⁹ The Country Report on the Philippines also indicated that an emerging problem in Saudi Arabia is the number of undocumented children born to parents, both or one of whom is a Filipino. The report estimates the number to be between 2,000 and 3,000 children.⁷³⁰ They are unable to leave Saudi Arabia owing to the absence of an exit visa and they grow up with little or no access to education and other services to which citizens or documented residents have rights to, such as access to hospitals and employment.⁷³¹ If born to illicit relationships, some of the children are taken away by the Saudi government and parental custody is lost.

The Country Reports again noted the absence of sufficient data. For instance, 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.⁷³² It was observed that Malaysia lacked relevant data on non-Malaysian children living in Malaysia. It was reported that undocumented/stateless children is an issue that has not been given adequate

722 Regional Thematic Working Group on International Migration Situation Report 2008, xviii.

723 *Ibid.*

724 *Ibid.*

725 "Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness," *Refugees International Bulletin*, (13 June 2007) <http://www.refintl.org/policy/field-report/malaysia-undocumented-children-sabah-vulnerable-statelessness>; "Report on Malaysia," *The International Observatory on Statelessness*, <http://www.nationality-forall.org/malaysia>.

726 Refugees International, *Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness*, 13 June 2007, available at: <http://www.unhcr.org/refworld/docid/47a6ee98d.html> (accessed 10 August 2012); Camilla Olson, "Street Children in Malaysia," *Refugees International Blog*, 13 January 2009, <http://www.refugeesinternational.org/blog/street-children-malaysia>.

727 *Ibid.*

728 See Department of Social Welfare and Development's Disaster Response Operation Monitoring and Information Center (DROMIC), available at <http://disaster.dswd.gov.ph/>.

729 Ministry of Foreign Affairs, *Right to Education for migrants, refugees and asylum seekers*, http://www.mfa.go.th/humanrights/index.php?option=com_content&view=article&id=72:right-to-education-for-migrants-refugees-and-asylum-seekers-&catid=35:un-resolution&Itemid=73 (accessed 9 January 2012).

730 House of Representatives of the Philippines Committee on Overseas Workers' Affairs, *The Condition of Overseas Filipino Workers in Saudi Arabia*, 34.

731 *Ibid.*, 35.

732 John Bryant, "Children of International Migrants in Indonesia, Thailand, and the Philippines: a Review of Evidence and Policies," *Innocenti Working Paper Series*, April 2005, 1, available at www.globalnetwork.princeton.edu (accessed 20 April 2012).

attention.⁷³³ The Country Reports also pointed to the need for studies on the condition of migrant children and children of migrants who are left behind. A “paucity of information on child migrants, other than street children or trafficked children” has been observed: “Virtually all studies of children migrating across international borders in East and South-East Asia appear to have been conducted in Thailand.”⁷³⁴

b. Root Causes of Abuse and Discrimination

Lack of Bargaining Power

The Country Reports indicated the inability of migrant workers to demand for better conditions as a root cause of abuse and discrimination. This is derived from low level of education, lack of knowledge of legal protection, need for employment, and irregular or illegal status in the country of destination. For instance, in Thailand, all children must receive 9 years of compulsory education and are entitled to receive 12 years basic education. This is reinforced by the 15-year free education programme, from kindergarten to high school, regardless of nationality.⁷³⁵ Domestic workers are protected under the Home Workers Protection Act B.E. 2553 (2010). This Act provides that wages should not go lower than that provided in the Labour Protection Act;⁷³⁶ it also provides for the responsibility of the hirer (employer) for health and safety of the work.⁷³⁷ However, migrant women are not always aware that their children are entitled to free education and that domestic workers have legal protection as regards wages, health, and safety.⁷³⁸

733 Dina Zaman, “Faceless street kids of Chow Kit,” *The Star* (Malaysia), 31 July 2008, <http://thestar.com.my/columnists/story.asp?file=%2F2008%2F7%2F31%2Fcolumnists%2Fawriterslife%2F21913840&sec=awriterslife>; “Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness,” *Refugees International Bulletin*, 13 June 2007, <http://www.refintl.org/policy/field-report/malaysia-undocumented-children-sabah-vulnerable-statelessness>.

734 Regional Thematic Working Group on International Migration Situation Report 2008, 189.

735 UN Human Rights Council Working Group on the Universal Periodic Review, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Thailand*, 19 July 2011, A/HRC/WG.6/12/THA/1, paragraph 53.

736 Home Workers Protection Act B.E. 2553 (2010), Section 16.

737 Home Workers Protection Act B.E. 2553 (2010), Section 20-24.

738 See CharnchaoChaiyanukij, “Violence against Women Migrant Workers in Thailand,” *Journal of The Medical Association of Thailand* 87 (2004), 224.

Social Isolation

The Country Reports indicate that domestic migrant workers are vulnerable to abuse and discrimination because they work in the domestic environment and are shielded from public observation. They often do not have contact with their family and friends. Further, the domestic setting and constant interaction between the domestic worker and the employers includes encroachment on personal spaces and stress.⁷³⁹ Law enforcement to counter abuses of foreign domestic workers is reportedly “difficult to enforce due to the nature of their work,” and, for this reason, is excluded from the Employment Act of Singapore.⁷⁴⁰

Discrimination

The Country Reports indicated that foreign domestic workers are often viewed as culturally inferior and this contributes to the prevalence of abuses against them. Segregation of the labour force and “devaluation of female labour” has been argued in literature.⁷⁴¹ Discrimination on the basis of religion, ethnicity, and race was also noted.⁷⁴²

For instance, the Country Report on Malaysia mentioned that it has been suggested that Malaysians’ abusive practices arise from cultural misunderstandings about the nature of domestic help. Human Rights Watch has observed that some Malaysians adopt “a slave-owner mentality in their relationship with their foreign domestic help.”⁷⁴³ According to the Women’s Aid Organization,

739 UNIFEM (now UN Women) Singapore, HOME and TWC2, “Granting Regular Days Off,” 63.

740 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: 4th periodic report of States parties : Singapore*, 3 April 2009, CEDAW/C/SGP/4, paragraph 11.26.

741 “Opportunities for migrant women from East and Southeast Asia, particularly, have been confined to a narrow range of economic activities. Many are recruited because of racist and sexist stereotypes of women as cheap, docile, temporary, and inclined to factory work” Dante B. Gatmaytan, “Death and the Maid: Work, Violence, and the Filipina in the International Labor Market,” *Harvard Women’s Law Journal* (1997), 20: 246-247.

742 AWARE, *CEDAW Shadow Report*, May 2011, paragraphs 4-5.

743 Patrick Lee, “Slave owner mentality in handling maids,” *Free Malaysia Today*, 7 June 2011, <http://www.freemalaysiatoday.com/2011/06/07/slave-owner-mentality-in-handling-maids/>.

many Malaysians have negative perceptions of migrant domestic workers and this contributes to the frequency and severity of abuse.⁷⁴⁴ Similarly, the Country Report on Singapore mentions existing perceptions that abusive behaviour towards foreign domestic workers is acceptable. Causes of this perception have been attributed to “ideologies of patriarchy and Confucianism, the hierarchical social structure, class and race prejudice, and corporate culture.”⁷⁴⁵ Foreign domestic workers have been described as “socially and economically invisible.”⁷⁴⁶

The Country Report on Myanmar also indicated that the portrayal of Burmese as the national enemies in Thai nationalist discourse has repercussions on Burmese migrants, who consist of the majority of the migrant population in Thailand.⁷⁴⁷ Undocumented street children also suffer from negative perceptions. As was noted in the Country Report of Malaysia, the CRC Committee has identified “negative public attitudes and prejudices against street children” as a factor that aggravates their difficulties.⁷⁴⁸ For instance, it has been observed that the local population in Sabah tends to see street children who live in the fish markets as undesirable or criminal elements.⁷⁴⁹ Street children in Chow Kit reportedly face more discrimination because of their mothers’ sex work.⁷⁵⁰

744 “Migrant Domestic Worker Abuse,” *Women’s Aid Organization*, http://www.wao.org.my/Migrant+Domestic+Workers_54_5_1.htm

745 Thomas Minu, “ICTs and Everyday Communication of Migrant Domestic Workers in Singapore” (Master’s thesis, NUS, 2008), 13, available at <http://scholarbank.nus.edu.sg/handle/10635/16680>.

746 UNIFEM (now UN Women) Singapore, HOME and TWC2, “Made to Work, Attitudes Towards Granting Regular Days Off to Migrant Domestic Workers in Singapore,” 2011, 25.

747 *Ibid.*

748 UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Malaysia*, 25 June 2007, CRC/C/MYS/CO/1, paragraph 93.

749 “Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness,” *Refugees International Bulletin*, (13 June 2007) <http://www.refintl.org/policy/field-report/malaysia-undocumented-children-sabah-vulnerable-statelessness>

750 Jasbant Singh, “Helping Malaysia’s street children,” *Al-Jazeera English*, 6 August 2007, <http://www.aljazeera.com/news/asia-pacific/2007/07/2008525172813676892.html>; and “Doc: Treat children of sex workers like other kids,” *The Star* (Malaysia), 9 July 2006, <http://thestar.com.my/news/story.asp?file=/2006/7/9/nation/14776370&sec=nation>.

Economic Factors

The Country Reports indicated that economic downturn contributed to incidences of abuse and discrimination against migrant workers. In Brunei Darussalam, for instance, due to regional economic changes that erode profit margins, some employers lower the wages to below contractual agreements and reduce employees’ benefits to the bare minimum.⁷⁵¹ Irregular migrant workers, who are not protected under the law, are the most exploited.⁷⁵² The Country Report of Myanmar also echoed this finding and stated that, in Thailand, after the economic crisis, the government wanted rice mills to switch away from hiring Burmese migrant labour to Thai workers instead. Mill owners were ordered to use 50 kg bags to attract Thai workers, while migrant workers were required to carry 100 kg rice bags.⁷⁵³

Policies that Facilitate Abuse and Discrimination

(Discussed in Migration Policies that Facilitate Exploitation in *Exploitation, De Jure State Responses, Assessment of State Policies.*)

c. Impact of Abuse and Discrimination

Social Impact

The Country Reports mention a range of negative social impacts of abuse and discrimination in migration. There are instances where domestic migrant workers are not properly sent home to their countries after their period of work. They are instead left on their own without money or documents. This may drive them to work on the streets as prostitutes to earn their way home. Children who are left behind find themselves with no other recourse but to live on the streets and engage in vice activities.⁷⁵⁴ Migrant children also face risks of being trafficked and recruited by gangs.

751 Regional Thematic Working Group on International Migration Situation Report 2008, 3.

752 *Ibid.*

753 Wickramasakera (2002), as cited in NailaKabeer, “Footloose” Female Labour: Transnational Migration, Social Protection and Citizenship in the Asian Region,’ *IDRC Working Papers on Women’s Rights and Citizenship*, No. 1, May 2007, 13.

754 “Malaysia: Undocumented Children in Sabah Vulnerable to Statelessness,” *Refugees International Bulletin*, (13 June 2007) <http://www.refintl.org/policy/field-report/malaysia-undocumented-children-sabah-vulnerable-statelessness>.

In Singapore and Malaysia, pregnancy of a foreign domestic worker is a legitimate reason for termination of her employment and deportation.⁷⁵⁵ At least 100 foreign domestic workers are reportedly sent home from Singapore every year due to pregnancy.⁷⁵⁶ As was noted by the CRC Committee, some concerns arise when a foreign domestic worker bears a child with a Singaporean man.⁷⁵⁷ Rejection of the marriage application would result in the foreign domestic worker having to leave Singapore for breaching her work permit and the family being separated from each other.

Another social impact concerns the education of migrant children. In Thailand, migrant children legally have free access to education. However, according to the Foundation for Rural Youth, less than 16% of *registered* migrant children are in Thai's education system.⁷⁵⁸ Barriers include refusal of local schools to accept migrant students due to language barriers or lack of registration documents; challenges on the part of the migrant family in meeting the expenses of education; and unawareness of the child's entitlement to enrol in Thai schools.⁷⁵⁹ Due to fear of deportation, unregistered migrants do not dare ask for access to government services.⁷⁶⁰ Registered migrants may not know their rights or, even if they knew, might not afford to send their children to school and would rather send them to work.⁷⁶¹

755 Solidarity for Migrant Workers 2011 UPR Joint Submission, paragraph 20, referring to Conditions of Work Permit/Visit Pass for Foreign Worker, Fourth Schedule, Conduct, point 10.

756 HOME, *CEDAW Shadow Report*, paragraph 47.

757 The CRC Committee noted that the application of the Employment of Foreign Manpower Act (EFMA) results in the separation of some children from their parents and has urged the Government to review its immigration legislation (in particular the Immigration Act and the EFMA), with a view to avoid the separation of children from their parents. UN Committee on the Rights of the Child, *Concluding Observations: Singapore*, 2 May 2011, CRC/C/SGP/CO/2-3, paragraphs 44-45. See also Solidarity for Migrant Workers 2011 UPR Joint Submission, Annex I.

758 "Thailand: Education desperately needed for migrant and stateless children," *minority voices newsroom*, 2010, <http://minorityvoices.org/news.php/en/693/> (accessed 10 January 2012).

759 *Ibid.*; and Regional Thematic Working Group on International Migration Situation Report 2008, 187-188.

760 ILO Mekong Sub-regional Project to Combat Trafficking in Children and Women, *Thailand: Reaching Out to Migrant Children: How an NGO Helped Put a National Policy on Education into Practice*, 29 October 2008, available at http://www.ilo.org/asia/whatwedo/publications/WCMS_099886/lang--en/index.htm (accessed 10 October 2011).

761 *Ibid.*

The Country Report on the Philippines indicates that whether migrants went through the legal or illegal process, children migrants experience difficulties in coping with a new environment and some of the effects experienced were as follows: (a) lost identity or culture gap; (b) fear of xenophobia; and (c) challenge in accessing the education system.⁷⁶² The absence of birth registration of some children of the migrants also restricts them from full enjoyment of their rights and leads to even higher risks of being abused and exploited.

Health

The Country Reports enumerated various health consequences of abuse and discrimination in migration. A usual factor that contributes to health issues is the lack of access to government services, including health. In Thailand, for instance, irregular migrants and those accompanying regular migrant workers do not have the right to obtain health insurance cards. They are able to access public health-care services only as long as they can pay for them.⁷⁶³ Other factors impeding access to health services include fear of arrest, fear of deportation of pregnant workers, difficulty in accessing health services and health-related information due to language barriers and reluctance or inability to take time off from work, and illegality of abortion leading women to resort to backstreet abortions. Social, economic and work pressures also negatively affect the health of migrants. The situation faced by migrant children is aggravated by the absence of care by parents who neglect their children from pressure at work.⁷⁶⁴

A report published in 2008 indicates that there has been little research on the relation between migration and

762 Vanessa Tobin, *Gender, Migration and Children's Rights*, 1, Paper presented at the International Conference on Gender, Migration and Development: Seizing Opportunities, Upholding Rights, National Commission on the Role of Filipino Women, Manila, 25-26 September 2008, citing, United Nations Children's Fund, *Migration and Children: A Need to Fill Information Gaps in Order to Guide Policy Responses*, 2008.

763 Simon Baker, "Migration and Health," in *Thailand Migration Report 2011*, eds. Jerrold W. Hugueta and Aphichat Chamratrithong, Bangkok: IOM Thailand (2011), 86.

764 Committee for Promotion and Protection of Child Rights (Burma) (CPPCR), "Feeling Small in Another Person's Country: The Situation of Burmese Migrant Children in Mae Sot Thailand," 2009, http://www.burmalibrary.org/docs08/Feeling_Small.pdf (accessed 18 January 2012), 13.

health in Asia.⁷⁶⁵ It was indicated, however, that certain groups of migrants may face higher risk of being infected with HIV than non-migrants because they are more likely to be exploited and victimized (e.g. sexual abuse, sex for survival) and because living and working conditions may predispose them toward high risk behaviour (e.g. unprotected sex and drug use).⁷⁶⁶

To illustrate, the Thai Ministry of Health recorded that among migrant pregnant women, complications for abortions were 2.4 times higher than for the local population.⁷⁶⁷ HIV/AIDS prevalence rate was higher at 4.3% among pregnant migrant women compared with 2% among pregnant Thai women.⁷⁶⁸ In Singapore, for fear of being deported if found to be pregnant, foreign domestic workers, have been reported to self-administer unsafe abortions or to undergo illegal ones.⁷⁶⁹

2. De Jure State Responses

Assessment of State Policies

Cruel Punishment

The Country Reports noted that caning is mandatory for certain immigration offences in Brunei Darussalam.⁷⁷⁰ Malaysia imposes whipping for entering and staying in Malaysia without a permit. Caning applies to those who unlawfully re-enter or reside in Malaysia after they have been deported.⁷⁷¹ In Singapore, judicial caning may also

765 Regional Thematic Working Group on International Migration Situation Report 2008, 195, citing Jatrana, Graham and Boyle, 2005.

766 *Ibid*, 196-197.

767 Naila Kabeer, "Footloose" Female Labour: Transnational Migration, Social Protection and Citizenship in the Asian Region, *IDRC Working Papers on Women's Rights and Citizenship*, No. 1, May 2007, 33.

768 *Ibid*.

769 *Ibid*.

770 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Brunei Darussalam*, A/HRC/13/14, January 4, 2010, 21.

771 "Caning is mostly used as punishment for migrant labourers for immigration offences. Immigrants who are convicted of illegal entry are normally caned up to three times, although the country's Immigration Act allows for them to be caned up to six times. In June 2009, the Malaysian government announced that they had sentenced 47,914 migrants to be caned for immigration offences since amendments to its Immigration Act came into force in 2002. "Photographic evidence shows the cruelty of caning in Malaysia," *Amnesty International*, 25 August 2009, <http://www.amnesty.org/en/news-and-updates/news/photographic-evidence-shows-cruelty-caning-malaysia-20090825> (accessed 3 August 2012).

be imposed for immigration offenses.⁷⁷²

Discrimination in Law

Migrant workers in Malaysia undergo mandatory health checks while in the country. If the worker is found with one of the communicable diseases on the government's exclusion list or is found to be pregnant, he or she will be deported without medical assistance.⁷⁷³ Singapore also prohibits foreign workers from becoming pregnant or delivering a child in Singapore during and after the validity period of the work permit.⁷⁷⁴ Foreign migrant workers are also prohibited from marrying a citizen or permanent resident without prior approval.⁷⁷⁵ Economic status is reportedly often a deciding factor; which means, in practice, many women migrant workers, who are generally lowly paid, see their marriage applications rejected.⁷⁷⁶ Mandatory examinations are also implemented in Singapore. Positive diagnosis for infectious diseases, namely tuberculosis, malaria, syphilis and/or HIV, will lead to repatriation.⁷⁷⁷ Employers who wish to know the results of the medical examination may obtain a copy of the completed report directly from the examining doctor.⁷⁷⁸

These laws have negative impacts on domestic migrant workers who have been abused or sexually assaulted, as it causes them to fear obtaining help. Furthermore, since migrant workers are not allowed to marry, a domestic worker found to be pregnant has no option of marrying her partner but will instead be deported and separated from her partner.

772 "World Report 2012: Singapore," *Human Rights Watch*, <http://www.hrw.org/world-report-2012/world-report-2012-singapore> (accessed 3 August 2012).

773 NGO Shadow Report Group, *Malaysia Shadow Report on 1st & 2nd Periodic Report*, Article 12.

774 Employment of Foreign Manpower (Work Passes) Regulations, Condition 9, Part IV (Conditions to be complied with by foreign employee), First Schedule.

775 Employment of Foreign Manpower (Work Passes) Regulations, Condition 8, Part IV (Conditions to be complied with by foreign employee), First Schedule; see also Solidarity for Migrant Workers 2011 UPR Joint Submission, paragraph 9.

776 HOME, *CEDAW Shadow Report*, paragraph 46.

777 "Work Permit (Foreign Worker) - After you apply," *Ministry of Manpower*, last updated on 29 November 2011, <http://www.mom.gov.sg/foreign-manpower/passes-visas/work-permit-fw/after-you-apply/Pages/default.aspx>.

778 *Ibid*.

The Country Report on Singapore noted that NGOs have observed the absence of legal safeguards relating to notice of termination of contract, annual leave, medical leave, maternity leave, and over-time pay.⁷⁷⁹ In addition, foreign domestic workers are excluded from the Employment Act and the Work Injury Compensation Act, which are said to provide better protection than the Employment of Foreign Manpower Act.⁷⁸⁰

Particularly on sex-specific bans on migration, in Indonesia, the recruitment and placement of pregnant women migrant workers is prohibited.⁷⁸¹ The law also requires women migrant workers to present a letter expressing the permission of their husband, or parents, or guardian to the placement agencies.⁷⁸² The requirement for a woman migrant worker to secure a written permission from her husband, or parents, or guardian is further reinforced by the Indonesian Council of Ulama in a *fatwa* that states that it is considered as *haram* if a married woman went abroad to work without her husband's consent.⁷⁸³ In Myanmar, a 2008 study indicated that males under the age of 18 and females under the age of 25 were prohibited from traveling abroad without a legal guardian.⁷⁸⁴ Recently, the U.S. Department of State *Country Reports on Human Rights Practices for 2011* stated that, "In an effort to address the problem of trafficking in persons, officials continued to impede the travel of women under the age of 25."⁷⁸⁵

779 HOME, *CEDAW Shadow Report*, Recommendations (9).

780 *Ibid*, paragraph 10; AWARE, *CEDAW Shadow Report*, paragraph 11.78.

781 Migrant Workers Law, Article 35(c).

782 *Ibid*, Article 51.

783 Martha Thertina, "TKW Haram Bekerja Jika... (Women Migrant Workers are *Haram* to Work if...)" *Tempo*, 1 July 2011, www.tempo.co (accessed 1 May 2012).

784 Social Environmental Research Consultant, "A Comparative Picture of Migration in Laos, Myanmar, Cambodia, Vietnam and Thailand: Summary," 8, available at http://www.burmalibrary.org/docs08/A_Comparative_Study_of_Migration-SERC.pdf (accessed 2 August 2012); see also "Facts on Human Rights Violation in Burma 2002-2003: 12. The Freedom of Movement, Assembly and Association", *ibiblio*, <http://www.ibiblio.org/obl/docs/Yearbook2002-3/yearbooks/12.%20The%20Freedom%20of%20Movement.htm> (accessed 2 August 2012).

785 United States Department of State, *2011 Country Reports on Human Rights Practices - Burma*, 24 May 2012, available at: <http://www.unhcr.org/refworld/docid/4fc75ab3c.html> (accessed 14 August 2012).

Gaps in Policy

The Country Reports indicate a gap in the legal framework as regards protection of the rights of women, as well as their children, who migrate for work. For instance, a June 2010 publication indicates that, while the government of Cambodia sees labour migration as one avenue for promoting employment and reducing poverty, "It has yet to establish the necessary concrete enabling policy."⁷⁸⁶ Weaknesses in the legal, regulatory, and institutional framework of labour migration have contributed to "incoherent policies and inconsistent practices in the labour migration process that have undermined, directly or through unintended consequences, the policies and programmes in other areas." The lack of effective migration governance has led to a large number of migrants with irregular status whose rights are subject to frequent abuse.⁷⁸⁷ Specifically, Cambodia's New Sub-Decree on Migrant Labour, also known as Sub-Decree 190, has been criticized for failing, among others, to ensure against debt bondage and to stipulate for minimum wage.⁷⁸⁸

Reports have observed that Indonesia's Migrant Workers Law focuses heavily on placement of migrant workers instead of the protection of their rights.⁷⁸⁹ Nonetheless, the Migrant Workers Law does acknowledge the rights of migrant workers to: 1) receive equal remuneration in accordance with the standard that applies in the destination country; 2) receive equal rights, opportunities, and treatments as received by migrant workers coming from other countries in accordance with the legislations of the destination country; and 3) receive legal protection against violations of their human rights and dignity in accordance with the legislations in the destination country.⁷⁹⁰ However, most Indonesian women migrant

786 Ministry of Labour and Vocational Training and International Labour Organization (ILO), *Policy on Labour Migration for Cambodia*, June 2010, 12, available at http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/publication/wcms_145704.pdf (accessed 2 August 2012).

787 *Ibid*, 19.

788 Cambodian League for the Promotion and Defense of Human Rights (LICADHO), "New Sub-Decree on Migrant Labor Fails Dismally on Workers Rights," 31 August 2011, <http://www.licadho-cambodia.org/pressrelease.php?perm=257> (accessed 15 May 2012).

789 IOM, *Labour Migration from Indonesia: an Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*, Jakarta (2010), 17. See also Palmira PermataBachtiar, *The Governance of Indonesian Overseas Employment*, 34; and CARAM ASIA, "Reality Check!" 17.

790 Migrant Workers Law, Article 8(e - g).

workers are domestic workers or caregivers in destination countries and these professions are usually not specifically protected in law.⁷⁹¹

As was pointed out in the section on Exploitation, some domestic workers lack legal protection even in their own home countries. The Philippines, Cambodia, Lao PDR, and Indonesia send many domestic workers to other countries every year. Yet, they themselves do not show that they put high value on domestic work by failing to give adequate protection in their own national policies. Ratifying ILO Convention 189 on Domestic Workers (as the Philippines has recently done on 6 August 2012), bringing national laws in line with the Convention's standards, establishing monitoring procedures, and prosecuting abusive employers would be highly beneficial in protecting domestic workers employed within and outside the countries of Parties to the Convention.

Legislations and mechanisms to protect migrant workers in receiving countries also need to be strengthened. As example, the CEDAW Committee observed that Malaysia lacked legislation or policies protecting the rights of migrant workers, particularly migrant domestic workers, who are mostly women.⁷⁹² It also lacks laws or regulations concerning the status of asylum-seekers and refugees.⁷⁹³

The Country Reports also indicated the need to strengthen the legal systems to protect migrant children. For instance, the Country Report on Indonesia observed the need for legislation specifically protecting the rights of children in the context of migration, including child migrant workers and children left behind by parents who are migrant workers.

Abusive Power in Law

The Country Report on Malaysia noted that the Malaysian Bar Council passed a motion calling for the repeal of the legislation that established the People's Volunteer Corps (RELA). This law empowers RELA officers to enforce immigration laws.⁷⁹⁴ The motion of the

Malaysian Bar Council has received support from human rights groups who believe that the involvement of poorly-trained volunteer RELA officers to effect arrests in the enforcement of immigration law is highly questionable.⁷⁹⁵ The fact that those powers can be exercised without a warrant violates due process of law.⁷⁹⁶ 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.⁷⁹⁷

3. Implementation, Monitoring, and Prevention

a. Complaints Process

For migrants, embassies were indicated as the main recourse. As the Country Report on the Philippines indicated, "Overseas domestic helpers typically go to the Philippine Embassy to report abuses, based on the general approach recommended during the pre-departure orientation seminars."⁷⁹⁸ Migrants in distress, including survivors of trafficking, are provided with assistance and support by embassies and other Foreign Service posts of the Philippines under the "Country-team Approach". The approach refers to a mode under which Philippine embassies or their personnel would operate in the protection and the promotion of the welfare of Filipino migrant workers.⁷⁹⁹ All officers, representatives, and personnel of the Philippine government posted abroad, regardless of their mother agencies, act as one

ple's volunteer corps (RELA)," Annual General Meeting of the Bar Council of Malaysia, 17 March 2007, accessed at <http://www.mfasia.org/mfaStatements/F95-MalaysiaBarResolution.html>.

795 International Federation for Human Rights (FIDH) & Suara Rakyat Malaysia (Suaram), *Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination*, (March 2008), 8, <http://www.fidh.org/IMG/pdf/MalaisieCONJ489eng.pdf> (accessed 4 August 2012).

796 *Ibid.*

797 "Malaysia: Abused and Abandoned: Refugees denied rights in Malaysia," *Amnesty International*, (16 June 2010), 9 <http://www.amnesty.org/en/library/info/ASA28/010/2010/en>.

798 Nicole J. Sayres, *An Analysis of the Situation of Filipino Domestic Workers* (Manila: International Labor Organization-ILO Special Action Programme to Combat Forced Labor, 2007), 26

799 UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Written replies by the Government of the Philippines concerning the list of issues (CMW/C/PHL/Q/1) received by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families relating to the consideration of the initial report of the Philippines (CMW/C/PHL/1)*, 6 March 2009, CMW/C/PHL/Q/1/Add.1, 7, citing Republic Act 8042, Section 28.

791 IOM, *Labour Migration from Indonesia: an Overview of Indonesian Migration to Selected Destinations in Asia and the Middle East*, Jakarta (2010), 18.

792 CEDAW Committee Concluding Comments, paragraphs 25-6.

793 *Ibid.*, paragraphs 28-29.

794 The Malaysian Bar, "Motion for the end of the state of emergency and an end to law enforcement by the untrained and armed peo-

country team under the leadership of the ambassador in a particular country.⁸⁰⁰

Some good practices that are being implemented to protect migrants in host countries were highlighted. In Brunei Darussalam, the Labour Department has a unit for addressing complaints of abuse of migrant workers. The Labour Department of Brunei Darussalam also runs a hotline to receive reports of abuse.⁸⁰¹ The Country Report on Brunei Darussalam noted that, according to Employment Order 2009, the welfare of foreign workers is protected from irresponsible employers and they are also accorded the same rights as Bruneian citizens under civil and criminal laws.⁸⁰²

In Singapore, social networks and the Ministry of Manpower appear to be the main recourse. In a 2007-2008 study, 219 foreign workers temporarily residing at a shelter ran by the Humanitarian Organization for Migration Economics (HOME) were asked how they learnt of the NGO or its shelters.⁸⁰³ Results were as follows: through a friend or relative working in Singapore, 47%; Ministry of Manpower, 32%; published articles, 5%; police, 4%; embassy, 4%, or locals, 2%. Forty-three per cent came to the shelter on their own initiative, and 25% were referred by the Ministry of Manpower. Besides the NGO, 42% sought advice from their friends or relatives, and 28% also sought advice from the Ministry of Manpower on the problems they encountered.⁸⁰⁴ For foreign domestic workers in Singapore, there is a toll-free helpline manned by Ministry of Manpower officers. An advisory booklet, available in English and 9 native languages of foreign workers, is given to all foreign workers.⁸⁰⁵ It sets out their rights and obligations, and provides useful telephone numbers to call in the event of an emergency.

Studies evaluating complaints mechanisms were however

⁸⁰⁰ *Ibid.*

⁸⁰¹ UNIFEM (now UN Women), *Good Practices to Protect Women Migrant Workers: High-Level Government Meeting of Countries of Employment*, Bangkok: UNIFEM (2006), 34.

⁸⁰² Quratul-Ain Bandial, "Migrant workers' complaints drop", *The Brunei Times*, August 20, 2011, <http://www.bt.com.bn/news-national/2011/08/20/migrant-workers-complaints-drop> (accessed 14 March 2012).

⁸⁰³ Kayoko Ueno, *Research survey report on shelter residents 2007 to 2008*, <http://www.home.org.sg/library/research/index.html> (accessed 8 May 2012).

⁸⁰⁴ *Ibid.*

⁸⁰⁵ Singapore's Fourth CEDAW Periodic Report, paragraph 11.34.

inadequate, as was observed in the Country Report of Myanmar. Further, it seemed that during the previous regime of Myanmar, the issues of migrant workers were side-lined or ignored.⁸⁰⁶ News reports say that the Myanmar Embassy in Thailand has been working on protection of migrant workers' rights in cooperation with the local workers' rights groups.⁸⁰⁷ However, information regarding how effectively migrant workers can lodge complaints with Myanmar embassies is unavailable. The Country Report on Malaysia also found that assessments of mechanisms that monitor implementation and observance of laws protecting female migrant workers and migrant children are lacking. The reports also do not identify any accreditation and systematic monitoring system to ensure respect of rights and good practices among recruitment agencies for domestic workers.

b. Protection and Rehabilitation

The Country Reports referenced bilateral and multilateral agreements between and among countries as important forms of protection. (See Annex D.) As example, the Malaysian government recently agreed to greater protection for Indonesian domestic workers and signed a protocol on 30 May 2011 to amend 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 domestic worker at RM4,511, guaranteeing one day rest day per week, and allowing domestic workers to keep their own passport.⁸⁰⁸

Seeking recourse from embassies was often mentioned as a form of protection and rehabilitation. As mentioned in the Country Reports of Singapore and Brunei Darussalam, the Philippine and Indonesian embassies operate shelters for their nationals in these countries.

⁸⁰⁶ Nay Thwin, "Burma appoints labour official for Thailand," *Democratic Voice of Burma* 2011, January 10, 2012, <http://www.dvb.no/uncategorized/burmese-embassy-in-thailand-appoints-labour-official/19386>.

⁸⁰⁷ "Burmese migrant (127) received estimated (3) millions Baht for their allowance!," *Democracy For Burma*; Nay Thwin, *Burma appoints labour official for Thailand*. Democratic Voice of Burma 2011, January 10, 2012, <http://www.dvb.no/uncategorized/burmese-embassy-in-thailand-appoints-labour-official/19386>.

⁸⁰⁸ Ahmad Fuad Yahya, "Indonesia officially allows domestic maids for Malaysia," *My Sinchew.com* (Malaysia), 17 November 2011, <http://www.mysinchew.com/node/66563>.

It has been noted that the services Indonesia⁸⁰⁹ and the Philippines⁸¹⁰ can afford citizen migrant workers outside their respective territories are still insufficient; however, both countries appear to be exerting continued efforts to protect their citizens. Since 2007, the government of Indonesia has established 24 Citizen Service Units, set up hotline services to help Indonesian migrant workers facing problems, and provided shelters for such workers with access to education and health services.⁸¹¹ In 2004, Indonesia established the Coordination Team for the Repatriation of Problematic Indonesian Migrant Workers and Family from Malaysia (TK-PTKIB) to handle cases of regular or incidental deportation of Indonesian migrant workers.⁸¹² The TK-PTKIB has units operating in 12 regions.⁸¹³ Further, the Ministry of Social Affairs created the Directorate of Social Assistance for Victims of Violence and Migrant Workers to provide psychological rehabilitation programs and oversee the reintegration of migrant workers back into their community.⁸¹⁴

Aside from providing shelter, the Philippines is said to have the world's largest migrant welfare fund—the Overseas Workers Welfare Administration (OWWA) welfare fund. This is crucial for the immediate repatriation of distressed and physically ill contract workers, and the remains of those who have died working abroad.⁸¹⁵ The Government's "main protection vehicle" has been the OWWA.⁸¹⁶

The Country Reports noted literature indicating deficiency of programs to reintegrate persons who have returned after migrating for work, regardless of whether they experienced abuse or discrimination while overseas. For instance, in Vietnam, there appears

to be no regulation or coordinated strategy to assist returning workers to get jobs. Many skilled workers face unemployment after several years abroad where they gained not only training but also relevant experience. Thus, many of them seek again for job opportunities in the countries they previously worked in.⁸¹⁷ A 2008 study conducted by Social Environmental Research Consultant showed that, in Lao PDR, 49% of returnees from Thailand faced unemployment upon returning to the village and, in many cases, a single migration was not sufficient; thus, returnees engaged in repeat migrations.⁸¹⁸

c. Prevention Strategy

Programs to prepare migrants for their life overseas and making relevant information available were emphasized as important prevention strategies. For instance, Thailand conducts information campaigns for Thai people who want to work abroad. In the Philippines, departing migrants are required to attend Pre-Departure Orientation Seminars (PDOS), which are supplemented by the optional Pre-Employment Orientation Seminar (PEOS).⁸¹⁹ In Vietnam, the IOM and the Department of Overseas Labour signed an agreement to establish a Migrant Resource Centre to promote safe and sustainable labour migration from Vietnam.⁸²⁰ The government launched a project, "Building the database of Vietnamese citizens migrating abroad," to build capacity for governmental agencies that manage migration-related issues and promote legal migration; create a general database about Vietnamese migrants abroad, analysing, monitoring and evaluating the bilateral cooperation agreements; and create a comprehensive database with detailed information, legal provisions, and statistics that can be utilized while launching safe-migration awareness

809 Komnas Perempuan, *2011 CEDAW Independent Report*, paragraph 42.

810 Sana and Abano, "Labor Migration in Southeast Asia," in Laipson and Pandya (eds.), *On the Move: Migration Challenges*, 62; and Ambito and Banzon, *Review of Philippine Migration Laws*, 20-21.

811 UN Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: (Universal Periodic Review): Indonesia*, 7 March 2012, A/HRC/WG.6/13/IDN/1, paragraph 115.

812 CEDAW, *Indonesia 6th & 7th Report*, paragraph 103.

813 *Ibid.*, paragraph 110.

814 *Ibid.*

815 Dovelyn Rannveig Agunias and Neil Ruiz, *Protecting Overseas Workers: Lessons and Cautions from the Philippines (Insight: Program on Migrant, Migration and Development)*, Washington, D.C.: Migration Policy Institute, (September 2007), 14.

816 *Ibid.*, 24.

817 Nguyen Anh Dang, "Labour Migration From Vietnam: Issues of Policies and Practices," *ILO Asian Regional Programme on Labour Migration Working Paper*. Thailand: ILO, EU (2008), 3.

818 Social Environmental Research Consultant, "A Comparative Picture of Migration in Laos, Myanmar, Cambodia, Vietnam and Thailand: Summary," 6, available at http://www.burmalibrary.org/docs08/A_Comparative_Study_of_Migration-SERC.pdf (accessed 2 August 2012).

819 Fabio Baggio, "The Migration-Development Disconnect in the Philippines," in Fabio Baggio and Maruja M.B. Asis (eds.), *Moving Out, Back and Up: International Migration and Development Prospects in the Philippines* (Manila: Scalibrini Migration Center, 2008), 118.

820 IOM, "Press Briefing - MRC Vietnam," (2012), http://www.iom.int.vn/joomla/index.php?option=com_content&task=view&id=279&Itemid=294, (accessed 12 March 2012).

campaigns.⁸²¹

For the Philippines, one key aspect of recent reform has been the enforcement of joint liability between the local recruitment agency and its foreign principal. Under this policy, a worker who feels his employer violates provisions of his work contract has the legal option to seek redress in Philippine courts against his recruitment agency.⁸²² Perhaps, other labour-sending countries could consider this policy.

The government of Malaysia stated that it regularly reviews labour policies, laws, and regulations to meet current needs and that Malaysia has introduced guidelines on the treatment and protection of the rights of foreign domestic workers.⁸²³ In Brunei Darussalam, new employers are briefed on labour laws and regulations.⁸²⁴ Domestic workers are required to be present during the signing of employment contracts so labour officers can brief them on their rights and obligations.⁸²⁵ They are also given the labour department's hotline number to report any abuse or complaints.⁸²⁶ All court cases are publicized through the media to remind employers of the need to comply with prevailing laws and regulations.⁸²⁷

The Country Report on Singapore indicated that all foreign workers entering Singapore on a work permit for lower-skilled or unskilled labour are issued letters prior to their departure to provide them with information on their expected occupation and basic monthly salary.⁸²⁸ These

letters also inform workers of the employment-related expenses that should be borne by employers and cannot be passed on to the worker. The Ministry of Manpower provides foreign domestic workers with feedback forms in prepaid envelopes at a compulsory course when they first arrive.⁸²⁹ The Ministry also conducts random interviews during their initial months and home visits.⁸³⁰ The Ministry produced an information kit for employers on their responsibilities and statutory obligations, a guide on cultural norms and customs of the main source countries for foreign domestic workers, and an electronic newsletter.⁸³¹ Employers are also required to attend an Orientation Programme. Employers who change workers five or more times in one year may be required to attend an interview. Applications from employers who change foreign domestic workers frequently may be rejected.⁸³²

The Country Reports mention the need to assess education and awareness programs that give information on potential abuse in migration, including recommended contents of labour contracts, legal rights, procedure for invoking redress, and procedure for migration to women who wish to migrate independently of recruitment agencies. For instance, the Country Report on Malaysia observed that there does not seem to be any existing program to raise community awareness of the risks, dangers, and opportunities of migration. The Country Report on Singapore also indicated that actions to eliminate prejudices against foreign domestic workers are seemingly lacking.

In Indonesia, reports indicate that, according to the Migrant Workers Law, the PPTKIS (privately-owned recruitment and placement agencies) 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 mediator in case a dispute arises between an employer and a migrant worker.⁸³³ More information on how effectively

821 "Báo cáo tổng quan hoạt động di cư của công dân Việt Nam ra nước ngoài - [General Report of Activities of Vietnamese citizens migrating abroad]."

822 Improving Governance in Migration: Lessons from the Philippine Experience, A paper delivered by Dr. Dante A. Ang, Secretary, Commission on Filipinos Overseas, for the Initiative for Policy Dialogue Task Force on International Migration, 4.

823 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia Addendum*, 3 June 2009, A/HRC/11/30/Add.1, No. 19.

824 UNIFEM (now UN Women), *Good Practices to Protect Women Migrant Workers: High-Level Government Meeting of Countries of Employment*, Bangkok: UNIFEM (2006), 34.

825 *Ibid.*

826 *Ibid.*; see also Quratul-Ain Bandial, "Migrant workers' complaints drop", *The Brunei Times*, August 20, 2011, <http://www.bt.com.bn/news-national/2011/08/20/migrant-workers-complaints-drop> (accessed 14 March 2012).

827 *Ibid.*

828 Ministry of Information, Communication and the Arts, "Singapore's Detailed Response to the Allegations in the 2010 US State

Department's Trafficking in Persons Report," press release, 30 June 2010, paragraph 5.

829 UN Committee on the Elimination of Discrimination Against Women, *Responses to the list of issues and questions with regard to the consideration of the fourth periodic report*, 18 May 2011, CEDAW/C/SGP/Q/4/Add.1, paragraph 84.

830 *Ibid.*

831 Singapore's Fourth CEDAW Periodic Report, paragraph 53.

832 *Ibid.*

833 Palmira Permata Bachtiar, *The Governance of Indonesian Overseas Employment*, viii.

this obligation is being carried out and complied with is, however, needed. National legislation in Cambodia and Lao PDR also guarantees pre-departure training for all formal migrants, however, it was found that many workers surveyed reported receiving no training at all.⁸³⁴

4. Progress Indicators and Challenges

The Country Reports highlighted the importance of international collaboration in addressing abuse and discrimination in the context of migration. Thus, it is laudable that Indonesia has recently ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Philippines also recently became the second country to ratify the International Labour Organisation Convention No. 189, the Convention Concerning Decent Work for Domestic Workers.⁸³⁵

Singapore's move to give foreign domestic workers a mandatory weekly day off could signal greater openness. In Thailand, with the aim to legalize registered migrant workers in order for them to obtain official working permits, Memorandums of Understanding have been signed and are currently being implemented with the neighbouring countries Myanmar, Lao PRD, and Cambodia.⁸³⁶ To faster regularize the large number of undocumented workers from neighbouring countries, Thailand recently opened new nationality verification centres.⁸³⁷ It is also notable that in August 2010, Vietnam signed a New Cooperation Agreement with the International Organization for Migration.⁸³⁸

834 IOM, *The Mekong Challenge: An Honest Broker – Improving cross-border recruitment practices for the benefit of Government, Workers and Employers*, 2008, xi.

835 The convention takes effect one year after the second ratification. "Domestic Workers Convention: Labor Rights Treaty to Take Effect," Human Rights Watch, 6 August 2012, <http://www.hrw.org/news/2012/08/06/domestic-workers-convention-labor-rights-treaty-take-effect> (accessed 7 August 2012).

836 UNIFEM (now UN Women), *Good Practices to Protect Women Migrant Workers: High-Level Government Meeting of Countries of Employment*, Bangkok: UNIFEM (2006), 47.

837 ASEAN Inter-Parliamentary Myanmar Caucus, "ASEAN Must Move Swiftly to Implement a Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers," *Burma Partnership*, 26 April 2012, <http://www.burmapartnership.org/2012/04/asean-must-move-swiftly-to-implement-a-framework-instrument-on-the-protection-and-promotion-of-the-rights-of-migrant-workers/> (accessed 6 August 2012).

838 IOM, "IOM Signs New Cooperation Agreement with Government

Since 2007, the Vietnamese government has recognized the issue of labour exploitation, both within country and abroad. This change of perception created opportunities for partnership to develop safe migration programs.⁸³⁹

In Brunei Darussalam, complaints from migrant workers over unpaid wages dropped 89% in three years. The overall number of complaints received by the Labour Department from migrant workers in private companies also fell from 468 in 2008 to 99 in 2010 — a 78% decrease.⁸⁴⁰ This can be due to stricter law enforcement; the Labour Department increased the number of enforcement operations from 15 in 2009 to 79 in 2010, which is a four-fold increase.⁸⁴¹

Mitigate Push Factors

The Country Reports highlighted the need to mitigate "push factors" and to address difficult situations in migrants' home country. This includes generation of employment opportunities, developing the labour force, and establishing peace and order. The Country Reports consistently indicate unemployment, poverty, and the desire for a better life as "push factors of migration". While it has been said that migration is now the reality, governments should still be relentless in aiming to give citizens opportunities to fully develop in their home countries.

Women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfil their aspirations in their country of origin, and hence migrate out of choice, rather than necessity. Those women and men who migrate and enter the global labour market should be able to do so in a safe and authorized manner, and because they and their skills are valued and needed by the states and societies that receive them.⁸⁴²

of Viet Nam," in *IOM Press Briefing Notes* (2010).

839 ILO, "Meeting the Challenge: Proven Practices for Human Trafficking Prevention in Greater Mekong Sub-region."

840 Quratul-Ain Bandial, "Migrant workers' complaints drop," *The Brunei Times*, August 20, 2011, <http://www.bt.com.bn/news-national/2011/08/20/migrant-workers-complaints-drop> (accessed 14 March 2012).

841 *Ibid.*

842 The Global Commission on International Migration, *Migration in an interconnected world: New directions for action*, Geneva (October 2005), 4.

Review Legislation and Strengthen Mechanisms

Creation and review of legislation and mechanisms that protect migrant women and children in particular, and the whole country's labour force in general, are necessary. Literature indicates that social rights (e.g. social security benefits and child care provisions) are rarely contextualized with migration policies.⁸⁴³ The right to family life has only recently become a topic of migrant rights' advocacy in Asia and a systematic analysis of the linkages between migration, social development, and social policy has not been undertaken.⁸⁴⁴ It has been recommended that policy measures include providing proper legal status, permission to change employers, and labour rights by recognizing jobs such as domestic work as being as worthy of protection under labour laws as other sectors of work.⁸⁴⁵ In the meantime, issuing provisions on standard contracts of employment between employer and migrant worker that set out the agreed rights as well as minimum terms and conditions of employment would be beneficial.⁸⁴⁶

Migration policies that are built on close and continuous control of migrants should not be at the expense of the safety, health, dignity, or other rights of migrants. For instance, in Thailand, no clear policy that specifically targets protection for vulnerable migrants has been set. Consequently, existing mechanisms and services are reportedly not effective in providing protection to migrant workers, especially in cases when migrants fall victim to abusive practices, accidents, disabilities, or unemployment. One concern is that registered migrants and their families are not entitled to work accident compensation from the Workmen Compensation Fund (WCF).⁸⁴⁷

In Singapore, the Country Report observed that no study has been conducted on the government's programs addressing abuse of foreign domestic workers, such as its employer-employee education efforts and the system of regulation of employment agencies. Areas

for improvement have not been studied. This research gap impedes evidence-based approaches to policy development.

As regards countries where migrants usually originate from, it was indicated that moves to overly restrict migration flows can exacerbate the situation, as it will push potential migrants to migrate irregularly-- especially when the government is not able to give options for a better life within the country. On the other hand, a labour export strategy has to be backed by adequate policies and systems to protect the rights of migrants. In the host countries, governments of sending countries need to ensure that their citizens, both of regular and irregular status, have access to personnel and resources capable of assisting them in pursuing complaints, providing shelter and treatment, and facilitating their repatriation when necessary.

For instance, despite encouraging migration, Vietnam has no specific gender policies and regulations that would protect rights and welfare of female workers.⁸⁴⁸ Further, not only is there lack of protection prior to and while working outside the country, but there is also a gap in policy addressing return and reintegration. "Most migrant workers are left to their own devices and frequently face difficulties in finding employment commensurate with the skills they have acquired abroad."⁸⁴⁹ In Lao PDR, domestic workers to Thailand remain unprotected as the sector is banned from labour migration to Thailand. The same was also observed in Cambodia where there is reportedly "no legal framework and no government institutions in Cambodia to regulate the flow of migration."⁸⁵⁰ This results to a large number of migrant workers who are without legal status in their host countries and without access to a range of rights and services. Myanmar as well does not yet have adequate institutions to protect migrant workers' rights effectively.

The Philippine migration model has been touted as a successful approach.⁸⁵¹ Even then, the UN Committee

843 Regional Thematic Working Group on International Migration Situation Report 2008, 171, *citing* (Hujo and Piper, forthcoming).

844 *Ibid.*

845 Regional Thematic Working Group on International Migration Situation Report 2008, 170.

846 *Ibid.*

847 See ILO, *Report of the Committee of Experts on the Application of Convention and Recommendations*, Geneva: ILO Office (2010), 715 – 717.

848 Nguyen Anh Dang, "Labour Migration From Vietnam: Issues of Policies and Practices," *ILO Asian Regional Programme on Labour Migration Working Paper*. Thailand: ILO, EU (2008)," 3.

849 *Ibid.*, 12.

850 IOM, *Analyzing the Impact of Remittances from Cambodian Migrant Workers in Thailand on Local Communities in Cambodia*, June 2010, 23-34.

851 Sana and Abano, *Labor Migration in Southeast Asia*, 62.

on the Protection of All Migrant Workers and Members of Their Families has recommended that Government “review its labour migration program in order to give primary importance to the human rights of migrant workers.”⁸⁵² The Committee also noted a “multitude of initiatives and programs” in response to the challenges regarding migration, but said “implementation, follow-up, and evaluation of these programs are insufficient.”⁸⁵³ The Country Report on Indonesia also indicated the need to review the Indonesian legal framework and policies relating to migration, particularly national legislations on regional autonomy and the role that regional governments can play in providing protection to migrant workers.

Addressing corruption should also be a target. The difficulties of migrants are exacerbated when labour and immigration officers make them pay for services that should be free.

(See also Migration Policies that Facilitate Exploitation in Exploitation, *De Jure State Responses, Assessment of State Policies.*)

Workers' and Employers' Preparedness

There is a need to adequately prepare migrants before they leave. Workers need to be oriented and informed about country profile, culture, how to cope with common problems experienced by other migrants, institutional support system, and their rights and obligations in the employment contract. There also appears to be a need to review even existing programs that orient migrants prior to departure. As was found in the case of the Philippines, despite its well-established pre-departure program, a survey of domestic workers prior to migration shows that many departing workers are not aware of basic work rights and government regulations and half of them were not briefed on their work contracts by their agents.⁸⁵⁴ Further, on the link between migration and development, a European Union (EU) report found that existing programs focus mainly on financial literacy activities, e.g. providing overseas Filipino workers and their families with necessary information to make sound decisions

852 *Ibid.*

853 CMW, 2009 *Concluding Observations: Philippines*, paragraph 13.

854 Graziano Battistella and Maruja M.B. Asis, *Protecting Filipino Transnational Domestic Workers: Government Regulations and Their Outcomes (Discussion Paper Series No. 2011-12)* (Manila: Philippine Institute for Development Studies, 2011), 25 and 37.

on the use of their remittances. The risks and threats to development that accompany migration are not being given as much attention.⁸⁵⁵

In receiving countries, employers should also be briefed on their responsibilities and statutory obligations, cultural norms and customs of the migrant worker's country, as Singapore has been doing. Actions to eliminate prejudices or perceptions of stereotyped roles, especially for foreign domestic workers, should also be considered.

Lack of Adequate Data

The Country Reports indicate that, not only is there difficulty in ascertaining the percentage of migrant women and children who are being abused or discriminated, but inconsistencies exist even in the recorded number of women and children who are outside of their home countries. As an example, the Country Report on Indonesia indicated that different data from official authorities on the number of registered workers were already confusing, this became even more so when data was compared with sources from non-state actors. For 2003, BNP2TKI data shows that there were 293,865 Indonesian workers abroad; UNICEF, however, reported that there were about 670,000 registered Indonesian workers in Peninsular Malaysia alone.⁸⁵⁶ Thus, methodology for reliable data collection should be developed. Information on Cambodian migrants in Thailand was found to be scarce as well.⁸⁵⁷ Majority of Cambodian migrants in Thailand are irregular and undocumented. The only data available is from the Thai Ministry of Labor, which, according to the Cambodian Ministry of Labor, are not completely reliable since many Lao and Burmese are identified as Cambodian by Thai authorities.⁸⁵⁸ The long and porous border also makes it very difficult to collect data.⁸⁵⁹

855 “Migration Profile: Philippines,” *European External Action Service, European Union* (2009), http://www.eeas.europa.eu/philippines/docs/migration_profile_annex3_en.pdf (accessed 6 March 2012).

856 BNP2TKI, “Placement of Indonesian Workers 1994 – 2006,” www.bnptki.go.id (accessed 20 April 2012); and John Bryant, “Children of International Migrants in Indonesia, Thailand, and the Philippines: a Review of Evidence and Policies,” *Innocenti Working Paper Series*, April 2005, 11, available at www.globalnetwork.princeton.edu (accessed 20 April 2012).

857 IOM, *Analyzing the Impact of Remittances from Cambodian Migrant Workers in Thailand on Local Communities in Cambodia*, June 2010, 23-24.

858 *Ibid.*, citing World Bank, 2006.

859 *Ibid.*, 24.

For the Philippines, several government agencies have been collecting data related to emigration from the Philippines, however, other than the total count of overseas Filipinos, basic demographic details such as distribution by gender or age were not available. Further, when data was compared with data on the Filipino population in host countries, the data often did not match.⁸⁶⁰ The actual number of irregular workers from the Philippines would be more difficult to account. The Country Report indicated that there is no available comprehensive information on the incidences of abuse and discrimination experienced by migrants from the Philippines. According to the Migrant Workers Committee, in spite of efforts to protect the rights of women migrant workers, abuse and exploitation continue, and these cases have remained underreported.⁸⁶¹

With the scarcity of comprehensive data collection mechanisms, there is the danger of drawing sweeping conclusions and assumptions on the basis of data from select case studies and surveys that are based on limited sampling. This makes formulation and assessment of government policies and programs to protect its migrants difficult.

Stronger Collaboration

The nature of abuse and discrimination in migration is that progress depends on the ties that sending and receiving countries establish and how willingly they share responsibility. Unfortunately, so far, only three out of the 10 ASEAN Member States have signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁸⁶² Only the Philippines has signed the ILO Domestic Workers Convention. Not all countries have signed the eight fundamental Conventions of the International Labour Organization. Thus, aside from ratifying migration-related instruments, forming more bilateral and multilateral labour agreements would be very helpful. Further, there is a need for ASEAN Member States to implement the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.⁸⁶³

860 "Migration Profile: Philippines," *European External Action Service, European Union* (2009), http://www.eas.europa.eu/philippines/docs/migration_profile_annex3_en.pdf (accessed 6 March 2012).

861 CMW, 2009 *Concluding Observations: Philippines*, 6.

862 These countries are Cambodia (signed), Indonesia (signed and ratified), and Philippines (signed and ratified).

863 Ridwan Max Sijabat, "RI Reminds ASEAN of Migrant Workers' Faith Suzzette Delos Reyes-Kong

It has been said that "migration policy-making in the region is increasingly taking place outside a human rights framework," with migrants being treated not only as non-citizens, but "essentially as people with no perceived rights."⁸⁶⁴ Not only are migrant workers at a disadvantage in negotiating the terms of their contracts and demanding their rights, but sending countries are also constrained from setting out terms and conditions by economic factors⁸⁶⁵ and the authority of host countries to determine migration management policies. Therefore, a regional solution that recognizes the obligation of both sending and receiving countries to respect the rights of skilled, semi-skilled, and unskilled migrants is necessary. Unlike the European Union, ASEAN does not provide for the free movement of labour. Further, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers is not legally binding and imposes no obligations on member states.⁸⁶⁶ Thus, civil society organisations have recommended for a legally binding ASEAN Framework Instrument to protect and promote the rights of migrant workers and that ASEAN work towards a free flow of labour within the region.⁸⁶⁷ Unskilled workers create the majority of labour movement in the region; thus, facilitating their flow, and not merely that of skilled workers, has to be seriously considered.⁸⁶⁸

Protection Deal," *The Jakarta Post*, 11 May 2012, www.thejakarta-post.com (accessed 15 May 2012).

864 Amarjit Kaur, "Migration Matters in the Asia-Pacific Region: Immigration Frameworks, Knowledge Workers and National Policies," *Migration and Integration in the Asia-Pacific Region, International Journal on Multicultural Societies (IJMS)*, Vol.9, No. 2, 2007, 154.

865 For instance, to promote better conditions for domestic workers, the Philippines announced on 15 December 2006 that, from 1 March 2007, domestic workers deployed overseas should be at least 25 years old; a minimum wage of US\$ 400 per month was established. Current and potential migrants protested and the minimum age was lowered to 23 years. Nevertheless, on 15 February 2007, it was reported that placements of domestic workers had fallen by 50%, largely because of the specified minimum wage. Regional Thematic Working Group on International Migration Situation Report 2008, 78.

866 IOM, *The Mekong Challenge: An Honest Broker – Improving cross-border recruitment practices for the benefit of Government, Workers and Employers*, 2008, 14.

867 VuthaHing, PideLun, and DalisPhann, "Irregular Migration from Cambodia: Characteristics, Challenges and Regulatory Approach," *Discussion Paper Series No. 2011-26*, Philippine Institute for Development Studies, 25-26. See also "Jakarta: ASEAN urged to speed up talks on migrant worker protection," *Task Force on ASEAN Migrant Workers*, 11 April 2011, <http://www.workersconnection.org/articles.php?more=139> (accessed 4 August 2012).

868 *Ibid.*, 25.

E. CONCLUSION AND GENERAL RECOMMENDATIONS

Our Baseline Study reveals that all ASEAN Member States have enacted laws and have adopted programmes to protect women and children from violence, exploitation, and abuse and discrimination in the context of migration. How far along each have gone varies considerably.

Our Study also shows that non-state actors play a very important role in providing protection to survivors and promoting freedom from violence, exploitation, and abuse and discrimination in migration. In most countries, non-state actors have been instrumental in monitoring government compliance with its international obligations and advocating for policy reforms. In a few countries, non-state actors have even shouldered a significant share of the government's obligation to provide needed assistance to victims and survivors.

Significant progress has been made; however, many gaps are also apparent. Our Baseline Study has identified the challenges that governments and non-state actors have yet to overcome. Some of these challenges have been discussed at the conclusion of each section of this Synthesis Report and they are further detailed in the Country Reports. In sum, we pinpointed the need to strengthen international collaboration, review existing commitments and policies, improve mechanisms and address inefficiencies, target the root causes, and develop systems for collecting and analysing up-to-date disaggregated data. From our Baseline Study, our general recommendations for further study, reform, and capacity building are therefore as follows:

1. Review commitments to and compliance with international instruments that protect against violence, exploitation, and abuse and discrimination in migration of women and children. Where governments have not acceded to key conventions that protect against violence, exploitation, and abuse and discrimination in migration, conduct studies to determine what hinders governments from doing so, the perception and reception of advocates and citizens on the lack of government commitment, and propose alternative strategies to temporarily fill in the vacuum that the absence of such commitments has created.
2. Conduct comprehensive in-depth research projects into the legislations, policies, and mechanisms of each ASEAN country in relation to addressing violence, exploitation, and abuse and discrimination in migration. Identify strengths and gaps so as to propose policy reforms, methods to improve mechanisms within the countries, and a system that will promote better collaboration among the ASEAN Member States. Reconcile inconsistencies in legislation and nullify laws and regulations that fall below the standards of the CEDAW and the CRC.
3. Conduct studies to develop indicators for the purpose of creating and maintaining databases that will provide comprehensive, accurate, updated, and disaggregated information on prevalence of violence, exploitation, and abuse and discrimination in migration. Maintaining such a database is very important for governments and non-state actors to be able to assess the impact of their policies and programmes and, thus, modify them accordingly. There is, therefore, also a need to study and create benchmarks against which progress can be analysed and measured.
4. Where Country Reports have indicated a gap in information, conduct studies into the forms, root causes, and impact of violence, exploitation, and abuse and discrimination in migration. Examine attitudes toward traditional gender roles from men's and women's perspective and women's rationalizations of the acceptability of violence. In all ASEAN Member States, the findings of studies on prevalence, root causes, and impacts of these three issues should be broadly disseminated. The need to make this information public is stressed, as they will mitigate the erroneous notion that these violations should be indefinitely borne in silence. This information will also guide stakeholders in the creation and implementation of their programs.
5. Conduct country-specific studies on how governments and non-state actors, including national human rights institutions, can improve collaboration and cooperation so as to facilitate sharing of information and diminish the wide discrepancies in the information they provide, avoid duplication of efforts, and better allocate resources. Conduct studies on best practices that ensure that all sectors, particularly women and children, are properly

consulted and involved in the government's decision-making process on issues that affect them. Including men in programs to oppose violations against women would also be an important goal.

will inspire further actions towards eliminating violence, exploitation, and abuse and discrimination against the women and children of ASEAN.

6. Review policies to determine whether or not adequate actions are being taken to address the root causes of violence, exploitation, and abuse and discrimination in migration. The Country Reports have identified numerous efforts that are being under taken to legislate and implement mechanisms to penalize violations and address their impacts. However, the Country Reports indicate that the same amount of attention is not always being given to prevention strategies, such as changing perceptions and remedying conditions that allow or facilitate violence, exploitation, and abuse and discrimination in migration.
7. Conduct studies on creating and proposing systematic awareness-raising programs. Develop and integrate age-appropriate subjects on human rights and women's rights into the curriculum of schools; review school curriculums and create guidelines for the media to ensure that women are portrayed as equals to be accorded with proper respect; design training programs for public officers and private citizens that include information on how to identify cases of violations and provide step-by-step guide on how to go about filing complaints.
8. Lastly, conceptualize and create activities that encourage and build the capacity of in-country researchers. The Country Reports indicated difficulties not only in accessing accurate raw data on incidences of violations, but also noted difficulty in accessing literature that study how effective policies and mechanisms are. Thus, there is a need to create an environment that supports curiosity and constructive analytical thinking within the ASEAN Region.

This Baseline Study describes violence, exploitation, and abuse and discrimination in the context of migration in broad strokes. Within the limits of this Study, we have gathered a massive amount of information on a wide range of interrelated issues and endeavoured to put them together in a coherent manner.

It is hoped that this Baseline Study, which is the product of men and women who are all children of the Region,

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

Annex

A. Background

- The Human Rights Resource Center for ASEAN (“HRRCA”) is a not-for-profit research center dedicated to supporting the work of the ASEAN Inter-governmental Commission of Human Rights (“AICHR”) and ASEAN Commission for the Promotion and Protection of Rights of Women and Children (“ACWC”) through independent research, analysis, training, and capacity building.
- Following its first baseline study of Rule of Law in ASEAN, HRRCA will undertake baseline study on the Protection and Promotion on the Rights of Women and Children in ASEAN (“the Study”). This study is to complement the ACWC in its mandate to prepare ASEAN member states in preparing for Convention on the Elimination of all forms of Discrimination Against Women (“CEDAW”) and Convention on the Rights of the Child (“CRC”) Periodic Reports and the Human Rights Council’s Universal Periodic Review (UPR), with the specific reference to the rights of women and children in ASEAN.⁸⁶⁹
- This study also aims to assist ACWC to promote studies and research related to the situation and well being of women and children, as well as to encourage ASEAN member states on the collection and analysis of data related to the promotion and protection of the rights of women and children.
- This study will further analyze each member states’ commitment to CEDAW and CRC, as well as several ASEAN declarations and work plans related to the rights of women and children, *inter alia*:
 - Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (28 October 2010)
 - Declaration on the Elimination of Violence against Women in the ASEAN Region (30 June 2004);
 - ASEAN Declaration against Trafficking in Persons particularly Women and Children (29 November 2004);
 - Declaration on the Commitments for Children in ASEAN (2 August 2001);
 - Resolution on the ASEAN Plan of Action on Children (1993)
 - Declaration of the Advancement of Women in the ASEAN Region (1988)
 - The Work Plan for Women’s Advancement and Gender Equality (2005-2010)
 - The Work Plan to Operate the Declaration on the Elimination of Violence against Women (2006-2010)

B. ASEAN Member states Ratification and Compliance with CEDAW and CRC to Protect and Promote the Rights of Women and Children

All 10 ASEAN member states have ratified CEDAW and CRC. Some reserve few provisions on the basis of religion, culture and national security. They have also endorsed the Beijing Platform for Action (BPFA) and United Nations Security Council Resolution 1325 and 1820 on Women, Peace and Security. Below, we will see the overview of each ASEAN member states’ Compliance with rights of women and children stipulated under CEDAW and CRC. These recent facts (2003-2011) are based on the CEDAW Committee periodic report, CRC Periodic Report and the Universal Periodic Report. Based on the above report, we can see the overarching issues in all Member States, and particular concerns in each of them in Annex 1 and Annex 2.

869 See ACWC Terms of Reference art. 5.6

I. Brunei Darussalam

Compliance with CEDAW

- CEDAW Committee has not made its periodic review on Brunei's Compliance with CEDAW
- In its national report submitted for UPR,⁸⁷⁰ Brunei Darussalam claimed that the literacy rate for girls has improved since 2001, from 91.5 per cent to 98.2 per cent as estimated in 2007-2008. Brunei Darussalam has achieved the fifth goal of the MDGs which is the reduction by three quarters of the maternal mortality ratio.

Women Participation in the Employment

- Brunei also reported that its strong emphasis on education to women has led to an increase in the participation rate of women in the labor force, working in professional, technical, managerial and administrative jobs. According to the *Human Development Report 2007/2008* statistics on Brunei Darussalam, 26 per cent of legislators, senior officials and managers were female between 1999 and 2005. In 2005, 9.1 per cent of Government officials at ministerial level were women.

Discrimination against Women in Family Matters

- In a 2008 report, the Special Rapporteur on freedom of religion or belief noted that women in Brunei Darussalam face discrimination in the application of religious laws, in particular in areas such as divorce, inheritance, custody of children and transmission of citizenship. For example, Brunei Nationality Act does not automatically grant to children of female citizens married to non-nationals, while it is granted where the father is a citizen

Coercion of Women in Wearing Religious Symbol

- According to IRPP, non-Muslims are required to wear a head covering as part of their uniform in government schools and institutions of higher learning. Non-Muslim teachers have also been pressured into wearing Muslim head scarves.

⁸⁷⁰ Human Rights Council, Working Group on the Universal Periodic Review Sixth session Geneva, 30 November-11 December 2009, A/HRC/WG.6/6/BRN/1, 9 September 2009

Compliance with Child's Rights⁸⁷¹

Lack of Data and Monitoring Mechanism

- Brunei still lack of data to monitor and evaluate progress achieved and to assess the impact of policies adopted with respect to children. As such, its monitoring system lacks data on vulnerable children, including child victims of abuse, neglect, or ill-treatment; children with disabilities; children belonging to ethnic groups; refugee and asylum-seeking children; children in conflict with the law; working children; adopted children; street children; and children living in urban areas.

Discrimination against Children

- The principle of non-discrimination is not included in Brunei Darussalam's legislation and that discrimination persists, specifically to discrimination against girls and children born out of wedlock under the existing personal status law.

Lack of Children Protection in Juvenile Justice System

- CRC was concerned that the minimum age of criminal responsibility is 7 years, which is far too low. CRC was further concerned that there is no juvenile justice system. Further, children abusing drugs may be placed in a closed institution for a period of up to three years.

Child Marriage

- CRC was concerned that the minimum age for marriage is 14, which it considered far too low, and that even younger children may marry under Islamic law

Lack of Access to Children with Learning Difficulties

- CRC was also concerned that insufficient services are provided for children with learning difficulties

⁸⁷¹ Committee on the Rights of the Child, Concluding observations: Brunei Darussalam, CRC/C/15/Add.219 27 October 2003

Violence against Children

- Brunei's Penal Code set a very low standard regarding age limit for marital rape, not only it does not criminalize marital rape, but allows room for child rape "sexual intercourse by a man with his own wife, the wife not being under *thirteen years* of age, is not rape
- The Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment is lawful in the home, in schools, and in penal institutions as a disciplinary measure and not prohibited in alternative care settings. GIEACPC further noted that corporal punishment can be used in the penal system as a sentence for a crime. For instance, males aged 7 – 17 may be sentenced to be whipped up to 18 strokes for a wide range of offences under the Penal Code and other laws. The Children and Young Persons Order would allow such a sentence to be passed only by the High Court.

Lack of Respect for Children's view

- CRC also noted that traditional attitudes towards children in society and local communities may limit respect for their views, especially within the family and schools.

II. Cambodia

*Compliance with CEDAW*⁸⁷²

- Article 31 of the Cambodian Constitution fully acknowledged equal rights of men and women to participate actively in the social, economic, and cultural life of the nation without discrimination. However, despite legal provisions and mechanisms, Cambodian women had yet to fully enjoy the same status as men.

Violence against Women

- Cambodia has taken major steps to tackle violence against women, as the Law on the Prevention of Domestic Violence and the Protection of Victims was adopted in 2005. The Law on Anti-trafficking was also passed in 2008 and the enforcement of it is now being carried out forward.
- The Committee on Economic, Social and Cultural Rights ("CESCR") and three United Nations reports registered grave concern that violence against women and girls remained high, including spousal violence, supported by attitudes blaming the female victim. CESCR noted that redress was limited and legal protection constrained, and victims of domestic violence have limited access to adequate housing elsewhere, according to the Special Rapporteur on adequate housing.
- The Special Rapporteur on adequate housing in 2006 highlighted that women were more vulnerable when communities were under threat of eviction, often involving intimidation and violence. Women commonly faced discrimination in dealings with officials and private companies to negotiate compensation, the terms of relocation and access to basic services.
- Noting the high level of domestic violence affecting 20 to 25 per cent of Cambodian women, rape and other sexual assaults remained a serious problem, with state authorities often seeking to resolve complaints through compensation rather than criminal prosecution. Victims were often unable to bring civil claims against perpetrators due to the fees imposed by the courts. The

⁸⁷² Human Rights Council, Working Group on the Universal Periodic Review Sixth session Geneva, 30 November-11 December 2009, A/HRC/WG.6/KHM/2,18 September 2009; Committee on the Elimination of Discrimination against Women Combined initial, second and third periodic reports of States parties: Cambodia, CEDAW/C/KHM/1-3, 11 February 2003.

2009 UN report noted significant obstacles for women and girls in accessing justice. Impunity, limited legal aid and high cost of medical certificates proving sexual assault were severe deterrents to women reporting abuse

Gender Stereotyping

- CEDAW Committee expressed concern about strong gender-role stereotyping, particularly in the traditional code of conduct, *Chbap Srey*.⁸⁷³ CESCR further recommended replacing *Chbap Srey* in the primary school curriculum with an educational tool that promotes the value of women.
- In 2006, CEDAW Committee was concerned that traditional and cultural factors were preventing women's full enjoyment of equal rights within the family and society, particularly the right to enter into marriage with free and full consent. The traditional and cultural factors also impact towards discrimination in the level of salary of the women.

Women Trafficking and Sexual Exploitation

- The 2009 UN report and CEDAW highlighted that physical violence and economic hardship made women and girls vulnerable to trafficking and exploitative prostitution, particularly young women who migrate to neighboring countries in search of work. As a result, CEDAW noted with concern the high prevalence of sexual exploitation of women and girls and their vulnerability to sexually transmitted diseases and HIV/AIDS.

Lack of Access to Healthcare

- CESCR, a 2008 UNFPA report and the Resident Coordinator's report expressed concern at lack of improvement in the alarmingly high maternal mortality rate. CESCR noted that rates of delivery in health facilities remained low, that unsafe abortions were key factors to maternal mortality, and that newborn mortality remained high.

Lack of Women Representation in the Public Sphere

- A 2008 UNFPA report indicated that the number of women in senior Government positions was increasing but remained low. Meanwhile, a 2008 United Nations Statistics Division (UNSD) source indicated that women held 19.5 per cent of seats in the national parliament in 2008, up from 9.8 per cent in 2005.

Compliance with Child's Rights⁸⁷⁴

- Affirmation of Children's rights is embodied in article 47 and 48 of the Constitution. As a practical measure, the Government has incorporated the relevant concepts of the Convention into a number of Laws, namely Labor Law, Criminal Law in Transitional Period, Crime Procedural Code, Civil Code, Law on the Suppression of Human Trafficking and Sex Exploitation etc.

Right to education

- The Committee commended the remarkable progress made by the State party to increase primary and secondary school enrolment, to ensure equitable access to education throughout the country and to reduce the gender gap. The Committee also welcomes the State party's commitment to implement the Education for All Initiative. However, the Committee expresses concern that education is still not compulsory.

Effort to Eliminate Worst form of Child Labor

- The CRC committee noted the adoption of the National Plan of Action on the Elimination of the Worst Forms of Child Labour and the State party's commitment to reduce the number of working children to eight percent by 2015 under its Millennium Development Goals and to end all the worst forms of child labour by 2016, however the committee expressed concern that over 1,5 million of children are economically active and that around 250,000 children are engaged in the worst forms of child labour. The Committee was concerned that thousands of children work as domestics, mainly in the capital Phnom Penh, in slavery-like conditions.

⁸⁷³ In the widely taught "rules for women," the *Chbap Srey*, girls are instructed to revere their husband and serve him as their lord See Lee, Susan. "Gender and Prestige in Khmer Buddhism" *Paper presented at the annual meeting of the American Sociological Association, TBA, New York, New York City, Aug 11, 2007* <Not Available>. 2010-10-24 <http://www.allacademic.com/meta/p183237_index.html>

⁸⁷⁴ Committee on the Rights of the Child, 57th Session, Concluding Observation: Cambodia, CRC/C/KHM/CO/2, 30 May – 17 June, 2011

Protection on Children's right of Nationality

- The Committee welcomed the Sub-Decree on Civil Status No. 103 of December 2000 which makes birth registration compulsory and the significant achievements of the State party to ensure countrywide free birth registration. This is not without a note since the children of Vietnamese origin are often rejected when they try to obtain birth certificate and children of irregular immigrants are not eligible to receive birth certificate.

Torture/Inhumane Treatment

- The Committee expressed deep concern about allegations that children and adolescent addicted to drugs, children with mental disabilities and children in street situations have been subjected to torture and ill-treatment, including widespread beatings, whippings and administration of electric shock in drug rehabilitation and youth centers where some of them had been forcibly placed
- The Committee is concerned that not only the culture endorse physical punishment as a form of discipline, it is supported by the law as stated in article 1045 of the Civil Code “parental power holder to personally discipline the child to the extent necessary” and article 8 of the Prevention of Domestic Violence and Protection of the Victims Law implicitly authorizes corporal punishment of children for disciplinary purposes.

Children with disabilities

- Children with disabilities, especially those living in remote areas (e.g. the north-eastern provinces) and children with mental disabilities remain extremely marginalized in the society, rejected by their own families and highly discriminated, in particular in their access to health and education services
- The State party does not have a system for early screening, identification, early intervention and prevention of disabilities

Sexual Exploitation and Children Trafficking

- The Committee welcomes the numerous measures taken by the State party to combat child trafficking, among them, the establishment of the Anti-Human Trafficking and Juvenile Departments at central and

provincial levels and the creation of trafficking police units. The Committee is however concerned that a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labor. The Committee also shares the concern expressed in 2009 by the Committee on Economic, Social and Cultural Rights (E/C.12/KHM/CO/1 para.26) about the low number of prosecutions and convictions of traffickers. Psycho-social rehabilitation services and shelters for children victims of sexual abuse and exploitation are mainly concentrated in the capital and run mainly by non-governmental organizations.

Arbitrary Arrest and Detention of Street Children

- Cambodian lack of specific mechanisms and resources to address the problem of children in street situations, operations
- of “cleaning up the streets” conducted by the police, such as the one carried out in early 2008 and during which many children in street situations were sent to two rehabilitation centers (Koh Romduol and Prey Speu) run by the Phnom Penh Department of the Ministry of Social Affairs, illegally confined and subjected to a variety of abuses which in some cases resulted in their death, including by suicide.

Violence against Children

- Domestic violence against women and children, including sexual violence remains an acute problem in the country. Even though Law on the Prevention of Domestic Violence and Protection of the Victims was adopted in October 2005, there is no child protection system. Furthermore domestic and gender-based violence continues to be socially accepted and widely tolerated by law enforcement authorities.

Lack of Child Protection in Juvenile Justice System

- Even though the setting of a minimum age of criminal responsibility is 14 years old but there are no children's courts, or specialized judges or prosecutors in children's rights and children are often sentenced as adults by courts, and generally held in adult prisons.
- Children detained have no or little access to education or vocational training, limited access to counseling services, including for drug and alcohol addiction,

and to recreational activities, they are also living in deteriorating and poor conditions.

- For those children in prisons because their mothers are incarcerated, the living condition is seriously harming their well-being. The mothers are expected to share their own ration with their children, and are often placed in cells without appropriate ventilation, in conditions of extreme heat and not always separated from persons with contagious diseases such as tuberculosis. Those children have limited access to health services and almost no access to education.

III. Indonesia

*Compliance with CEDAW*⁸⁷⁵

Discrimination against Women

- For the past decade, Indonesian government has amended gender-biased laws to remove discrimination against women. However, up until this moment, no precise definition of discrimination exists anywhere in any legislation, thus leaving it open to interpretation. Due to the regional autonomy, some provinces have unilaterally enacted local legislation that resulted in discrimination against women. National Commission on Violence against Women mentioned about 154 local legislations create discrimination against women. Moreover, the amended citizenship laws (2006) give disadvantages to the women who migrated abroad as they risk losing nationality under such law

Unequal Benefits at Work

- CEDAW Committee is concerned about the situation of women with respect to discriminatory recruitment processes, the pay gap between women and men and the inequalities in the social security benefits provided to women and men

Lack of Prohibition on Sexual Harassment at Work

- CEDAW Committee also expresses concern regarding the lack of a law prohibiting sexual harassment in the workplace

Violence against Women

- Indonesia has enacted some legislations targeted at eliminating violence against women, including the Law on Domestic Violence (2004), the Victim Protection Law (2006), and the Law on Anti-Trafficking (2007).
- UNICEF noted that despite reports of abuse and violence against girls and women, particularly in the region of Aceh, very few cases have been addressed or brought to justice. There are also some incidences of

⁸⁷⁵ Human Rights Council, Working Group on the Universal Periodic Review, First session Geneva, 7-18 April 2008A/HRC/WG.6/1/IDN/2, 31 March 2008; A/HRC/WG.6/1/IDN/3 6 March 2008 Committee on the Elimination of Discrimination against Women Thirty-ninth session 23 July-10 August 2007, CEDAW/C/IDN/CO/5

the practice of female genital mutilation in Indonesia, without any laws prohibiting so.

Gender Stereotypes

- CEDAW Committee noted that there is still a 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. For example, a woman is required to obtain her family's consent before engaging in night work. Further, woman is required to obtain her husband's consent regarding sterilization and abortion, even when her life is in danger.

Women Trafficking

- Problems of women and girls trafficking in Indonesia still persist in considerable rate, both domestic and cross border. Unfortunately there are low rates of prosecution and conviction of traffickers and those who exploit the prostitution of women.

Domestic Workers' Exploitation

- There are many cases of abuse and exploitation of women employed as domestic workers. Amnesty International reported that they regularly experience economic exploitation, and physical, psychological and sexual violence, and lived in a very poor living condition. As such they are denied basic workers' rights under Manpower Act, which regulates work hours, leave and minimum wages, and are therefore additionally vulnerable to exploitation.

Exploitation of Migrant Worker

- CEDAW Committee remains concerned at the situation of women migrants from Indonesia, who constitute some 70 per cent of the country's migrants. It is also concerned that the rights of women workers who migrate through informal channels are not adequately protected.
- The National Human Rights Commission (Komnas-HAM) expressed concern about migrant workers experiencing acts of enforced payment, ill treatment, fraud, and sexual harassment.

Lack of Access to healthcare

- The rates of maternal and infant mortality in Indonesia are still high. The lack of family planning education and the difficulty in accessing contraceptives, result in a high rate of abortions and teenage pregnancies.
- With regards to continuous disaster occurred since Tsunami 2005, women's rights to health, including reproductive health, clothing, housing and safety needs are not met, and that women heads of households suffer discriminatory treatment when attempting to access the housing or food aid provided to male heads of households.

Violation of the rights of lesbian, gay, bisexual, and transgender ("LGBT")

- The LGBT in Indonesia face an increased risk of police harassment. Arbitrary harassment, summary arrest and detention of the transgender and gay men by the police are common place. Department of Social Affairs even classifies the transgender as mentally handicapped under the federal '*cacat law*' (*Mentally Disabled Law*). This effectively denies them the right to work, or reduces them to working in low-paid jobs in the hidden economy.

Compliance with Child's Rights⁸⁷⁶

Independent Monitoring

- CRC welcomes the establishment of the Indonesian Commission for Child Protection (*Komisi Perlindungan Anak Indonesia*) and of the National Commission on the Elimination of the Worst Forms of Child Labor as independent monitoring mechanism to the promotion and protection of the Rights of Children.

Sexual Exploitation on Children

- In 2004, Committee of the Rights of the Child ("CRC") was concerned at insufficient legal protection for child victims of sexual exploitation, including trafficking, pornography and prostitution, and that there were few

⁸⁷⁶ Human Rights Council, Working Group on the Universal Periodic Review, First session Geneva, 7-18 April 2008A/HRC/WG.6/1/IDN/2, 31 March 2008; Committee on the Rights of the Child Thirty-fifth session, Concluding Observations: Indonesia, CRC/C/15/Add.223 26 February 2004

preventive and protective measures. Moreover, CRC was also concerned at the very low age limit for sexual consent (12 years).

Child Trafficking

- Under-aged Indonesian girls were reportedly being trafficked into a neighboring country, including selling their babies for illegal adoptions. UNICEF noted that about 80,000-100,000 women and children are victims of sexual exploitation or trafficking every year.

Violence on Children

- There are a high number of child victims of violence, abuse and neglect, including sexual abuse, in schools, public places, detention centers and in the family. Corporal punishment to children in the family and in schools is widespread, culturally accepted and still lawful. The Global Initiative to End All Corporal Punishment of Children (GIECP) noted that Children have limited protection from violence and ill-treatment under the Penal Code, the Law on Child Protection (2002), the Law on Human Rights (1999), the Law on Elimination of Domestic Violence (2004) and the Constitution (1945, amended 2000).

Arbitrary Arrest and Detention

- United Nations Children's Fund ("UNICEF") noted that there is also high number arbitrary arrest and detention to children living on the street especially during sweep operations.

Discrimination against Children

- The Committee notes with concern that societal discrimination persists against girls and against other vulnerable groups of children, in particular children living in poverty, children born out of wedlock, children displaced by conflict and minority children.

Child Marriage

- CRC is concerned that despite its previous recommendation, the legal age of marriage of females (16) and males (19) is still discriminatory. A very large proportion of children, especially girls, are married by the age of 15, and that they are thereby legally

considered to be adults, meaning that the Convention no longer applies to them.

Lack of Children Protection in the Juvenile Justice System

- There is a very large number of children sentenced to jail even for petty crimes and that these children are often detained with adults and are detained in poor conditions, even when in detention centers for children. As such, CRC reiterates its serious concern that the minimum age of criminal responsibility, set at eight years, is too low.

Non-Compliance of the principle of "Best Interest of the Child"

- The Committee is concerned that according to Islamic law applicable to Muslims in Indonesia, in divorce proceedings decisions relating to custody of children are based on the age of the children rather than on their best interests. The Committee is similarly concerned that children cannot legally have a father unless their biological parents are legally married.

Lack of Access to Education

- CRC is very concerned that education is not free, even at primary level and higher education is not affordable for many families. There is also high dropout and repeat rates, and married children and pregnant teenagers do not generally continue their education.

Lack of Protection on Children with disabilities

- While acknowledging the development of special services and rehabilitation centers for children with disabilities, CRC is concerned that only very few children with disabilities have access to these services.

Lack of Access to Healthcare

- While acknowledging the improvements in budget allocations to the health-care sector, CRC remains concerned at the high maternal mortality rate, incidence of child malnutrition, proportion of children born with low birth weight and prevalence of infectious and, mosquito-borne diseases, including malaria, the low immunization rate and the lack of access to safe drinking water and sanitation, particularly in conflict-affected areas.

IV. Lao PDR

*Compliance with CEDAW*⁸⁷⁷

Lack of Protection on Ethnic Minority Women and Women in Rural Areas

- While noting that 80 per cent of the population lives in rural areas, CEDAW Committee is deeply concerned about the pervasive poverty and under development of women, especially in rural and ethnic minority communities. These women have limited access to health care, or information on the prevention of HIV/AIDS. Rural women carry out more than half of total agricultural production in every field, with additional tasks of housework and child-rearing. These rural women are not fully represented in important decision-making, nor on the village council.
- CEDAW Committee is also concerned that ethnic minority women, without having any alternative sources of income, depend on production of opium poppies for their livelihood. These women are also facing harmful traditions, such as rape of ethnic girls before menarche to avoid early death.

Lack of Access of Education

- Despite some progress, the illiteracy rate of women, 40 per cent, are still very high, including the large discrepancy between male and female literacy rates and between urban and rural women's education. There is an extreme illiteracy rate among ethnic minority women.

Lack of Access to Healthcare

- CEDAW Committee also expressed its concern on the very high maternal and infant mortality rates and the high fertility rate, especially among women in rural and remote areas and among ethnic minorities. The Committee is concerned about the lack of health-care facilities and medical professionals in rural villages and remote areas as well as the lack of awareness among women and adolescents regarding reproductive health and family planning, including contraceptives and birth spacing.

Gender Stereotypes

- There exists prevalence of traditional gender-role stereotyping, which leads to disparities in leadership and decision-making in all spheres, including in the family, the community and in public life. This also prevents them from getting equal education and life opportunities, especially in rural areas.

Lack of Women Representation in the Public Sphere

- There is generally low representation of women in the administration, at both the national and local levels, and in the judiciary. Considering the fact that 80 per cent of the population lives in rural areas and that the village chief and the village council handle most everyday matters, only less than 1 per cent of the village chiefs are women and only one member of the Lao Women's Union represents women in the village council.

Violence against Women

- CEDAW Committee expressed concern at the high prevalence of violence against women and girls, including domestic violence; that such violence would appear to be socially legitimized and accompanied by a culture of silence and impunity; and that cases that are reported are settled out of court, including through village mediation units. The existing criminal Law grants exemption from penal liabilities in cases of physical violence without serious injury or physical damage. Moreover, the fact that most victims of domestic abuse eventually returned to their husbands was a serious concern as it would further create the same pattern of abuse.

Discrimination of Women at Work

- CEDAW Committee expressed concern at the poor work conditions in garment factories, where 80 per cent of workers are young rural women. It was also concerned about labor force segregation, and that women usually engage in temporary and seasonal employment with less job security, and women in small- and medium-sized enterprises face a number of challenges compared with their male counterparts

⁸⁷⁷ Human Rights Council, Working Group on the Universal Periodic Review Eighth session, Geneva, 3-14 May 2010, A/HRC/WG.6/8/LAO/2, 24 February 2010

Lack of Women Organization

- CEDAW Committee remained concerned that Laos lacks lively, autonomous and active women's and human rights organizations

*Compliance with Child's Rights*⁸⁷⁸**Discrimination against Children**

- CRC is concerned that girls do not have the same opportunities in education as boys.

Respect for the views of the child

- The committee is concerned that the views of a child are not respected before the court as children do have the rights to be a witness or to bring a complaint or seek reparation without the consent of their parents.

Torture/Inhumane Treatment

- The Committee notes that corporal punishment is prohibited in primary school but there are reports where teachers use physical punishment as means of discipline and corporal punishment is lawful in the home and is not prohibited in alternative care settings.

Violence

- Violence in the home against children is still common and it is considered taboo to discuss abuse, neglect, violence therefore they remain hidden within communities and families. Furthermore there is no system for reporting violence even for those professionals who work with and for children.

Child Marriage

- The committee is concerned that early marriage continues to exist within the certain ethnic group even though the practice is prohibited by law. Furthermore the country does not have any statistics on the number of such marriages occurring in its territory.

Trafficking

- The committee is concerned that the country remains as country of origin, transit and destination for victims of trafficking for the purposes of forced labor and sexual exploitation even though there the explicit prohibition of child trafficking under the Law on the Protection of the Rights and Interests of the Children.

Juvenile Justice

- The committee regrets that the project to establish juvenile court is still not in place, hence children under the age of 15 who commit very serious offense are brought before criminal courts at the regional, provincial and national level. Furthermore the committee is concerned that children are held together with adults in prisons and that death penalty is no explicitly prohibited for children.

Lack of Access to healthcare

- The committee is concerned that access to healthcare in remote areas is very limited. The rate of routine vaccines given to children is also low. The committee notes that trainings given to medical personnel are inadequate and the country has one of the highest number in the region for infant, child and maternal mortality.

Lack of Access to Education

- While noting that according to law, education is free, in reality, parents are expected to contribute to secondary costs such as school maintenance and every day running expenses. Furthermore, school attendance depends on financial situation of the parents and the availability of five grades local primary school. The lack of trainings and qualifications of teachers as wells as their numbers are also areas of concern for the committee.

⁸⁷⁸ Committee on the Rights of Children, 56th Session, Concluding Observation: Lao PDR, CRC/C/Lao/CO/2, 17 Jan – 04 Feb, 2011

V. Malaysia

Compliance with CEDAW⁸⁷⁹

Reservation on CEDAW

- Malaysia made this following reservation to 5(a), 7(b), 9(2), 16(1a), 16(1c), 16(1d) and 16(2) [6] of CEDAW: “*The Government of Malaysia declares that Malaysia’s accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia law and the Federal Constitution of Malaysia.*”
- CEDAW committee noted that areas covered under reservation above are causing discrimination against women, including with regard to marriage and divorce rights, inheritance, and equality of personal rights between husband and wife. Polygamy for example, is prohibited under civil law, but acceptable under Sharia’ law (for men only); in terms of inheritance, no distinction exists for men and women under civil law, while Muslim law provide that men inherits twice as much as women in the same degree of relationship.

Legislation amending Discrimination against Women

- The Federal Constitution of Malaysia was recently amended to prohibit discrimination on the basis of gender. However, it does not contain a definition of discrimination against women.
- Some progress has been made in implementing CEDAW, including the amendment of Pensions Act to ensure widows of civil servants do not lose their pensions upon remarriage, and the Land Act to allow wives of settlers to become joint owners of land. The Domestic Violence Act was also amended to broaden the definition of domestic violence and improve protection measures for survivors, and the Penal Code was amended to increase penalties for rape and incest, and several laws relating to employment now include provisions prohibiting sexual harassment.

Gender Stereotypes

- CEDAW committee is concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society.

Lack of Representation of Women in Public Sphere

- CEDAW Committee is also concerned about the low level of representation of women in public and political life and in decision-making positions (despite the 30 percent quota policy). This also occurs in private sector organizations.

Discrimination against Women at Work

- There is still lack of employment opportunities for women despite their high level of education. Preliminary findings of a study indicated that employers have a preference for male employees due to strongly held stereotypes of men as being more independent workers.

Violence against Women

- CEDAW Committee expresses its concern on Malaysia’s reluctance to criminalize marital rape. The proposal before Parliament on this issue is 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.
- 56 Malaysian NGO Coalition (“COMANGO”) also indicated that cases of violence against women are on the rise, including using corporal punishment such as canning to women, for certain offences, including illicit sex.

Women Trafficking

- Malaysia’s revised anti-trafficking law (2010) creates more harm to the victims as they will be treated as undocumented migrants subject to immediate deportation. The revised law also narrows the legal definition of “human trafficking,” which only covers protection for children and adults who are “forced”, instead of also tricked into being trafficked.

879 Human Rights Council Working Group on the Universal Periodic Review Fourth session Geneva, 2-13 February 2009 A/HRC/WG.6/4/MYS/2 20 November 2008; A/HRC/WG.6/4/MYS/3, 27 October 2008; Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia CEDAW/C/MYS/CO/2

Criminalizing Women's freedom of expression

- COMANGO has noted that violation of freedom of expression through the regulation of sexuality is most often used against women. Muslim entertainers have borne the brunt of religious authorities' regulation of 'immoral activities' in pubs, bars and other entertainment outlets. Singers have been arrested, charged under Sharia offences and harassed.

Exploitation of Migrant Workers

- There is still lack of legislation and policies on the rights of migrant workers, particularly migrant domestic workers who are mostly women, including employment rights and rights to seek redress in cases of abuse. Asylum-seekers and refugees, including women, are prosecuted for immigration-related offences and may be indefinitely detained at immigration detention centres or deported. Thus, gender-based violence occurs often them, since perpetrators are aware that they are reluctant to lodge police reports for fear of getting arrested on immigration offences.

Violation of the rights of LGBT

- Amnesty International called on the Government to repeal or reform articles 377a and 377b of the Penal Code, which have created an environment that allows for discrimination against lesbians, gays, bisexuals and transsexuals.

*Compliance with Child's Rights*⁸⁸⁰

Right to Health and Education

- Malaysia had made notable improvement in economic and social development, including continuous investments in the health services, the protection infrastructure and the educational system in facilitating the rights of children.

Legislation Protecting Rights of the Child

- However, Malaysia's Child Act 2001, currently under review, suffers from weak enforcement, as noted by the National Human Rights Commission ("SUHAKAM"). The Bar Council of Malaysia ("BCM") highlighted the absence of express statutory provisions for children to be able to express their views, particularly in the juvenile justice system or in civil proceedings. BCM also noted that the underlying spirit of the CRC to treat children differently from adults, has not been applied by the Courts in the interpreting detention provisions, nor has the Federal Court annulled a legal provision which allows for an undetermined length of deprivation of liberty of a child.

Lack of Protection in Juvenile Justice System

- CRC notes with concern the low minimum age of criminal responsibility, which is ten years in the Penal Code (Act 574). It also expresses its concern, among other things, at long (pre-trial) detention periods, delays in dealing with cases involving children and the fact that children in conflict with the law are often subject to negative publicity in the media. This is worsened by the poor detention condition, particularly the Immigration Detention Centers ("IDC"), which suffers from severe and chronic overcrowding, poor sanitation, insufficient food and water. There are also reports of physical violence and abuse in the centre; children detained with adults, including unaccompanied minors.

Violence on Children

- According to COMANGO, official statistics show a sharp increase in child abuse cases from 2002 to 2006, and the police is slow in investigating cases of commercially and sexually exploited children. There are no adequate provisions to protect the safety of the children physically, emotionally or otherwise. More agencies and mental health practitioners specializing in the area of child sexual exploitation are needed.
- CRC was gravely concerned that domestic violence, including violence against children in the family. Owing to strong taboos, victims and witnesses rarely reported these cases, despite established mechanisms to receive reports on child abuse and neglect. CRC was also concerned that corporal punishment in the home was lawful.

⁸⁸⁰ Human Rights Council Working Group on the Universal Periodic Review Fourth session Geneva, 2-13 February 2009 A/HRC/WG.6/4/MYS/2 20 November 2008, Committee on the Rights of the Child Concluding observations: Malaysia, CRC/C/MYS/CO/1 25 June 2007

Lack of Protection on Child domestic workers

- CRC was alarmed at the high number of migrant domestic workers in Malaysia, including child domestic workers who work under hazardous conditions which. Thus, CRC remained concerned that children of migrant workers still face many difficulties in the enjoyment of their rights

Child Prostitution

- CRC was concerned about prostitution involving children, in particular the vulnerability of certain children to being exploited, such as those without any official record of their existence

Lack of Protection on Street Children

- As regards children living and/or working in the streets, particularly in Sabah, CRC noted with concern that “cleaning operations” have resulted in detaining street children and that negative public attitudes and prejudices against street children exacerbated their situation.

VI. Myanmar

*Compliance with CEDAW*⁸⁸¹

- Myanmar has established several agencies and organizations focused on women’s rights, including the Myanmar National Committee for Women’s Affairs (MNCWA), the Myanmar National Working Committee for Women’s Affairs (MNWCWA) and Myanmar Women’s Affairs Federation (MWAF).

Gender Stereotypes

- However, there is a persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life, especially within some ethnic groups. Such customs and practices create unequal status of women and men in many areas, including in public life and decision-making and in marriage and family relations, and the persistence of violence against women.

Violence against Women

- There is a high prevalence of violence against women and girls, such as widespread domestic violence and sexual violence, including rape. Such violence appears to be socially legitimized and accompanied by a culture of silence and impunity, that cases of violence are thus underreported and that those that are reported are settled out of court. Women in northern Rakhine State and those areas affected by Cyclone Nargis, are particularly vulnerable and marginalized. Member of armed forces were reported to commit sexual violence against rural ethnic women, including Shan, Mon, Karen, Palaung and Chin women. There were only few perpetrators brought to justice, with few mechanisms and remedies for victims, who are faced with threats and intimidation.

881 Committee on the Elimination of Discrimination against Women Concluding Observations: Myanmar 7 September 2008 CEDAW/C/MMR/CO/3; Human Rights Council, Working Group on Universal Periodic Review, 10th Session, A/HRC/WG.6/10/MMR/3, Geneva 24 Jan – 04 Feb, 2011

Women Trafficking and Sexual Exploitation

- There is a persistence of trafficking and sexual exploitation of women and girls in the country. There are reports of the abuse of 2005 anti-trafficking resulting in some innocent people have been arrested on false trafficking charges. In addition, there is an inadequate protection procedures granted for returned trafficked victims from abroad, especially from China, along the border areas.

Lack of Women Representation in Public Sphere

- While noting that the majority of university graduates are women, CEDAW Committee is concerned at the very low rate of participation of women in all areas of public, political and professional life, including in the National Assembly and the realms of government, diplomacy, the judiciary, the military and public administration, especially at senior levels.

Vulnerability to HIV/AIDS

- Myanmar faces a serious threat of HIV/AIDS, as such the women and girls would be the most vulnerable as their unequal power to men and their inferior status of women and girls hamper their ability to negotiate safe sexual practices to avoid infection. There have already been cases of high infection rates for pregnant women.

Lack of Protection of Ethnic Minority Women

- CEDAW Committee expresses its deep concern at reports that Muslim women and girls in northern Rakhine State endure multiple restrictions and forms of discrimination which have an impact on all aspects of their lives, including severe restrictions on their freedom of movement; restricted access to medical care, food and adequate housing; forced labour; and restrictions on marriages and pregnancies. In addition, these women maintain highly conservative traditions and a restrictive interpretation of religious norms, which contribute to the suppression of women's and girls' rights. In general, women in rural and remote areas - the majority of women in Myanmar - face poverty, illiteracy, difficulties in access to health care, education and social services and a lack of participation in decision-making processes at the community level.

Discrimination against Women in Family Matters

- The Committee expresses its concern at the multiple marital systems that apply in the State party. It is particularly concerned that, although polygamy is discouraged, it is not prohibited. The Committee is also concerned that other discriminatory customary practices persist, especially in ethnic communities, with regard to, inter alia, marriage and its dissolution, as well as family relations, including inheritance. The Committee is further concerned that marital rape is not recognized as a criminal offence.
- It must be noted that there has been significant deficiency of data concerning Myanmar's practice in the promotion and protection of the Rights of Women, as well as Children below. As such, Myanmar needs to ensure more transparency and effective monitoring mechanism to measure its compliance with obligation to protect and promote the rights of women and children.

Violation of the Rights of LGBT

- The submission from NGOs in the latest Universal Periodic Review mentioned that State Party maintains criminal sanction against sexual activity between consenting adults. This opens the possibility of criminalizing sexual activity between consenting adults of the same sex.

*Compliance with Child's Rights*⁸⁸²

Right in obtaining nationality

- There is a concern from the NGO communities that not every child born in the country is issued a birth certificate. The cost for access and registration for such issue must be removed especially in the remote areas. All children born in the country who reach the age of 10 should receive citizenship and an identity card.

882 Committee on the Rights of The Child, Thirty-sixth session, Summary Record of the 960 Meeting CRC/C/SR.960 8 June 2004; Human Rights Council, Working Group on Universal Periodic Review, 10th Session, A/HRC/WG.6/10/MMR/3, Geneva 24 Jan - 04 Feb, 2011

Children Involvement in Armed Conflict

- The Special Rapporteur on the situation of human rights in Myanmar had drawn attention to indications that children had been forcibly conscripted into Myanmar's armed forces and into insurgent armies. She requested information on measures taken to prevent that practice. She wished to know why the Special Rapporteur's request to visit Myanmar in 2003 had been refused on two separate occasions.
- There have been allegations of the systematic forcible recruitment of children into the national army. Those children were reportedly routinely beaten and humiliated during their training and later forced to engage in combat against armed ethnic opposition groups and to perpetrate human rights violations against the civilian population.

Arbitrary Detention of Street Children

- The Special Rapporteur on the situation of human rights in Myanmar was also concerned that child beggars and homeless children were punishable by law.
- Although Myanmar legislation prohibited the pre-trial detention of minors, cases had been reported of detention exceeding two weeks.

Lack of Children Protection in Juvenile Justice System

- Myanmar Penal law provides an extremely low minimum age of criminal responsibility. The application of capital punishment to 16- and 17-year-olds that 16-year-olds could be sentenced to death or life imprisonment and that children as young as 7 could be sentenced to a maximum of seven years imprisonment. He was also concerned at the absence of a juvenile justice system. Moreover, children whose character was deemed to be in need of reform were sent to training schools that appeared to be de facto detention centres. Over 3,000 children were currently detained in such centres and they had no right of appeal.

Torture/Corporal Punishment

- Child Law 1993 reflected an attempt to promote and protect the rights of children especially through the establishment of national, regional and township child rights committees. The law however does not protect

all the rights of the children especially with regard to the use of corporal punishment. Trainings at the minimal on Child Law and Convention on the Rights of Children are yet to be given to professionals who deal with children (especially teachers, committee members, police, attorneys and judges).

Right to education

- UPR submission by the NGOs stated that public education in the State Party is characterized by low enrolment, poor attendance, high dropout rates and use of corporal and humiliating punishment. Members of ethnic minority in Rakhine state are not eligible for government-issued National Registration Cards therefore they are denied access to education in state-run schools.

VII. Philippines

*Compliance with CEDAW*⁸⁸³

Lack of Progress in Revising Discriminatory Legislations

- While the Convention has been in force in the State party for 25 years, CEDAW Committee notes with great concern the lack of progress in undertaking and completing necessary revisions of discriminatory provisions in national legislation and in enacting a comprehensive legal framework pertaining to gender equality. In particular, the Magna Carta for Women Bill, the Marital Infidelity Bill and several other bills aimed at amending the Family Code, the Civil Code and the Revised Penal Code. CEDAW Committee is particularly concerned about existing discriminatory provisions of the Code of Muslim Personal Laws, which permit marriage of girls under the age of 18, polygamy and arranged marriages.

Gender Stereotypes

- CEDAW Committee notes with concern the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society.

Women Trafficking and Prostitution

- Trafficking in women and girls and the exploitation of prostitution continue to thrive in the Philippines, owing to the poverty of women and girls. The Committee is also concerned about the low rates of prosecution and conviction of traffickers and those who exploit the prostitution of women. In search of work opportunities through informal channels remain vulnerable to becoming victims of various forms of exploitation, violence and trafficking.

Lack of Access to Reproductive Healthcare

- CEDAW Committee expresses its concern about the inadequate recognition and protection of the reproductive health and rights of women in the Philippines. There are high maternal mortality rates,

particularly the number of deaths resulting from induced abortions, high fertility rates, inadequate family planning services (only 36 per cent of women relied on modern family planning methods in 2006), the low rates of contraceptive use and the difficulties of obtaining contraceptives. It is also concerned about the lack of sex education, especially in rural areas. It is concerned at the high rate of teenage pregnancies, which present a significant obstacle to girls' educational opportunities and economic empowerment.

Lack of Protection of Women from Ethnic Minority

- There is a precarious situation of rural and indigenous women, as well as the Muslim women in the autonomous region of Muslim Mindanao, who lack access to adequate health services, education, clean water and sanitation services and credit facilities. CEDAW Committee is also concerned about these women's limited access to justice in cases of violence, especially in the conflict zones, and the lack of sanctions against the perpetrators of such violence. The Committee is furthermore concerned that the practice of early marriage is persistent among Muslim women.

*Compliance with Child's Rights*⁸⁸⁴

Violence against Children and Sexual Exploitation

- While noting a number of legislative initiatives in the State party, CEDAW Committee remains concerned at the lack of legislation with regard to the prohibition of corporal punishment, the prohibition of torture and the status of children born out of wedlock.
- CRC expresses its deep concern at the increasing number of cases of domestic violence, including physical abuse, neglect and sexual abuse of children, and at the fact that violence within the family is mostly unreported, despite the enactment of this Act. The Committee also reiterates its concern at the alleged cases of sexual abuse of children in religious institutions. Cases of domestic violence and abuse of children are not investigated within a child-friendly procedure that abused children may be victimized in such proceedings and that child witnesses are not protected from intimidation.
- There are number of groups of children vulnerable

⁸⁸³ Concluding comments of the Committee on the Elimination of Discrimination against Women: Philippines 7-CEDAW/C/PHI/CO/6, 25 August 2006

⁸⁸⁴ Committee on the Rights of the Child Fifty-second session Concluding observations: The Philippines CRC/C/PHL/CO/3-4 22 October 2009

to commercial sexual exploitation, including street children, children involved in "prostitution" (e.g. earning for tuition fees), "call girls / boys" (who engage in seasonal prostitution mostly to address the emergency needs of their families or for their own upkeep), and young female overseas Filipino workers (OFWs) who work as "entertainers".

Discrimination against Children

- CRC reiterates its concern at discrimination faced by many children, in particular children living in poverty, children with disabilities, indigenous and minority children, including Muslim children living in Mindanao, migrant children, street children and children living in rural areas as well as children living in conflict areas, as regards their access, inter alia, to social and health services and education. CRC also remains concerned at the de facto discrimination still affecting the girl child and impeding the full enjoyment of her rights, mainly due to societal attitudes toward girls and women. Moreover, children born out of wedlock, still face discriminatory practices such as their classification as "illegitimate" and their restricted right to inherit.

Extrajudicial Killings on Children

- CRC expresses its deep concern at reported cases of extrajudicial killings, including of children, as highlighted by the Special Rapporteur on extrajudicial, summary or arbitrary executions and other sources.

Lack of Protection on Children's right of Nationality

- There are 2.6 million unregistered children in the country, most of whom are Muslim and indigenous children living in Mindanao. CRC is also concerned that birth registration is not free of charge and that fines have to be paid in case of late registration.

Torture and Inhumane Treatment of Children

- With reference to recent reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and other sources of information, CRC remains deeply concerned at the high number of reported cases of torture, inhuman and degrading treatment of children, particularly children in detention. The existing legislation does not provide

children with an adequate level of protection against torture and ill treatment. Furthermore, there are only a low number of torture cases resulted in a prosecution and conviction.

Lack of Access to Healthcare

- Committee remains concerned at the high infant and maternal mortality rates as well as regional disparities in achieving progress in terms of mortality rates. The Committee also remains concerned at the deficiencies in registering and reporting newborn deaths and stillbirths. The Committee further reiterates its concern at under-nutrition (under-weight, under-height and thinness) among children, and in general, at children's limited access to quality health services in the remote areas of the country. In addition, the Committee regrets the lack of information in the State party's report on the issue of mental health and related services for children and adolescents in need.

Lack of Access to Education

- The Committee notes with concern the trend in recent years with regard to a deterioration of school enrolment and completion rates and the increasing number of children who drop out of school, especially in the first two grades of primary school, or do not attend school. The Committee also remains concerned that certain vulnerable groups of children, such as children living in poverty, children with disabilities, working children, children in armed conflict, indigenous children, children infected with, or affected by, HIV/AIDS, and street children do not have equal access to education.

Children Involvement in Armed Conflict

- In May/June 2008 of Philippines initial report on the Optional Protocol on the involvement of children in armed conflict, there have been continued reports on recruitment of children by armed groups to serve as combatants, spies, guards, cooks or medics and at the lack of prosecution of perpetrators of such crimes.
- CRC is deeply concerned at the high number of child workers between the age of 5 and 14 in the State party. The Committee is particularly concerned that many of these children work in hazardous or dangerous conditions and are exposed to various forms of sexual and economic exploitation, including the worst forms of child labor.

Poor Condition of Street Children

- The Committee remains seriously concerned at the high number of children living in the streets (nearly 250,000) and their special vulnerability to various forms of violence and abuse, including sexual and economic exploitation. The Committee also notes with concern the continued lack of a systematic and comprehensive strategy to address the need for the prevention, reduction of the number and protection of children living in the streets. The Committee is further concerned at certain rescue operations conducted in various areas of Manila, also referred to as 'rescue of indigents', 'clean-up of street dwellers' or 'round-ups' and the lack of follow-up of such operations.

Child Trafficking

- CRC is particularly concerned that despite the persistence of the crime of child trafficking, there are only low number of prosecutions and convictions of child traffickers. It also concerned at existing risk factors contributing to trafficking activities, such as persistent poverty, temporary overseas migration, growing sex tourism, impunity and weak law enforcement in the State party.

Lack of Child Protection in Juvenile Justice System

- There is raising number of detained children, including pre-trial detention and that children in conflict with the law do not effectively have legal safeguards and access to medical care. CRC further regrets the lack of specialized courts and personnel and it expresses its serious concern at the conditions of detention of children, who are often detained, with adults, in overcrowded facilities in poor conditions. In addition, CRC is concerned at the recent initiatives to lower the age of criminal responsibility of children.

VIII. Singapore

*Compliance with CEDAW*⁸⁸⁵

Reservations on CEDAW

- The Committee notes the partial withdrawal made by Singapore however the reservations to article 2 paragraph (a) to (f), article 11 paragraph (11), article 16 paragraph 1(a, c and h) and paragraph 2 are deemed impermissible since these articles are fundamental to the implementation of all provisions of the Convention.

Efforts to Combat Violence against Women and Discrimination against Women

- The CEDAW Committee notes the creation of the National Family Violence Networking System, an Inter-Agency Taskforce on Trafficking in Persons, the re-designation of Women's Desk as the Office for Women's Development and the progress in legislative reforms since the last periodic report in 2007.
- The Committee welcomes the amendments of The Penal Code in 2008 on the criminalization of marital rape however the committee is concerned that it applies only when the perpetrator and victim are living apart and in the process of marriage termination and the victim applies for protection order.

Discrimination against Women in Family Matters

- Although Singapore has amended the Administration to Muslim Law Act in 2008 by raising the minimum age of marriage for Muslim women (and men) to 18 years, the Committee is concerned about the existence of the dual legal system of civil law and Sharia law in regard to personal status, which results in continuing discrimination against Muslim women in the fields of marriage, divorce and inheritance.

Gender Stereotypes

- The committee is concerned that the patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men

⁸⁸⁵ CEDAW, 49th Session, Concluding Observations: Singapore, CEDAW/C/SGP/CO/4, New York, 11 – 29 July, 2011; Human Rights Council, Working Group on Universal Periodic Review, 11th Session, A/HRC/WG.6/11/SGP/1, Geneva, 2 – 13 May, 2011

persist within the family and society and that the discriminatory traditional cultural attitudes that continue to utilize the “head of the household” concept still exist in the country.

Lack of Representation of Women in Public Sphere

- CEDAW Committee is further concerned that the proportion of women parliamentarians is still low, especially given Singaporean women’s educational achievements and competence and that women continue to be under represented at senior levels within the public administration, including the diplomatic service, the judiciary and educational institutions, as well as the private sector, thus limiting women’s equal participation in decision-making processes in all areas.
- Discrimination against Women at Work and Lack of Prohibition of Sexual Harassment at Work Place
- In workplace, there is a continuing vertical and horizontal occupational segregation; the persistent wage gap between women and men; and the lack of a prohibition of sexual harassment at work place.
- The committee is concerned that the 16 weeks maternal leave applies only to citizen births and that single unwed mothers do not get the same benefits as married women. There are also cases where pregnant women are forced to resign.

Women Trafficking

- Singapore established the Inter-Agency Taskforce on Trafficking in Persons in 2011 and adopted the Palermo Protocol definition of “trafficking in persons” but the lack of comprehensive legal framework to combat trafficking as well mechanism to protect the victims since they are most often treated as offenders of immigration laws are concerns highlighted by the committee.

Violation of Rights of LGBT

- Joint submission 5 in the latest Universal Periodic Review noted that Singapore maintains criminal sanctions against sexual activity between consenting adults of the same sex. There have been cases where men caught in intimate situations with each other in public places were prosecuted under the Penal Code.

Exploitation of Migrant and Domestic Workers

- CEDAW Committee is concerned about the situation of foreign domestic workers, in particular the regular pregnancy testing, the prohibition to marry Singaporeans and the lack of a mandatory day off. It is further concerned that the Employment Act does not cover foreign domestic workers, and the Employment of Foreign Workers Act deals mainly with the issue of work permits rather than providing the necessary protection of the rights of foreign domestic workers. The Committee is also concerned that the security bond deposited by employers often results in a restriction on the freedom of foreign domestic workers.
- Joint Submission 4 in the latest Universal Periodic Review recommends Singapore to establish and implement a minimum standard of accommodation for domestic workers, fully implement and enforce regulation that prohibits employers from holding on to passports and work permits of migrant workers.

Compliance with Child’s Rights⁸⁸⁶

Declaration on CRC

- Singapore made declarations on articles 12-17, 19 and 39 and reservations to articles 7, 9, 10, 22, 28 and 32 to CRC based on its existing socio-political situation and its domestic law.

Legislation and Policy protecting Rights of the Child

- CRC further noted that Singapore domestic legislation does not fully reflect all the principles and provisions of the Convention, mostly with regards to the best interests of the child as a primary consideration. Thus, Singapore also has not developed a national plan of action for children.

Violence

- The CRC Concluding Observation in February 2011 stated that there is no mandatory obligation for professionals working with or for children to report

⁸⁸⁶ Committee on the Rights of The Child, 56th session, Concluding Observations: Singapore, CRC/C/SGP/CO/2, 17 Jan-04 Feb,2011; Human Rights Council, Working Group on Universal Periodic Review, 11th Session, A/HRC/WG.6/11/SGP/1, Geneva, 2 – 13 May, 2011

abuse of children.

- The submission by Singapore to Universal Periodic Review in May 2011 stated that any child in Singapore who is a victim of exploitation is extended protection and assistance, regardless of nationality. Community partners, law enforcement officers, teachers and school counselors are trained to detect and manage child abuse cases. The National Family Violence Networking System, which links the Police, hospitals, social service agencies, the Courts and Ministries, ensures that assistance is timely and help is within reach.
- It is a concern that despite the existence of mechanism to handle violence or abuse against children, if reporting is not mandatory then it will be a waste of resources.

Lack of Protection in Juvenile Justice System

- Children and Young Persons Act enacted in Singapore is only applicable to persons under the age of 16 and that the minimum age of criminal responsibility (7 years) and the minimum age of employment (12 years) are considered too low by CRC. Moreover, all persons in conflict with the law under 18 are not afforded special protection, and that corporal punishment and solitary confinement are used to discipline juvenile offenders. Parents are also able to file complaints that their children are “beyond parental control”, which, according to the law, can lead to the placement of these children in institutions for juvenile delinquents.

Respect of the Children’s view

- CRC is concerned that traditional attitudes towards children in society limit respect for their views within the family, schools, other institutions and society at large and furthermore there is no formal procedure by which children are systematically invited to express their views in judicial and administrative processes that affect them.

Right of Citizenship

- CRC is concerned that Singaporean citizenship is not acquired automatically by children of a Singaporean mother and a foreign father born overseas, and that in such cases the mother is obliged to apply for “citizenship by registration”.

Torture/Corporal Punishment

- CRC also noted with concern that corporal punishment is permitted by law at home, schools and institutions.
- The Global Initiative to End All Corporal Punishment for Children in its submission to the latest Universal Periodic Report noted that in the penal system, corporal punishment is lawful as a sentence to a crime and as a disciplinary measure in penal institutions.
- The Committee regrets that there is no mandatory obligation for professionals working with or for children to report abuse of children.

Right to Education

- CRC noted that *not* all children within Singapore’s jurisdiction are covered by the Compulsory Education Act or have access to free primary school since it excluded children with disabilities. The highly competitive nature of the education system risks hampering the development of the child to his or her fullest potential and youth suicide rates are on the rise based on such competitive environment.

IX. Thailand

Compliance with CEDAW⁸⁸⁷

Reservation to CEDAW

- Thailand made the following reservation on article 16 of CEDAW: *“In all matters which concern national security, maintenance of public order and service or employment in the military or paramilitary forces, the Royal Thai Government reserves its right to apply the provisions of the Convention on the Elimination of all forms of Discrimination against Women, in particular articles 7 and 10, only within the limits established by national laws, regulations and practices.”*
- The CEDAW Committee noted that its reservations to article 16 are contrary to the object and purpose of the Convention.

Discrimination against Women in Family Matters

- Discriminatory provisions still exist in Family Law, especially in relation to betrothal, marriage and divorce. A betrothed man, *unlike woman*, may claim compensation from any man who has either sexual intercourse or who has raped or attempted to rape his betrothed. With regard to marriage, CEDAW Committee notes with concern that a man who has sexual relations with a girl over the age of 13 but under the age of 15, with her consent or that of her parents, could marry her without being prosecuted. With regard to divorce, discrimination exist as adultery committed by the wife could constitute grounds for divorce, but if committed by the husband need further proof that he supports and honors another woman as his wife. The Committee is also concerned that the 310-day waiting period for a woman to remarry puts an unnecessary restriction on her rights.

Discrimination in Obtaining Nationality

- Certain provisions of the Nationality Law described in the report continue to discriminate against Thai women who marry foreign men. In particular, while Thai men may extend their citizenship to their foreign wives, non-Thai men who marry Thai women need to

reside in Thailand for more than five consecutive years before being able to obtain citizenship.

- CEDAW committee also concerned that many refugee women do not enjoy legal status in the country. This also applies to hill tribe women, as they face complexity in obtaining Thai Citizenship.

Violence against Women

- The Committee continues to be concerned about the prevalence of violence against women and girls. While welcoming the “draft Act on the Prevention and Resolution of Domestic Violence”, the Committee is concerned about the inadequacy of the punishment for perpetrators set out therein. The Committee also notes with concern that the “draft Act” focuses on reconciliation and family unity to the detriment of the right of women to live free from violence. The Committee is furthermore concerned that the definition of rape in section 276 of the Penal Code is limited to sexual intercourse between a man and a woman who is not his wife, thus allowing a husband to rape his wife with impunity.

Gender Stereotypes

- There is a persistence of strong stereotypical attitudes about the roles and responsibilities of women and men in the family and in society. Such stereotypes undermine women’s social status, present a significant impediment to the Compliance with the Convention and are a root cause of the disadvantaged position of women in a number of areas, including in the labor market and in political and public life.

Women Trafficking

- While welcoming the legislative and policy measures undertaken to combat human trafficking, CEDAW Committee remains concerned about the persistence of trafficking and exploitation of women and girls in the country. It is also concerned about the continuing phenomenon of sex tourism in the country.

Lack of Women Representation in the Public Sphere

- CEDAW Committee notes with concern the low level of women’s participation in public life and decision-making, particularly in the House of Representatives,

⁸⁸⁷ Concluding comments of the Committee on the Elimination of Discrimination against Women: Thailand CEDAW/C/THA/CO/5, 24 June 2004

the Senate and local government councils, as well as at the international level.

Lack of Access to Healthcare

- Rural and hill tribe women still have lack of access to adequate nutrition, sanitation, healthcare services, education and income-generating activities. Whereas, Muslim women in the south of the country who lack access to education, social security, health care and economic opportunities, and are subjected to early marriage due to cultural norms. This situation is further exacerbated by the recent unrest in the south.

*Compliance with Child's Rights*⁸⁸⁸

Lack of Child Protection in Juvenile Justice System

- Thailand had enacted the Child Protection Act, which incorporates the provisions in CRC. However, that the Compliance and enforcement of such legislation, require further attention in order to ensure full compliance with the principles and provisions of the Convention. It also notes that some existing legislation, for example the Penal Code regarding the minimum age of criminal responsibility (7 years), is still not in compliance with the Convention.

Discrimination against Children

- CEDAW Committee is concerned about the persistence of both direct and indirect discrimination against the child, particularly with respect to the girls, children of indigenous, and religious or ethnic minority communities, children of refugees and asylum-seekers, children of migrant workers, street children, children with disabilities, children living in rural areas, and children living in poverty.

Children Involvement in Armed Conflict

- CEDAW Committee notes with concern that the violence and civil unrest in the southern provinces of the country have had severe consequences on children and their families, and endangered the right of the child to life, survival and development. There is lack of rehabilitation, counseling and other assistance

programs for child survivors, ex-soldiers and witnesses of violence in these provinces.

Lack of Protection on Children's right of Nationality

- There are a high number of children without birth registration, particularly in the most remote areas of the country and in tsunami-affected areas. There are also persisting difficulties in ensuring the registration of children of migrant workers, refugees and asylum-seekers as well as of indigenous and minority communities, particularly those born outside of hospitals.

Violence on Children

- There are increasing reports of cases of domestic violence, child abuse and neglect in the country. CEDAW Committee had noted deficiencies in the domestic legislation as regards penalizing all forms of abuse, neglect and mistreatment, including sexual abuse (for example, the provisions of the Penal Code only protect female victims of rape). It also expresses its concern at the lack of a national data collection system on cases of violence against children.

⁸⁸⁸ Committee on the Rights of the Child, Concluding observations: Thailand CRC/C/THA/CO/2 17 March 2006

X. Vietnam⁸⁸⁹

- While welcoming the adoption of the new Law on Gender Equality as an improvement of the legal regime and the Compliance with the Convention as well as other legal and policy measures to eliminate discrimination against women and girls and to promote gender equality, CEDAW Committee regrets that the State party did not provide sufficient information or data on the actual impact of these laws and whether they have resulted in accelerating the advancement of women and girls

Gender Stereotypes

- CEDAW Committee reiterates its concern about the persistence of patriarchal attitudes and deep-rooted stereotypes, including the preference for male offspring, regarding the roles and responsibilities of women and men within the family and society at large. These stereotypes are a root cause of violence against women and put women in a disadvantaged position in a number of areas, including in the labour market and in political and public life.

Lack of Women Representation in Public Sphere

- CEDAW Committee remains concerned about the under representation of women in appointed public decision-making bodies, particularly at the district and commune/ward levels.

Women Trafficking and Sexual Exploitation

- CEDAW Committee welcomes a number of measures to suppress Trafficking of Women and Girls, but is concerned about the persistence of trafficking in women and girls and the exploitation of prostitution, both within the country and to other countries. It is also concerned about the low rates of prosecution and conviction of traffickers and of others who exploit the prostitution of women. Further, these women face problems in enjoying their citizenship rights when returning to Viet Nam, as well as in conveying citizenship to their children born abroad. Moreover,

rehabilitation measures, such as administrative camps, may stigmatize girls and young women victims of prostitution and deny them due process rights. In addition, CEDAW Committee is concerned about the lack of systematic data collection on the phenomenon of trafficking and exploitation of prostitution.

Violence against Women

- Although the Committee welcomes the drafting of a new bill on domestic violence, it continues to be concerned about the lack of information and data on all forms of violence against women and girls, the insufficient information on measures taken to prevent and combat violence against women, including services provided to victims, and the prosecution and punishment of perpetrators of all forms of violence.

Lack of Access to Education

- While noting progress towards reaching high levels of literacy in the country, the Committee notes with concern that a high proportion of girls still drop out of school and that girls in rural and remote areas do not have full access to education.

Discrimination against Women at Work

- It is also concerned at the concentration of women in the informal economy, which negatively affects their eligibility for social security and other benefits, including health care. The Committee continues to be concerned about the occupational segregation between women and men in the labour market and the persistent high gap in wages between women and men.

Lack of Access to Reproductive Health Care

- The Committee expresses its concern about women's limited access to sexual and reproductive health-care services, and about the very high rate of abortions, in particular among adolescent and young women. The Committee is also concerned about the increase in HIV/AIDS infections among women.

Lack of Protection of Women from Ethnic Minority

- The Committee expresses its concern about the situation of women in rural and remote areas, as well

⁸⁸⁹ Concluding comments of the Committee on the Elimination of Discrimination against Women: Viet Nam, 2 CEDAW/C/VNM/CO/6, 2February 2007

as the situation of ethnic minority women, who lack sufficient access to adequate health services, education opportunities, employment and credit facilities.

*Compliance with Child's Rights*⁸⁹⁰

- CRC welcomes the State party's efforts to support and facilitate children's participation and improve the coordination and Compliance with its child rights policy. In particular, the establishment of Viet Nam Committee for Protection and Care of Children (CPCC), which was subsequently merged into the National Committee on Population, Family and Children, as the central mechanism to monitor and coordinate activities related protection, care and education of children.
- CRC notes with concern that budgetary allocation for children are insufficient to respond to national and local priorities for the protection and promotion of children's rights. In particular, insufficient resources have been allocated to the development of health infrastructure and education in remote and mountainous areas. As such, there is no system of data collection on child labor or children with disabilities and that the data available on child abuse is not comprehensive.

Lack of Respect of Children's View

- The Committee is concerned that traditional attitudes towards children in society still limit the respect for their views, within the family, schools and society at large. In addition, administrative and judicial proceedings are not always required to take the views of the child into account, for instance in the case of divorce hearings.

Lack of Protection on Children's right of Nationality

- CRC is concerned that still not all children are registered at birth and that there are, in particular, problems with the birth registration of children living in remote and mountainous regions, where parents are not always aware of birth registration requirements.

Violence against Children

- CRC is concerned that children in the State party are subject to various forms of violence and ill treatment,

including child abuse and neglect, and corporal punishment.

Lack of Access to Healthcare

- CRC is nevertheless concerned at the persistently high rates of maternal mortality, infant mortality and under-5 mortality, as well as the high rates of malnutrition among children, the frequency of anemia amongst pregnant women, and the low proportion of women who breastfeed their children exclusively for the first six months. In general, it appears that antenatal care is inadequate, primarily because of a lack of access to such services and clinics.

Lack of Protection on Children with disabilities

- CRC is very concerned at the high proportion of children with disabilities who that do not attend school, do not have access to vocational training or preparation for employment and have limited access to rehabilitation services, particularly in rural areas.

Vulnerability to HIV/AIDS

- CRC is concerned that HIV/AIDS is spreading and increasingly affects children, either because they have been infected or because they may have lost parents to the disease.

Sexual Exploitation on Children

- CRC notes with concern that a significant proportion of sex workers are under the age of 18. Furthermore, it is concerned that, although the State party recognizes trafficking in children to be a significant problem, the number of officially reported cases is very low.

⁸⁹⁰ Committee on the Rights of The Child, Concluding Observations: Vietnam CRC/C/15/Add.200, 18 March 2003

Annex B: Terms of Reference

Violence, Exploitation, and Abuse and Discrimination Affecting Women and Children in ASEAN: A BASELINE STUDY

A. Synopsis

1. The HRRC is a non-profit regional research centre based at the University of Indonesia. Its aim is to support the work of ASEAN human rights bodies through research, analysis, training and capacity building. It currently has seven partner institutions and one affiliate across the region.
2. The HRRC, together with its network of Partner and Affiliated Institutions, will undertake a study on key issues pertaining to women and children's rights within ASEAN countries. Because the range of human rights issues involving women and children is so vast, this study will concentrate on a cluster of issues focusing on violence, exploitation and migration involving women and children. This study will provide the basis for broader long term and in-depth studies of these and other issues related to women and children's rights in the region. The goal for completion of this study is September 2012.

B. Rationale and Scope

3. The pertinence of the rights of women and children for the ASEAN region has long been recognized by the ASEAN governments, as most recently manifested in the creation of the ASEAN Commission for the Promotion and Protection of Women and Children (ACWC) and the ASEAN Intergovernmental Human Rights Commission (AICHR). While the mandate of the ACWC is specifically directed at this area, the AICHR has also included issues in its Work Plan that involve the rights of women and children. As one of the core aims of the HRRC is to provide support for ASEAN human rights institutions and initiatives through research, analysis, and capacity building, such a baseline survey, as well as the follow-on in-depth studies, will aim at assisting the ACWC and the AICHR in defining and implementing their agenda. Informal contacts between the HRRC and ACWC and AICHR commissioners have indicated interest on the part of these institutions in receiving such studies. One of the reasons for beginning with a baseline survey is that such a study can be completed quickly enough so as to help the ACWC and AICHR

in identifying pressing issues for inclusion in their work in this area. The in-depth follow on studies can then be crafted in light of programmatic interaction between the HRRC and the ACWC and AICHR.

4. The HRRC Women and Children's study will cover all ASEAN member states. The study will take as its point of departure the principles articulated in the Terms of Reference (TOR) for the ACWC. In its Terms of Reference, the new Commission's Article 2(3) says that the goal is "to promote the well-being, development, empowerment and participation of women and children in the ASEAN Community building process which contribute to the realization of the purposes of ASEAN set out in the ASEAN Charter".⁸⁹¹
5. In addition, the study will be based upon the definitions of violence, exploitation and migration as stipulated in the two major international conventions to which all ASEAN members are state parties: CEDAW and CRC.
6. General Recommendation No. 19 of the Committee on the Elimination of Discrimination Against Women, in defining gender-based violence, states as follows:
 - * 6. *The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, 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. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.*
7. General Comment No. 13 of the Committee on the Rights of the Child, defines violence as follows:
 - * 4. *Definition of violence. Xxx "violence" is understood to mean "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" as listed in article 19, paragraph 1 of the Convention.*

⁸⁹¹ While the ASEAN Charter acknowledges the importance of these principles, it does not define them or mention a modality for their implementation. It also does not clarify the way in which the rule of law, good governance, and human rights of women and children relate to one another and to human rights in general (i.e. the alignment of AICHR and ACWC).

8. For the purpose of this study, the term “exploitation” shall be based upon the description set out in Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (hereinafter Palermo Protocol), to wit:

* *Xxx Exploitation shall 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*

9. As described in CEDAW General Recommendation No. 26, the term “migration” of women refers to work-related situation of migrant women who are in low-paid jobs, may be at high risk of abuse and discrimination, and who may never acquire eligibility for permanent stay or citizenship. These categories of migrant women are:

* *Women migrant workers who migrate independently;*

* *Women migrant workers who join their spouses or other members of their families who are also workers;*

* *Undocumented women migrant workers who fall into any of the above categories.*

10. Abuse and discrimination of children in migration shall cover situations of children of migrant workers who accompany their parent/s and those who migrate on their own.

C. A Baseline Survey

11. At a brainstorming meeting of regional experts convened by the HRRRC in November 2010, it decided to focus the baseline study on issues of violence, exploitation and abuse and discrimination in migration affecting women and children in ASEAN as those issues are inter-related and among the most pressing and widespread in the South East Asian region. A number of UN documents, namely UPR, CEDAW reports and CRC reports on ASEAN member states, identified those issues as issues of concern in at least 8 out of 10 ASEAN countries.
12. The analysis in this study will build upon previous activities by various institutions that have already compiled a large body of primary sources. With respect to exploitation, migration and violence affecting children, a primary source will be the compilation of concluding observations of the CRC

undertaken by SEARCH/CIDA (SE Asia Regional Cooperation in Human Development) for ASEAN, the ASEAN Commission for the Promotion and Protection of Women and Children (ACWC)⁸⁹² and the HRRRC⁸⁹³. The experts who undertook the SEARCH/CIDA will be closely involved as advisors in the proposed study. This document compiled the recommendations made by the CRC Committee over several years starting in the year 2000 with respect to all ASEAN member states. The compilation breaks the observations on each country into four themes: i) Child Welfare and Legislation, ii) Violence against Children, iii) Trafficking and Child Protection/Matters of Girl Child, and iv) Best Interests of Children and Child Participation. Similarly, with respect to women, the primary source will be a similar compilation on the CEDAW completed by UN Women also for the new ASEAN Commission. This study includes compilations on three themes: i) Welfare and Legislation of Women and Girls, ii) Violence against Women, iii) and Trafficking in Women and Girls.

13. The proposed HRRRC study is intended as a baseline survey that will provide an overview and assessment of the breadth and depth of different reports and analyses, the relevance of and gaps in existing reports, as well as analyzing contradictions and inconsistencies amongst the various compilations and studies available on this cluster of key issues. This study will identify areas where additional research and data collection are necessary and thus provide the basis for a multi-dimensional research plan that can serve as a major resource for the ACWC, AICHR, civil society organizations, and ASEAN governments.
14. The study will analyze major sources of documentation and reporting from each ASEAN member state, including official government

⁸⁹² SEARCH and UN Women each produced compilations devoted to the rights of children (in the case of SEARCH) and women (in the case of UN Women) which include reports on: the CRC Concluding Comments (mentioned in this text); the CEDAW Concluding Comments; the National Plans of Action for Children and for Women; a series of selected UN reports devoted to ending violence against children and selected UN reports devoted to ending violence against women; and finally, a report compiling shadow reports on children.

⁸⁹³ HRRRC prepared a compilation of CEDAW and CRC Concluding Comments as well as ASEAN Member States’ UPR used at the brainstorming meeting for women and children study in Bangkok, November 23, 2011.

publications made at national and international levels, academic analyses, and reports from international organizations and NGOs. These country-focused analyses will each be conducted by an expert from that country. A comparative analysis by the research team leader, with input from the expert advisory group, will provide a synthesis of the findings from the ten ASEAN Countries. The synthesis will also suggest a framework for regionally based studies and programs arising from the identification of gaps, where certain logical flow expected from the material reviewed is not met, inconsistencies, and needs in the existing literature and documentation.

15. In addition to outlining a research agenda for ASEAN on these key issues affecting women and children, the synthetic and comparative analyses will also draw a series of preliminary policy recommendations based upon lessons learned from the studies and reports examined. This study will be directed by the HRRC Secretariat in Jakarta but will draw upon experts from its partner and affiliated institutions across ASEAN, as well as operating in close consultation with the expert advisory group. The research team will be led by a small group of senior researchers from ASEAN.

D. Work plan

16. A brainstorming session took place in Bangkok in November 2010 over 2 days to identify key indicators and themes that will guide the research study.
17. A team of research advisers and HRRC will identify key individuals who will be acting as the core team with expertise in women and children's rights issues.
18. Research advisers, HRRC and lead researchers will hold a preliminary meeting to discuss and agree upon the design, structure and content of the research as well as ensuring that the expected output can be achieved. The preliminary meeting will also identify people who will be acting as country rapporteurs, preferably those who are residing in the country of their responsibility.
19. The HRRC will hold a first meeting for the research team and advisory group to ensure that there is a common understanding concerning the TOR, the research indicators and the methodologies to be employed. Concrete examples will be used to assist the country rapporteurs in understanding how to identify and analyze various kinds of research

materials and how to deal with the challenges and obstacles inevitably encountered in such research.

20. The research team will be given approximately 3-4 months to prepare their findings under the supervision of the lead researchers.
21. The HRRC will conduct a second meeting where the country rapporteurs will present their findings and receive suggestion for revision and, as needed, further research. The draft reports will be circulated to the entire group before the meeting so that the whole team can participate effectively in reviewing each other's work.
22. Immediately after this second meeting, the small team of lead researchers will begin work on the synthetic analysis to provide a regional perspective and assessment. They will also work with the country rapporteurs on the ongoing revisions until the country reports have achieved the required quality and uniformity of approach.
23. The HRRC will launch the report at a conference including relevant stakeholders, accompanied by publication of the synthetic and country reports,
24. Following the conference the HRRC will prepare a comprehensive research plan and appropriate research proposal for in-depth studies based upon the results of its report.

E. Expected Outputs of the Research Activity

25. To initiate a consolidated regional research activity (rather than piecemeal country-focused activity), and stimulate regional discussion about a key area of human rights concerning women and children in ASEAN, in particular on issues of violence, exploitation and migration.
26. To create and build the capacity of a network of researchers who are engaged in undertaking policy-oriented studies of the human rights of women and children in ASEAN, and who will be able to continue to work together in the future.
27. Produce a report that will assist ASEAN institutions and governments in advancing the ASEAN human rights agenda as it relates to women and children and human rights in general.
28. Provide the basis for the development of further research, regional training and capacity building programs to be conducted by the HRRC or other institutions that focus on the rights of women and children in the ASEAN region.
29. Finally, it is anticipated that this research will directly

assist ACWC, AICHR, national governments, CSOs and other secondary duty-bearers and beneficiaries, by providing an empirical basis upon which to discuss human rights issues of pressing concern at the policy level for women and children in ASEAN countries.

F. Designing Indicators

30. Although this study is going to focus only on one cluster of issues, the cluster itself is highly complex and multi-faceted. Therefore, the first preliminary step is a mapping classification related to the cluster.
31. The indicators of this study shall be classified into three major sections: Violence, Exploitation and Migration. Each section shall begin by gathering and analyzing the depth of available information on prevalence, causes, and impact of violence, exploitation or migration in each ASEAN country.
32. As all countries covered in this research have ratified both CEDAW and CRC, this study will examine what various reports say as regards each state's *de jure* compliance with these Conventions. The compliance of the laws and policies of the State with other international and regional treaty and non-treaty instruments relating to violence, exploitation and migration shall also be considered.
33. Thereafter, this study will analyze what the reports say relative to a State's *de facto* compliance with its commitments, i.e., the action actually being taken by the State to implement its obligations to address violence, exploitation or migration.
34. Recognizing the important role of non-state individuals and non-governmental organizations, this study will review what the reports say regarding programs of non-state actors aimed at assisting victims and ending violence, exploitation and abuses relative to migration.
35. Researchers will then analyze what the reports say regarding progress achieved by the responses of the state and non-state actors, the indicators being used to show or measure progress, and the challenges to solving concerns relating to violence, exploitation and migration.
36. Thus, each section on Violence, Exploitation and Migration shall be outlined as follows:
 1. Description of the Problem
 - a. Prevalence
 - b. Root Causes and Aggravating Practices
 - c. Impact
 2. De Jure State Responses
 - a. Bases of State Responsibility
 - b. National Policies
 - 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 Victims
 - b. Prevention Programs
 - c. Monitoring and Cooperation
 5. Progress Indicators and Challenges
 6. Recommendations for Further Study
37. Explanatory notes, examples for the indicators, and the format of the Country Reports are detailed in "Template for Country Reports".
38. Using this classification, the research team will identify relevant publications by a) governments (including publication by different ministries and functional institutions); b) academic institutions; c) international organizations; d) CSOs that are reliable, credible and authoritative.
39. Analysis will focus on the depth, relevance, gaps, consistencies and contradictions, quantitative and qualitative methodologies, and the use of formal and informal statistics. In the case of annual reports (e.g. US embassy human rights or labor or trafficking reports, UPR or country reports to the CEDAW Committee), analysis will also involve the use of updated information as well as paying attention to shifts of approach in such reports.
40. The study, it should be noted, is not intended to undermine certain reports or to discredit certain institutions. Researchers will undertake a qualitative analysis of a whole range of literatures available on the basis of the classifications above. The research will be conducted following widely accepted academic research norms and in a balanced and objective manner befitting the academic focus of the university-based HRRC network.

Annex C: Template for Country Reports

(Table of Contents)

“State X”

Formal Name:

Capital City:

Population	Male: Female: Both sexes:
Life expectancy	Male: Female: Both sexes:
Age structure	<i>Example:</i> 0-14 years: 34.6% (male 17,999,279/female 17,285,040) 15-64 years: 65-over:
Sex ratio	<i>Example:</i> At birth: 1.05 male(s)/female Under 15: 1.04 male(s)/female 15-64 years: 1 male(s)/female 65-over: 0.76 male(s)/female Total: 1 male(s)/female
Religions	<i>Example:</i> Catholic 82.9% (Roman Catholic 80.9%, Aglipayan 2%), Muslim 5%, Evangelical 2.8%, IglisianiKristo 2.3%, other Christian 4.5%, other 1.8%, unspecified 0.6%, none 0.1% (2000 census)
Ethnic groups	
Functional literacy rate	Male: Female: Both sexes:
National poverty line	(also referred to as poverty threshold)
Percentage of population living below the national poverty line	
Gross Domestic Product per capita	
Net enrolment ratio in secondary schools	Male: Female:
Migration rate	Net: (Ex: -1.29 migrant(s)/1,000 population)
Number of citizens working overseas	Male: Female:
Number of foreign workers in country	Male: Female:
Percentage of female-headed households	
Labor force participation rate	Male: Female:

Unemployment rate	Male: Female:
Proportion of unpaid family workers	Male: Female:
Fertility rate	(Ex: 3.19 children born/woman)
Maternal mortality rate	
Infant mortality rate	(Ex: 19.34 deaths/1,000 live births)
Legal definition of “child”	
Age of majority	
Marriageable age	
Age of consent	(also referred to as legal age for sexual activities)
Age of criminal responsibility	
Minimum age of employment	
Minimum age for military recruitment and participation	

OVERVIEW

The Overview shall aim to succinctly do the following:

- Provide background information on points common to all sections on violence, exploitation, and abuse and discrimination in migration of women and children
- Provide an overview of the sources reviewed and their key points

The country reports shall contain 25,000 to 50,000 words, excluding the introductory chart and references.

Sources reviewed shall have been published not earlier than year 2005, unless a report published prior to 2005 deals with an important issue on which no subsequent report has been made. Consider including the following sources in the review: Universal Periodic Review; CEDAW and CRC reports (*Concluding Observations, National Plans of Action, UN Agencies and iNGOS, NGO reports*); publications by international organizations (ILO, IOM, US Trafficking in Persons Report, UN Women/UNICEF/ other UN agencies); official government publications; publications by credible NGOs.

References shall be cited using the Chicago Manual of Style, notes and bibliography system.⁸⁹⁴ All sources used in the report shall be cited as footnotes. A “Bibliography” section at the end of each country report shall contain a full list of works used to write the report; it may include works that were consulted but were not cited.

⁸⁹⁴ See http://www.chicagomanualofstyle.org/tools_citationguide.html.

VIOLENCE

- Description of the Problem

- * Prevalence of Violence

Do the reports contain information on the prevalence of violence committed against women and children according to profile (geographical location, educational attainment, income, age, sex, ethnicity, etc.) of person violated, and person inflicting violence? Do the reports include an estimate of unreported cases?

How do the reports measure prevalence of violence? Do they reflect type of violence, circumstance of violence, degree and duration of violence?

How comprehensive is the data and what are the means used for data collection and analysis? Does the data ignore or overlook certain kinds of violence (e.g., rape vs. domestic violence, does it include instances of marital rape)?

- * Root Causes of Violence and Aggravating Practices

Do the reports identify the root causes of violence against women and children? How is violence defined, what is included and what is left out?

Do different reports attribute violence to different causes?

What kinds of quantitative and qualitative analysis are used to support conclusions as to root causes?

Do the reports consider factors that may not cause violence, but tend to exacerbate or increase incidence of violence?

* Impact of Violence

Do the reports study the physical, psychological and social impact of violence against women and children? Do they differ in the measure they use to assess impact of violence?

• De Jure State Responses

* Bases of State Responsibility

Describe or enumerate the bases of state responsibility. This may be done by the means of a table, or in paragraph form.

Do the reports establish the legal bases (e.g., whether or not the State is a signatory to CEDAW/CRC) for the state's responsibility to respect, protect and promote non-violence against women and children? Do the reports give recommendations on the State's commitments and reservations in relation to international documents on violence against women and children?

* National Policies Against Violence

Describe the State's national policies on violence. Do the reports identify preventive, protective and curative legislation and other policies by the State relative to violence committed on women and children?

* Assessment of State Policies

Do the reports study and provide recommendations on compliance of laws and other national policies with the standards set by CEDAW, CRC, their general recommendations and comments, and other related documents?

Examples (consider whether or not the reports address the question):

* *Do the laws penalize discrimination against women and do they expressly include gender-based violence, committed by state and non-state agents, in its definition of discrimination?*

* *Note: "Gender Based Violence" is violence that is directed against a woman or that affects women disproportionately. It includes physical, mental, sexual harm or suffering, threats of such acts,*

coercion and deprivation of liberty. [CEDAW General Recommendation 19 (6)]

* *Do the laws define and penalize domestic violence, which include past and present physical, sexual, psychological or economic violence between former or current intimate partners, adult household members, parent or children?*

* *Do the laws penalize marital rape?*

* *Do the laws define and prohibit statutory rape?*

* *Do the laws penalize female circumcision, forced marriage, dowry deaths, acid attacks, forced sterilization, and other traditional practices harmful to the health of women? [CEDAW General Recommendation No. 14 and No. 19 (11)]*

* *Do the laws protect against child marriage?*

* *Do the laws penalize all forms of sexual violations (including penetration of all orifices by any object) and sexual harassment in the workplace, schools, etc., with steeper penalties when committed by a person in a position of trust?*

* *Note: "Sexual harassment" is defined as "such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands whether by words or actions". [CEDAW General Recommendation 19 (18)]*

* *Do the laws provide for a comprehensive definition of consent, detailing circumstances where consent cannot be presumed, e.g., when the woman is sleeping, under the influence of drugs or alcohol, under threat, coercion or intimidation?*

* *Do laws relating to criminal procedure and evidence prohibit use of discriminatory rules in sexual assault prosecutions, such as corroboration, proof of resistance or admission of prior sexual history? How much force is necessary to prove sexual assault?*

* *Do the laws prohibit bail for sexual assault suspects or provide other protective measures to victims if there is any risk to the victim?*

* *Do the laws protect children from neglect or negligent treatment, bullying, corporal punishment and other cruel or degrading forms of punishment?*

* *Do the laws protect street children from violence?*

* *Do the laws protect children from violence while being detained for criminal offenses?*

* *Do the laws provide for protection of women and children in armed conflict?*

- Implementation, Monitoring and Prevention
 - * Implementing and Monitoring Mechanisms

Describe the State's implementing and monitoring mechanisms. Does it have specialized institutions with the mandate to oversee the implementation of laws protecting against violence (e.g., national human rights institutions)? This may be done by the means of a chart, table, or in paragraph form. Do the reports study mechanisms that monitor both public authorities and private organizations and individuals in their implementation and observance of laws related to violence?
 - * Complaints Process

Describe the State's complaint process. This can be done by means of a chart, table or in paragraph form. Do the reports assess complaints processes where victims of violence can bring actions and receive remedies? Do the reports study whether the complaint process is adequately funded and free of charge to complainants, staffed by gender experts, able to receive complaints against both public and private institutions/individuals, allows standing to persons not personally violated, e.g., family of victim/witness to exploitation, and affords protection to person filing complaint? What forms of protection are given to persons filing complaints? How are children against whom complaints for violence are filed treated? Is there a special complaint mechanism that protects children?
 - * Protection and Rehabilitation

Describe the State's protection and rehabilitation program. Do the reports assess the state's responses to violence against women and children, including programs to ensure protection and rehabilitation of domestic violence victims, e.g. restraining orders, funded support services, emergency shelters?
 - * Prevention Strategy

Describe the State's prevention program. Do the reports identify a well-funded comprehensive prevention strategy, including advocacy campaigns, of the state aimed at changing social, cultural and traditional attitudes that cause violence?
- Role of Non-State Actors
 - * Assistance to Victims

Do the reports identify assistance (legal, psychological, medical) and protection given by non-state actors to victims of violence?
 - * Prevention Programs

Do the reports identify programs by non-state actors aimed at ending violence, including information or advocacy campaigns and lobbying with the State for action and issuance of laws and policies?
 - * Monitoring and Cooperation

Do the reports describe how non-state actors monitor the State in the implementation of laws and policies against violence? Do the reports describe how non-state actors cooperate and collaborate with State agencies and other non-state actors in providing assistance and/or preventing violence?
- Progress Indicators and Challenges

Do the reports study how effective policies and measures are by gathering statistics (e.g., rate of successful prosecution of violators, decrease in incidence of violence, etc.), developing success indicators, and maintaining a database to show whether or not there is progress?

Do the reports assess how carefully success indicators are crafted and whether or not indicators factually reflect the extent of progress? Do they study vulnerabilities in the state agencies that allow or promote violence, such as corruption, lack of knowledge/expertise of state agents, lack of funding to properly implement policies, failure to properly train law enforcement agents on how to respond to complaints of violence against women and children? Are progress reports available and accessible to the public?
- Recommendations for Further Study
 - * Give a summary of what is and is not known
 - * Identify areas of controversy and resolve conflicts amongst seemingly contradictory reports
 - * Recommend areas for data collection and further research

EXPLOITATION

- Description of the Problem

- * Prevalence of Exploitation

See B.1.a

In addition, do the reports identify the means/patterns employed by persons committing and facilitating exploitation, including the recruitment and transportation of victims, routes and links between and among individuals/groups engaged in trafficking, nature of exploitation, and the human rights violations committed on women and children being exploited?

Do the reports identify sectors or enterprises where incidences of exploitation are particularly high?

Do the reports consider prevalence of all kinds of exploitation (sexual, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs)?

- * Root Causes of Exploitation and Aggravating Practices

See B.1.b

- * Impact of Exploitation

See B.1.c

- De Jure State Responses

- * Bases of State Responsibility

See B.2.a

Also consider international, bilateral (Mutual Legal Assistance) and regional agreements/declarations, such as the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004) .

- * State Policies Against Exploitation

See B.2.b

- * Assessment of State Policies

See B.2.c

Consider also whether or not the reports give recommendations on compliance of the laws and other national policies with CRC Optional Protocol on sale of children, child prostitution and child pornography; CRC Optional Protocol on involvement of children in armed conflict; applicable ILO Conventions, e.g., Forced or

Compulsory Labour Convention (No. 29), Abolition of Forced Labour Convention (No. 105), Minimum Age Convention, 1973 (No. 138), Worst Forms of Child Labour Convention, 1999 (No. 182), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Convention against Transnational Organized Crime (and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air).

Examples (consider whether or not the reports address the question):

- * *Do the laws penalize trafficking of women and children within and outside of the county?*

- * *Note: "Trafficking" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*

- * *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking" even if this does not involve threat or use of force or other forms of coercion, etc. (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children)*

- * *Do the laws and national policies establish quasi-universal jurisdiction—is trafficking an extraditable offense and/or can the State apprehend and prosecute offenders found within its territory even when the acts constituting trafficking were not committed therein?*

- * *Do the laws protect women and children against all kinds of exploitation- sexual, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs?*

- * *Do the laws provide protection measures including immunity from criminal liability, the right to legal representation, the right to be heard in court, the right to compensation for damages, the right to medical assistance, the right to social assistance,*

- the right to seek residence, and the right to return to original residence?*
- * *Do the laws penalize prostitution? Do the laws define prostitution as a crime that can only be committed by women (as is the case in the Philippines)? Do the laws allow prostitution but penalize soliciting or pimping?*
 - * *Do the laws ensure health and safety standards and equal rights and conditions of employment for women, including sex workers and those who work in informal sectors? (CEDAW General Recommendations Nos. 13, 16)*
 - * *Do the laws penalize the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances?*
 - * *Do the laws deal with the use of the internet as a medium for prostitution, trafficking, or child pornography? (ILO C182)*
 - * *Do the laws penalize the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties? (ILO C182)*
 - * *Do the laws penalize work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children? (ILO C182)*
 - * *Do the laws define “child soldiers” and penalize hiring child soldiers?*
 - * *Do the laws protect children being adopted and street children from exploitation?*
 - * *Do the laws protect domestic workers from exploitation?*
 - * *Do the reports highlight that trafficked women and children are victims of exploitation and discuss the impact of not treating migration and trafficking as separate issues?*
 - * *Do the laws strictly regulate proper documentation at birth? Is failure to implement the laws a root cause for exploitation?*
 - * *Do the laws allow institutionalized exploitation, as in the case where women receive less salary than the male counterparts?*
- Implementation, Monitoring and Enforcement
 - * Monitoring Mechanisms
See B.3.a
 - * Complaints Process
See B.3.b
 - * Protection and Rehabilitation
See B.3.c
 - * Prevention Measures
See B.3.d
 - Role of Non-State Actors
 - * Assistance to Victims
See B.4.a
 - * Prevention Programs
See B.4.b
 - * Monitoring and Cooperation
See B.4.c
Also consider how non-state actors collaborate with other non-state actors in and beyond the ASEAN region.
 - Progress Indicators and Challenges
See B.5.
 - Recommendations for Further Study
 - * Give a summary of what is and is not known
 - * Identify areas of controversy and resolve conflicts amongst seemingly contradictory reports
 - * Recommend areas for data collection and further research

ABUSE AND DISCRIMINATION IN MIGRATION

- Description of the Problem
 - * Prevalence of Abuse and Discrimination in Migration
See B.1.a

In addition, do the reports give information on prevalence of abuse and discrimination of migrant women and their children according to whether the State concerned is the country of origin, transit or destination?

Do the reports provide information on prevalence of abuse and discrimination of children who migrate on their own?

Do the reports study the means/patterns employed by persons committing and facilitating abuse of migrant women and the human rights violations committed on them?

Do the reports show or emphasize the connection between migration and violence, abuse, and exploitation because of the increased vulnerability of migrants?

- * Root Causes of Abuse and Discrimination in Migration and Aggravating Practices
See B.1.b
- * Impact of Abuse and Discrimination in Migration
See B.1.c
- De Jure State Responses
 - * Bases of State Responsibility
See B.2.a
Also consider international, bilateral and regional agreements/declarations, such as the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).
 - * National Policies Against Abuse and Discrimination in Migration
See B.2.b
In addition, do the reports identify policies by the State relative to abuse and discrimination of migrant women and children, according to whether the state is the country of origin, transit or destination?
 - * Assessment of State Policies
See B.2.c
In particular, consider recommendations of the reports relative to compliance with CEDAW Recommendation No. 26 on Women Migrant Workers.
Also consider recommendations of the reports regarding compliance of state laws and policies with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and applicable ILO Conventions, e.g., Convention Concerning Decent Work for Domestic Workers (No. 189).

Examples (consider whether or not the reports address the question):

- * *Do the laws provide for safe migration and protection of rights of children and women migrant workers?*
- * *Do the laws prohibit sex-specific bans and discrimination restrictions on women's migration on the basis of age, marital status, pregnancy or marital status and the requirement of permission from the spouse or male guardian to obtain a passport or to travel?*
- * *(For countries of destination: Do they restrict permission to women migrant workers to be employed in male-dominated jobs? Do they exclude female-dominated occupations from visa schemes? Do they prohibit women migrant workers from marrying nationals, permanent residents, becoming pregnant or securing independent housing?)*
- * *Do the laws define and penalize irregular recruitment?*
- * *Does the state ensure that women who wish to return to countries of origin are able to do so free of coercion and abuse?*
- * *Do the laws/state policies protect freedom of movement of women migrant workers, e.g., disallow confiscation of travel documents by employers and forced seclusion or locking in homes?*
- * *Note: Consider that some of these circumstances may fall under exploitation (forced labour or services, slavery or practices similar to slavery). In which case, the researcher should exercise discretion and account for the circumstance in the section (Exploitation vs Migration) most appropriate and mention whether or not the report makes the connection between vulnerability of migrants and exploitation.*
- * *Do the laws ensure that migrant workers enjoy treatment not less favourable than that which applies to nationals of the State in respect of remuneration and other conditions of work, e.g., overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship?*
- * *Do the laws and policies ensure that migrant women workers and migrant children are given equality before the law as regards legal remedies?*

- * *Do the laws and policies ensure that the core principles of the CRC (non-discrimination; best interests of the child; the right to life, survival and development; and considering the views of the child in decisions which affect them) are also applied to migrant children and not only its nationals?*
- * *Does the state grant children of migrant workers and migrant children access to education, emergency medical care, social services, on the basis of equality of treatment with nationals of the State concerned?*
- * *Do the reports identify structural vulnerabilities or gaps in legal framework as regards women and children migrants, e.g., when a migrant woman marries a national, in the process losing her nationality, and later on loses the nationality of her spouse when she is divorced by him?*
- Implementation, Monitoring and Enforcement
 - * Monitoring Mechanisms
See B.3.a
Examples to consider would be assessments by the reports of an accreditation and monitoring system to ensure respect of rights and good practices among recruitment agencies and/or a system for monitoring of workplaces of migrant women.
Do State agencies, including embassies, monitor their nationals in the destination countries? What is the extent of assistance given to their citizens?
 - * Complaints Process
See B.3.b
In addition, do the reports study whether or not, aside from documented migrants, undocumented ones can also bring actions and receive remedies?
 - * Protection and Rehabilitation
See B.3.c
 - * Prevention Measures
See B.3.d
In particular, do the reports assess State education and awareness programs that give information on potential exploitation (including recommended contents of labor contracts, legal rights, procedure for invoking redress and procedure for migration to women who wish to migrate independently of recruitment agencies)? Is there a program to raise community awareness of the risks, dangers and opportunities of migration?
How available and accessible are these information and how widespread is the awareness program?
- Role of Non-State Actors
 - * Assistance to Victims
See B.4.a
 - * Prevention Programs
See B.4.b
 - * Monitoring and Cooperation
See B.4.c
Also consider how non-state actors collaborate with other non-state actors in and beyond the ASEAN region.
 - * Progress Indicators and Challenges
See B.5.
- Recommendations for Further Study
 - * Give a summary of what is and is not known
 - * Identify areas of controversy and resolve conflicts amongst seemingly contradictory reports
 - * Recommend areas for data collection and further research

Annex D: Consolidated List of International and Regional Instruments Referenced in the Country Reports

i. International and Regional Treaty Instruments Relative to Violence, Exploitation, and Migration of Women and Children

INTERNATIONAL AND REGIONAL TREATY INSTRUMENTS RELATIVE TO VIOLENCE, EXPLOITATION, AND MIGRATION OF WOMEN AND CHILDREN										
Instrument	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		(A)	(R)	(S)			(A)		(A)	
Optional Protocol to the Convention Against Torture		(R)								
Convention on the Elimination of All Forms of Discrimination Against Women	(A)	(S) (A) ⁸⁷³	(R)	(R)	(A)	(A)	(R)	(A)	(A)	(R)
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women		(R)	(S)				(R)		(R)	
Convention on the Political Rights of Women		(S)	(R)	(A)		(S)	(R)		(R)	
Convention on the Prevention and Punishment of the Crime of Genocide		(A)		(A)	(A)	(R)	(R)	(A)		(A)
Convention Relating to the Status of Refugees (1951)		(A)					(A)			
Protocol Relating to the Status of Refugees 1967		(A)					(A)			

873 Although Democratic Kampuchea had signed both [the International Covenant on Economic, Social and Political Rights and the International Covenant on Civil and Political Rights] on 17 October 1980..., the Government of Cambodia deposited an instrument of accession to the said Covenants."⁸ Convention on the Elimination of All Forms of Discrimination against Women," United Nations Treaty Collection, note 11, http://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&lang=en#10 (accessed 3 July 2012).

Convention Relating to the Status of Stateless Persons (1954)							(R)			
Convention on the Rights of the Child (1989)	(A)	(A)	(R)	(A)	(A)	(A)	(R)	(A)	(A)	(R)
Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography	(A)	(R)	(S)	(A)	(A)	(A)	(R)		(A)	(R)
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”		(R)	(S)	(A)	(A)		(R)	(R)	(A)	(R)
Optional Protocol to the Convention on the Rights of the Child on a communications procedure										
Convention on the Rights of Persons with Disabilities	(S)	(S)	(R)	(R)	(R)	(A)	(R)		(R)	(S)
Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption (1993)		(A)					(R)		(R)	(R)
Hague Convention on the Civil Aspects of International Child Abduction								(A)	(A)	
International Convention on the Elimination of All Forms of Racial Discrimination		(R)	(A)	(A)			(R)		(A)	(A)
International Convention for the Protection of All Persons from Enforced Disappearance			(S)	(S)					(S)	
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families		(S)	(R)				(R)			

International Covenant on Civil and Political Rights		(A)	(A)	(R)			(R)		(A)	(A)
International Covenant on Economic, Social and Cultural Rights		(A)	(A)	(R)			(R)		(A)	(A)
International Labour Organization Convention No. 1 – Hours of Work (Industry) (1919)						(R)				
International Labour Organization Convention No. 4 – Night Work (Women) Convention (1919) (SHELVED)		(R)				DE-NOUNCED 1961				
International Labour Organization Convention No. 6 – Night Work of Young Persons (Industry) (1919)		(R)		(R)		(R)				(R)
International Labour Organization Convention No. 11 – Right of Association (Agricultures) (1921)					(R) Peninsular Malaysia & Sarawak only	(R)		(R)		
International Labour Organization Convention No 13 – White Lead (Painting) (1921)		(R)		(R)						
International Labour Organization Convention No. 14 – Concerning Weekly Rest (Industry)					(R) Sarawak only	(R)			(R)	(R)
International Labour Organization Convention No. 15 – Minimum Age (Trimmers and Stokers) (1921) (SHELVED)					DE-NOUNCED 1977	(R)		DE-NOUNCED 2005		
International Labour Organization Convention No. 17 - Workmen's Compensation (Accidents) (1925)					(R) Peninsular Malaysia only	(R)	(R)			

International Labour Organization Convention No. 18 – Workmen's Compensation (Occupational Diseases) (1925)						(R)				
International Labour Organization Convention No. 19 – Concerning Equality of Treatment (Accident Compensation)			(R)		(R) Peninsular Malaysia & Sarawak only	(R)	(R)	(R)	(R)	
International Labour Organization Convention No. 26 – Minimum Wage-Fixing Machinery (1928)						(R)				
International Labour Organisation Convention No. 29 – Convention Concerning Forced or Compulsory Labour*		(R)	(R)	(R)	(R)	(R)	(R)	(R)	(R)	(R)
International Labour Organization Convention No. 42 – Workmen's Compensation (Occupational Diseases) (Revised 1934)						(R)				
International Labour Organization Convention No. 45 – Underground Work (Women) (1935)			(R)		(R) Peninsular Malaysia			(R)		(R)
International Labour Organization Convention No. 52 – Holidays with Pay (1936)						(R)				
International Labour Organization Convention No. 59 – Minimum Age (Industry) Convention (Revised) (1937)							DE- NOUNCED 1998 as result of ratification of ILO C-138			
International Labour Organization Convention No. 63 – Statistics of Wages and Hours of Work (1938)						(R)				

International Labour Organization Convention No. 77 – Medical Examination of Young Persons (Industry) Convention (1946)							(R)			
International Labour Organisation Convention No. 80 (1946) – Final Articles Revision Convention									(R)	(R)
International Labour Organization Convention No. 81 – Labour Inspection Convention (1947)			(R)		(R)				(R)	(R)
International Labour Organisation Convention No. 87 (1948) – Concerning Freedom of Association and Protection of Rights to Organise*		(R)	(R)				(R)	(R)		
International Labour Organisation Convention No. 88 (1948) – Concerning the Organisation of the Employment Service			(R)		(R)		(R)	(R)	(R)	
International Labour Organization Convention No. 89 – Night Work (Women) Convention (Revised) (1948)							(R)			
International Labour Organization Convention No. 90 – Night Work of Young Persons (Industry) Convention (Revised) (1948)							(R)			
International Labour Organization Convention No. 93 - Wages, Hours of Work and Manning (Sea) Convention (Revised) (1949)							(R)			
International Labour Organization Convention No. 94 – Labour Clauses (Public Contracts) Convention (1949)					(R) Sabah & Sarawak		(R)	(R)		

International Labour Organization Convention No. 118 – Equality of Treatment (Social Security) (1962)							(R)			
International Labour Organization Convention No. 122 – Concerning the Employment Policy		(R)					(R)		(R)	
International Labour Organization Convention No. 123 – Concerning Minimum Age (Underground Work)					(R)				DE- NOUNCED 2004	(R)
International Labour Organization Convention No. 127 – Concerning Maximum Weight									(R)	
International Labour Organization Convention No. 138 (1973) – Concerning Minimum Age for Admission to Employment*	(R)	(R)	(R)	(R)	(R)		(R)	(R)	(R)	(R)
International Labour Organization Convention No. 141 – Rural Workers’ Organisations Convention (1975)							(R)			
International Labour Organization Convention No. 143 – Concerning Migrant Workers (Supplementary Provisions)							(R)			
International Labour Organization Convention No. 144 – Tripartite Consultation (International Labour Standards) Convention (1976)			(R)	(R)	(R)		(R)	(R)		(R)
International Labour Organization Convention No. 149 – Nursing Personnel Convention (1977)							(R)			

International Labour Organization Convention No. 150 – Labour Administration Convention (1978)		(R)								
International Labour Organization Convention No. 156 – Concerning Workers with Family Responsibilities										
International Labour Organization Convention No. 157 - Maintenance of Social Security Rights (1982)							(R)			
International Labour Organization Convention No. 159 – Concerning Vocational Rehabilitation and Employment (Disabled Persons)							(R)		(R)	
International Labour Organization Convention No. 165 - Social Security (Seafarers) Convention (1987)							(R)			
International Labour Organization Convention No. 176 - Safety and Health in Mines Convention (1995)							(R)			
International Labour Organisation Convention No. 182 – Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*	(R)	(R)	(R)	(R)	(R)		(R)	(R)	(R)	(R)
International Labour Organisation Convention No. 189 – Convention Concerning Decent Work for Domestic Workers ⁸⁷⁴							(R)			

874 The Philippine Senate ratified the instrument on 6 August 2012; President Benigno Aquino III signed it on 18 May 2012, following the treaty's first ratification by Uruguay. The convention takes effect one year after the second ratification. "Domestic Workers Convention: Labor Rights Treaty to Take Effect," Human Rights Watch, 6 August 2012, <http://www.hrw.org/news/2012/08/06/domestic-workers-convention-labor-rights-treaty-take-effect> (accessed 7 August 2012).

International Labour Organization Migration for Employment Convention					(R) Sabah only		(R)			
Rome Statute of the International Criminal Court (ICC)		(R)					(R)		(S)	
Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol						(S)	(A)			(A)
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery		(A)		(A)	(A)		(A)	SUCCESSION		
Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries	(R)	(S)	(R)	(R)	(R)	(S)	(S)	(R)	(S)	(R)
UNESCO Convention against Discrimination in Education	SUCCESSION		ACCEPTANCE				ACCEPTANCE			
United Nations Convention against Corruption	(R)	(A)	(R)	(R)	(R)	(S)	(R)	(R)	(R)	(R)
United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others		(S)	(S)	(A)		(S)	(R)	(A)		
United Nations Convention against Transnational Organized Crime	(A)	(R)	(R)	(A)	(R)	(A)	(R)	(R)	(S)	(R)
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		(A)		(A)						

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime		(R)	(R)	(A)	(A)	(A)	(R)		(S)	(A)
Protocol against the Smuggling of Migrants by Land, Sea and Air, Smuggling Protocol supplementing the United Nations Convention against Transnational Organized Crime		(R)	(R)	(A)		(A)	(R)		(S)	
United Nations Convention on Cluster Munitions			(S)	(R)					(S)	
United Nations Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction	(R)	(R)	(R)		(R)		(R)	(R)		
United Nations 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)		(A)		(A)						
S – Signed R – Ratified A – Acceded * – Fundamental ILO Convention										

ii. Other International Instruments

- 1948 United Nations Declaration on Human Rights
- 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Riyadh Guidelines)
- 1993 Declaration on the Elimination of Violence against Women
- 1993 Principles relating to the Status of National Institutions (Paris Principles)
- 1993 Vienna Declaration and Programme of Action
- 1994 Cairo Programme of Action
- 1995 Beijing Declaration of Platform for Action
- 1996 Declaration and Agenda for Action of the 1st World Congress against Commercial Sexual Exploitation of Children (Stockholm Declaration)
- 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work
- 1999 Global Code of Ethics for Tourism
- 2000 UN Security Council Resolution 1325 on Women and peace and security
- 2001 Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.
- 2001 Yokohama Global Commitment against Commercial Sexual Exploitation of Children
- 2002 A World Fit for Children
- 2002 United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking.
- 2006 UNICEF Guidelines on the Protection of Child Victims of Trafficking
- 2007 Global Initiative to Fight Trafficking (GIFT)

2008 Declaration of Istanbul on Organ Trafficking and Transplant Tourism

2008 UN Security Council Resolution 1820

iii. Other Regional Instruments

- 1985 ASEAN Foreign Ministers Joint Statement on The Problem of Drug Abuse and Trafficking
- 1988 Declaration of the Advancement of Women in ASEAN Region
- 1993 ASEAN Plan of Action for Children
- 1994 Jakarta Declaration on the Advancement of Women in Asia and the Pacific
- 1997 ASEAN Declaration on Transnational Crime
- 1997 ASEAN Vision 2020
- 1998 Ha Noi Declaration
- 1998 Manila Declaration on the Prevention and Control of Transnational Crime
- 1999 2006 2010 Cambodia-Malaysia-Korea-Thailand Mutual Labour Cooperation
- 1999 ASEAN Plan of Action to Combat Transnational Crime
- 1999 Bangkok Declaration on Irregular Migration, adopted by several Governments in the Asian and Pacific region during the Symposium on Migration “Towards regional cooperation on irregular/undocumented migration”
- 2000 ASEAN Plan of Action for Cooperation on Immigration Matters
- 2001 Declaration on the Commitments for Children in ASEAN
- 2002 ASEAN Tourism Agreement
- 2002 Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime

- 2002 Joint Declaration of ASEAN and China on Cooperation in Non-Traditional Security Issues
- 2003 Cambodia - Malaysia - Korea - Thailand Memorandum of Understanding on Cooperation in the Employment of Workers
- 2003 Declaration of ASEAN Concord II (Bali Concord II)
- 2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children
- 2004 ASEAN Security Community Plan of Action
- 2004 ASEAN Socio-Cultural Community (ASCC) Plan of Action
- 2004 Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) Memorandum of Understanding on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-region
- 2004 Declaration on the Elimination of Violence Against Women in the ASEAN Region
- 2004 Memorandum of Understanding on the Cooperation against Trafficking in Person in the Greater Mekong Sub-Region
- 2004 Vientiane Action Programme
- 2006 Asia Regional Cooperation to Prevent People Trafficking (Asia Anti-Trafficking Project)
- 2006 Framework for Cooperation between the Association of Southeast Asian Nations (ASEAN) and the United Nations Development Fund for Women (UNIFEM)
- 2007 ASEAN Commitments on HIV and AIDS
- 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
- 2007 ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons
- 2007 Cebu Declaration Towards One Caring and Sharing Community
- 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
- 2008 Joint Statement of the ASEAN High-level Meeting on Good Practices in CEDAW Reporting and Follow-up
- 2008 Rio de Janeiro Declaration and Call to Action to Prevent and Stop Sexual Exploitation of Children and Adolescents
- 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)
- 2009 Cha-am HuaHin Declaration on Strengthening Cooperation on Education to Achieve an ASEAN Caring and Sharing Community
- 2009 Joint Declaration on the Attainment of the Millennium Development Goals in ASEAN
- 2009 Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children
- 2009 Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights
- 2010 ASEAN Statement on Human Resources and Skills Development for Economic Recovery and Sustainable Growth
- 2010 Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children
- 2010 Master Plan on ASEAN Connectivity: One Vision, One Identity, One Community
- 2010 Southeast Asia National Human Rights Institutions Forum (SEANF) Memorandum of Understanding Against Trafficking of Women and Children
- 2011 ASEAN Leaders Joint Statement in Enhancing Cooperation against Trafficking in Persons in Southeast Asia

Brunei Darussalam

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**

BRUNEI DARUSSALAM

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Formal Name : Negara Brunei Darussalam**Capital City : Bandar Seri Begawan**

Population	Male: 219,100 Female: 195,300 Both sexes: 414,400 ¹
Life expectancy	Male: 77.1 years Female: 78.3 years Both sexes: 77.7 years ²
Age Structure	0-14 years: 25.7% (male 57,500/female 49,000) 15-64 years: 70.8% (male 154,700/female 138,800) 65-over: 3.5% (male 6,900/female 7,500) ³
Sex ratio	At birth: 1.047 male(s)/female Under 15: 1.06 male(s)/female 15-64 years: 0.99 male(s)/female 65-over: 0.94 male(s)/female Total: 1 male(s)/ female (2010 est.) ⁴
Religion	Muslim (official): 67% Buddhist: 13% Christian: 10% Other (includes indigenous beliefs): 10% ⁵
Ethnic groups	Malay: 66.3%, Chinese: 11.2%, indigenous: 3.4%, other: 19.1 % (2004 est.) ⁶
Functional Literacy rate	Male: 96.82 (age of 15 and above) Female: 93.67 (age of 15 and above) Both sexes: 95.24 ⁷
Net enrolment ratio in secondary schools	Male: 20,849 Female: 18,995
Migration rate	2.64 migrant(s)/1,000 populations (2010 est.) ⁸
Number of citizens working overseas	Male: No data Female: No data
Percentage of female-headed households	No data
Labour force participation rate	Male: 76.4 Female: 58.0 ⁹

1 Brunei Darussalam Statistical Yearbook, 2010.

2 US Department of State, Brunei Darussalam, 28 October 2011.

3 Brunei Darussalam Statistical Yearbook, 2010

4 Central Intelligence Agency (CIA), *the World Factbook* – Brunei Darussalam.

5 *Ibid.*

6 “Brunei Darussalam Ethnic Groups-Demographics,” accessed January 3, 2012, www.indexmundi.com/Brunei_Darussalam/ethnic_groups.html.

7 “Brunei Darussalam-literacy rate,” www.indexmundi.com/facts/Brunei_Darussalam/literacy-rate.

8 Central Intelligence Agency (CIA), *the World Factbook* – Brunei Darussalam, available at: http://www.theodora.com/wbfcurent/Brunei_Darussalam/Brunei_Darussalam_people.html, accessed January 3, 2012.

9 Brunei Darussalam Statistical Yearbook, 2010.

Unemployment rate	Male: 2.0 Female: 3.7 ¹⁰
Proportion of unpaid family workers	Male: No data Female: No data
Fertility rate	1.85 children born/woman (2012 est.) ¹¹
Maternal mortality rate	21 deaths/100,000 live births ¹²
Infant mortality rate	6.1 (39 deaths/1,000 live births) ¹³
Legal definition of 'child'	'Child' means a person who has not attained the age of 14 years 'Juvenile' means a person who has attained the age of 7 years of age but who has not attained the age of 18 years 'Young person' means a person who has attained the age of 14 years of age but who has not attained the age of 18 years. [Part I, Section 2, Children and Young Persons Order, 2006] ¹⁴
Age of majority	18 years old ¹⁵
Marriageable age	14 years old ¹⁶
Age of consent	16 years old Any person who has or attempts to have carnal knowledge of a girl under the age of 16 years except by way of marriage shall be guilty of an offence [Section 2, Unlawful Carnal Knowledge Act, Cap 29: An Act to render unlawful the having of carnal knowledge of a girl under 16 years of age] ¹⁷ 14 years old No two persons shall be capable of contracting a valid marriage unless the following conditions are fulfilled, namely: (a) That both parties to the intended marriage have reached the age of 14 years [Section 3, A, Marriage Act Cap 76: An act to provide for the solemnization and registration of church and civil marriage] ¹⁸
Age of criminal responsibility	7 years old 'Youthful offender' includes any child convicted of an offence punishable by fine or imprisonment who in the absence of legal proof to the contrary is above the age of 7 and under the age of 18 years in the opinion of the Court before which such child is convicted. [Part 1, Chapter 1 of the Chapter 7 of the Criminal Procedure Code, Cap 7: An Act to establish a Code of Criminal Procedure] ¹⁹

10 *Ibid.*

11 "Central Intelligence Agency, *the World Factbook* - Brunei Darussalam," accessed May 30, 2012, <https://www.cia.gov/library/publications/the-world-factbook/fields/2127.html>

12 "Brunei Darussalam Demographics Profile 2011," accessed January 3, 2012, http://www.indexmundi.com/Brunei_Darussalam/demographics_profile.html.

13 Brunei Darussalam Statistical Yearbook, 2010.

14 Children and Young Persons Order, 2006.

15 "Brunei Darussalam: Age of Sexual Consent," accessed January 16, 2012, available at: www.ageofconsent.com/Brunei_Darussalam.html.

16 The Marriage Act (Cap 76).

17 Unlawful Carnal Knowledge (1984).

18 *Ibid.*

19 Criminal Procedure Code (Cap 7): An Act to establish a Code of Criminal Procedure.

Minimum age of employment	<p>16 years old²⁰</p> <p>Section 48. Persons under the age of 16 years shall not be recruited: Provided that young persons under that age may be recruited with the consent of their parents or guardians for employment upon light work in an occupation approved by the Commissioner.</p> <p>Section 24. (1) A person whose apparent age is less than 16 years shall not be capable of entering into contract.</p> <p>(2) Notwithstanding anything contained in any written law a person whose apparent age exceeds 16 years but is less than 18 years shall be capable of entering into a contract for employment in an occupation approved by the Commissioner as not being injurious to the moral and physical development of non-adults. [Laws of Brunei Darussalam, Chapter 93 Labour]</p>
Minimum age for military recruitment and participation	<p>17 ½ years²¹</p> <p>‘Eligible young person’ means an eligible person who has attained the age of 17 ½ years [Part 1, Section 2, Laws of Brunei Darussalam, Chapter 149, Royal Brunei Darussalam Armed Forces]</p>



Map of Brunei Darussalam
(Source: Millennium Development Goals)

Brunei Darussalam GDP

<i>Recent economic indicators:</i>	2006	2007	2008	2009	2010(a)	2011(b)
GDP (US\$bn) (current prices):	11.5	12.2	14.4	10.7	12.4	15.6
GDP PPP (US\$bn) (c):	18.9	19.5	19.5	19.4	20.1	21.2
GDP per capita (US\$):	29,929	31,404	36,223	26,423	29,675	36,521
GDP per capita PPP (US\$) (c):	49,431	50,029	49,139	47,797	48,333	49,518
Real GDP growth (% change yoy):	4.4	0.2	-1.9	-1.8	2.6	2.8
Current account balance (US\$m):	6,472	6,254	7,835	4,318	5,573	7,560
Current account balance (% GDP):	56.4	51.1	54.3	40.2	45.0	48.5
Good exports (% GDP):	73.0	69.4	80.2	75.3	81.4	na
Inflation (% change yoy):	0.2	1.0	2.1	1.0	0.4	1.8

Source: Brunei Darussalam Factsheet Compiled by the Market Information and Research Section, DFAT, using the latest data from the ABS, the IMF and various international sources.³

²⁰ Labour Act (Cap 93).

²¹ Royal Brunei Armed Forces, Chapter 149, 19.

²² Available at: <http://www.dfat.gov.au/geo/fs/brun.pdf>.

A. OVERVIEW

Brunei Darussalam is an independent Sultanate, founded on a written constitution promulgated in 1959 and amended later in 1984 and 2004. His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam is the executive authority and Head of State; governance is facilitated by a Council of Cabinet Ministers, Religious Council, Privy Council, a Council of Succession, and a Legislative Council.²³ The Millennium Development Goals, a government publication, states that:

Brunei Darussalam has practiced an integrated and systematic socio-economic planning since the early 1950s, realized through eight series of five-year National Development Plan or *Rancangan Kemajuan Negara* (RKN). The development strategies pursued over these RKN had been the keys to the successful creation of wealth in the economy, improvement in the quality of life of the people, political stability, and maintaining a clean and healthy environment.²⁴

One of Brunei Darussalam's eight strategies is its Social Security Strategy which seeks to 'ensure that, as the nation prospers, all citizens are properly cared for.' During the 13th session of the Human Rights Council on 4 Jan 2010, the Brunei Darussalam delegation highlighted this fact and in 2007/2008 the country scored 0.894 on the Human Development Index, ranking 30th out of 177 nations. Brunei Darussalam attributed this to its national efforts to achieve national harmony, unity, stability and prosperity by guaranteeing equitable socio-economic development, an approach to promote respect towards human rights.²⁵

Baseline Study on Violence, Exploitation, and Abuses in Migration Affecting Women and Children

The baseline information utilized in this report are reports from the United Nations Human Rights Council, the Committee on the Rights of the Child, International Labour Organization,²⁶ human rights reports from non-state organizations, statistics from the World Bank,²⁷

UNICEF,²⁸ International Human Development Indicators,²⁹ information from Brunei Darussalam media, and data from various government agencies. The information gathered is substantiated by relevant orders, acts and laws provided for in the Attorney General's Chamber.³⁰

For the 13th session of the Human Rights Council on 4 January 2010, in the Report of the Working Group on the Universal Periodic Review for Brunei Darussalam, the Brunei Darussalam delegation emphasized the efforts of its government to ensure the welfare of their people, including the provision of a peaceful environment, a first-class health system, a top class educational system, adequate housing, providing for people in need, addressing poverty, ensuring food security, and jobs for the people. Education remains a top priority, taking up 12% of the national budget. This important policy of providing free education to all has led to Brunei Darussalam having one of the highest literacy rates of 94.9% in Asia. The percentage of women's participation in education has also increased, with 73% of the total graduates in 2007 being female. The provision of a comprehensive free health-care system for the people is another priority, in urban and rural areas. Its target was to attain 'Health for All'. Emphasis is placed on the development of a healthcare system based on primary healthcare, aimed at providing a wide range of preventive, promotion, curative and rehabilitative healthcare and support services.³¹

While Brunei Darussalam has done much to better the welfare of its people, it has not acceded to a number of international treaties and has maintained reservations to the CRC and CEDAW. Based on the 6th Session of the Human Rights Council Working Group on the Universal Periodic Review held in Geneva from 30 November to 11 December 2009, the scope of Brunei Darussalam's international obligations are as follows:³²

23 Available at: <http://www.dfat.gov.au/geo/fs/brun.pdf>.

24 *Ibid.*, 3.

25 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Brunei Darussalam*, A/HRC/13/14, (UN Human Rights Council: 2010), accessed March 4, 2012, <http://www.unhcr.org/refworld/docid/4be279482.html>, 5.

26 International Labor Organization, *Brunei Darussalam*, accessed March 3, 2012, <http://www.ilo.org/asia/countries/brunei-darussalam/lang-en/index.htm>.

27 World Databank, accessed 3 March, 2012, <http://databank.worldbank.org/ddp/home.do>.

28 UNICEF, "At a glance: Brunei Darussalam," accessed March 3, 2012, http://www.unicef.org/infobycountry/Brunei_Darussalamdarussalam.html.

29 International Human Development Indicators, accessed March 3, 2012, <http://hdrstats.undp.org/en/indicators/68606.html>.

30 Attorney General's Chamber, accessed March 3, 2012, <http://www.agc.gov.bn/>.

31 UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 4-5.

32 UN Human Rights Council, Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 - Brunei Darussalam, A/HRC/WG.6/6/BRN/2, (UN Human Rights Council: 2009), accessed March 6, 2012, <http://www.unhcr.org/refworld/docid/4ac9fede0.html>, 2.

A. Scope of international obligations ¹			
Core universal human rights treaties ²	Date of ratification, accession or succession	Declarations /reservations	Recognition of specific competences of treaty bodies
CEDAW	24 May 2006	Yes (general, including arts. 9(2), 29(1))	-
CRC	27 Dec. 1995	Yes (general, including arts. 14, 20, 21)	-
OP-CRC-SC	21 Nov. 2006	-	-
Core treaties to which Brunei Darussalam is not a party: ICERD, ICESCR, OP-ICESCR, ³ ICCPR, ICCPR-OP 1, ICCPR-OP 2, OP-CEDAW, CAT, OP-CAT, OP-CRC-AC, ICRMW, CRPD (signature 18 Dec. 2007) CRPD-OP, CED.			
Other main relevant international instruments			Ratification, accession or succession
Convention on the Prevention and Punishment of the Crime of Genocide			No
Rome Statute of the International Criminal Court			No
Palermo Protocol ⁴			No
Refugees and stateless persons ⁵			No
Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁶			Yes, except Additional Protocol III
ILO fundamental conventions ⁷			No, except No. 182
UNESCO Convention against Discrimination in Education			Yes

Figure 1.
Brunei Darussalam Scope of International Obligations

The most recent development on the Universal Periodic Review of Brunei Darussalam is the 8 February 2011 Report of the Human Rights Council. The Council adopted decision 13/113 without a vote during the 32nd meeting of its thirteenth session, held on 19 March 2010. This refers to the Outcome of the Universal Periodic Review for Brunei Darussalam.³³

Universal Periodic Review Info, the Geneva-based non-profit NGO states that as of 3 Jan 2012, Brunei Darussalam has accepted 33 recommendations, rejected 27, while there is no clear position on 25 issues.³⁴ The recommendations that did not enjoy the support of

Brunei Darussalam, particularly those that may have a direct effect on the protection of women and children against violence, exploitation, and abuses in migration, are cited below:

- 1) R-1: Take early action to become a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) (New Zealand); become a party to other treaties, such as ICCPR and ICESCR, as soon as possible (Republic of Korea);
- 2) R-2: Sign and ratify ICCPR (Sweden);
- 3) R-3: Ratify ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (France);
- 4) R-4: Ratify ICCPR, ICESCR and CAT (Netherlands);
- 5) R-5: Ratify core international human rights

33 UN Human Rights Council, *Report of the Human Rights Council on its thirteenth session*, A/HRC/13/56, (UN Human Rights Council: 2011), accessed March 8, 2012, <http://www2.ohchr.org/english/bodies/hrcouncil/13session/>, 79.

34 Universal Periodic Review, *Reponses to Recommendations - Brunei Darussalam*, http://www.upr-info.org/IMG/pdf/recommendations_to_brunei_darussalam_2009.pdf, accessed March 2, 2012

- instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ICESCR, ICCPR and CAT, within the context of Council resolution 9/12 (Brazil); take the necessary steps for the ratification of ICESCR, ICCPR, ICERD and CAT (Germany);
- 6) R-6: Sign and ratify the main ILO conventions, and the main international human rights instruments, particularly ICCPR, ICESCR, CAT and the International Convention for the Protection of All Persons from Enforced Disappearance (CED) (Spain);
 - 7) R-7: Consider signing or ratifying, as appropriate, the following international human rights instruments: the Optional Protocols to ICCPR, CAT, the Rome Statute of the International Criminal Court and the Convention on the Prevention and Punishment of the Crime of Genocide (Chile);
 - 8) R-8: Consider an early ratification of the Optional Protocols to ICCPR and ICESCR, CAT and the Rome Statute (Slovakia);
 - 9) R-9: Sign the Second Optional Protocol to ICCPR, Aiming at the Abolition of the Death Penalty (Portugal);
 - 10) R-10: Adhere to principles of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and consider favourably possibly ratifying it (Mexico);
 - 11) R-11: Consider the possibility of ratifying CED (Argentina);
 - 12) R-16: Revise its Penal Code so as to criminalize all acts of rape without exception and irrespective of the marital status and the gender of the victim (Netherlands); revise section 375 of the Penal Code so as to criminalize all acts of rape without exception and irrespective of the marital status and gender of the victim (Slovenia); review section 375 of the Penal Code in order to criminalize all acts of sexual violence, regardless of matrimonial status or the victim's gender (Spain); strengthen the protection of women and children by modifying section 375 of the Penal Code, which does not recognize marital rape even when the spouse is a minor (France);
 - 13) R-17: Repeal or amend all provisions in domestic laws which provide for caning for administrative offences involving immigration law (Canada);
 - 14) R-18: Specifically prohibit corporal punishment in institutions (Germany); prohibit corporal punishment in other public institutions and abolish whipping as a form of punishment (Italy); abolish the practice of corporal punishment (France); legally prohibit any form of corporal punishment of children and adolescents (Chile);
 - 15) R-19: Repeal or amend the Internal Security Act so as to abolish all forms of administrative detention (Canada); abrogate or amend the Internal Security Act and all legislation allowing for detention without trial (Spain); review the Internal Security Act of 1982 in order to bring it into line with international standards (Slovakia);³⁵
- The scheduled Human Rights Council Universal Periodic Review (Second Cycle) places Brunei Darussalam in the 19th session on 2014.³⁶

B. VIOLENCE

1. Description of the Problem

a. Prevalence of Violence

It is observed that aside from the fact that the statistics reported do not include a definition of their indicators nor provide the scope of the survey, there are also significant inconsistencies in the figures provided by various agencies in Brunei Darussalam. For instance, the Department of Community Development or *Jabatan Pembangunan Masyarakat* (JAPEM) reported 21 domestic violence and 41 child abuse occurrences from 2004 to 2006; it also reported a total of 563 domestic violence cases for the same period. These indications may be a result of an absence of a well-defined methodology in the collection of data. Further, the reports do not contain information as to the profile, location, educational attainment, income, age, sex of the persons violated and the person inflicting violence. The type of violence, circumstance, degree, and duration are also not included in the agency reports.

³⁵ *Ibid.*

³⁶ Universal Periodic Review, *Human Rights Council Universal Periodic Review Second Cycle*, accessed March 4, 2012, http://www.upr-info.org/IMG/pdf/UPR-FullCycleCalendar_2nd.pdf.

During the Domestic Violence Symposium held in Brunei Darussalam in 2008, the statistics provided pertaining to the occurrence of domestic violence are as follows: 81 in 2000; 102 in 2001; 102 in 2001; 160 in 2003; 173 in 2004; 193 in 2005; and 197 in 2006. These statistics referring to domestic violence include abuses towards wives, husbands, ex-wife, ex-husband, maids and children.³⁷ According to statistics from the Community Development Department, cases of domestic violence in the country increased, citing an increase of 81 cases to 214 from 2000 to 2007, which totals to 264 per cent increase in seven years.³⁸

The Department of Community Development (JAPEM) recorded 53 family related cases from 2004 to 2006 which were classified as: 21 domestic violence cases, 6 child custody cases, 4 family conflicts cases, 4 on housing problems concerning wives, 4 on financial problems, 4 for begging, 2 cases of poverty stricken families, 2 for neglecting the elderly, 2 cases of alimony and 4 others. Also between 2004 and 2006, there were 105 child related cases recorded by JAPEM, classified as: 41 child abuse, 36 for youth beyond parental control, 14 for neglecting children, six abandoned babies, six over schooling of children and two others.³⁹

The Community Development Statistics recorded from June to October 2010 no cases of violence against women. However, there are a total of 7 cases found in November and December 2010. From January 2011 to September 2011, there are a total of 17 cases. The information did not indicate the type of injuries or type of violence incurred.⁴⁰

In a report by the Department of Criminal Intelligence, the number of domestic violence cases from 2005 to 2009 is as follows: 175 (2005), 142 (2006), 155 (2007), 158 (2008) and 122 (as of August 2009). Among these, marital abuse involves 160 (2005), 123 (2006), 137 (2007), 132 (2008) and 100 (as of August 2009).⁴¹

37 Womensphere, "Brunei Darussalam Lacks Legislation on Domestic Violence", accessed March 6, 2012, <https://womensphere.wordpress.com/2008/04/25/BruneiDarussalam-lacks-legislation-on-domestic-violence/>.

38 "Domestic violence cases on the rise in Brunei: Sermon," *The Brunei Times*, 5 July 2008, accessed March 8, 2012, http://www.bruneitimes.com.bn/home_news/2008/07/05/domestic_violence_cases_on_the_rise_in_brunei_sermon.

39 Womensphere, "Brunei Darussalam Lacks Legislation On Domestic Violence."

40 Department of Community Development, Brunei Darussalam.

41 Azaraimy HH, "Police Urge Abused Wives to Speak Up", *Borneo Bulletin Weekend*, 26 September 2009, accessed March 15, 2012, <http://www.brusearch.com/news/51417>.

The table below shows the number of cases that were reported to the Royal Brunei Darussalam Police Force over the last three years. As the data presented are only those cases that were actually reported to the police, the actual occurrence may be higher than what is reflected in the report.⁴²

Violence Cases Reported to RBPF

Offence ⁴³	2009	2010	2011
Wife Abuse	119	117	85
Husband Abuse	6	3	2
Child Assault	26	24	16
Maid Abuse	5	9	7
Family Abuse	13	12	4
Rape	31	27	15
Incest	8	4	4
Outrage of Modesty	8	7	5
Underage Sex	22	29	22
Abandoned Babies (Alive)	2	1	2
Abandoned Babies (Dead)	2	5	2
Problematic Teenagers	13	9	7
Total	255	247	171

Violence Affecting Women

Senior Investigating Officer of the Criminal Investigating Unit for Women and Child Abuse P/ASP Mariyani bte Abd Wahab observes that the decline of reported cases should increase concern as it may indicate that more victims are not disclosing their situation. She added that as more cases are reported and recorded, it indicates that more women are aware of their rights. For cases of withdrawn complaints, Brunei Darussalam police issues a stern warning to the offender. However, according to ASP Mariyani, the main problem is that most abused wives are either embarrassed or reluctant to report their husbands and most women in Brunei Darussalam are still financially dependent on their husbands. In Brunei Darussalam, domestic violence is viewed as a community problem where both the abused and the abuser are considered to require counselling. It was stressed, however, that for abuse involving the 'protected group', consisting of children or young persons below 18, the abuser is

42 ASP Mariyani Abdul Wahab, Letter to Editor: "Awareness, Prevention and Intervention," *The Brunei Times*, December 2, 2011, accessed January 4, 2012, <http://www.bt.com.bn/letters-editor/2011/12/02/awareness-prevention-intervention>.

43 *Ibid.*

immediately arrested and charged correspondingly.⁴⁴

On 25 June 2008, Dayang Hajah Saemah, head of the NDP women's Assembly highlighted the increasing number of educated women in Brunei Darussalam and stressed that women's participation in the workforce was more than 40%. However, in the most vulnerable communities, women are constantly exposed to the problems of torture, abuse and neglect, while some are even the breadwinner in the household. Despite the support of established institutions such as the Domestic Violence Unit at the Royal Brunei Darussalam Police, Medical Welfare Unit in the hospitals, and the Family Advisory Services, not all cases faced by women can be solved immediately. As some of the cases have to be resolved in court, many of the women complainants are unable to defend themselves for the reason that they cannot pay for the legal services. The procedure is said to entail at least 16 stages from the filing of the complaint, which usually takes years to resolve.⁴⁵

The 2010 US Department of State Human Rights Report on Brunei Darussalam mentions that 'during the year, 23 rape cases were reported; at year's end Police were investigating 11 and had forwarded 10 cases to the Attorney General Chambers'⁴⁶ and 'there were a total of 62 cases of spousal dispute abuse reported; at year's end, 55 cases were under investigation, and eight had been forwarded to the Attorney General Chambers.'⁴⁷

Violence Affecting Children

On the issue of corporal punishment of children, the CRC Committee is concerned that 'corporal punishment is not prohibited at home, in schools or institutions and remains acceptable in the society. The Committee also notes that the new book of discipline for schools does not specifically prohibit corporal punishment nor does it even refer to it as a form of discipline.'⁴⁸

On the issue of rape, ASP Mariyani Abdul Wahab from the Women and Child Abuse Investigation Unit of the Royal Brunei Darussalam Police Force (RBPF), in her letter to the editor of *Brunei Darussalam Times* newspaper on 2 December 2011, states that in 2009, her office investigated 31 cases of rape: seven were against women below 14 and five were against women between 14-16 years of age. Among the seven cases involving women below 14 years, five met the perpetrator through online chat. Of the five cases involving women between the ages of 14-16 years, four women also met the perpetrator though on-line chat. Eight cases violating the Unlawful Carnal Knowledge Act were investigated by the WCAIU in 2009, seven of which met their perpetrator in an online chat while one case involved the victim's boyfriend. The perpetrators' ages ranged between 15-33 years old.⁴⁹

In 2010, the Women and Children Abuse Investigation Unit (WCAIU) investigated 27 cases classified as rape, six of which were against women below the age of 14 years old and four who were between the ages of 14-16 years old. Seven out of the reported 10 cases show that the victims knew the perpetrators from online chat. There were seven cases under the Unlawful Carnal Knowledge Act; all of the perpetrators in these cases, who are between ages 15-19 years, were met by the victims in an online chat. In Brunei Darussalam, a girl under the age of 14 who consents to a sexual act with a man is considered as rape, while a girl under the age of 16 who consented to a sexual act with another man is punishable under the Unlawful Carnal Knowledge Act.⁵⁰

In addition to these incidents, the relevant statistics recorded by the Community Development Department are as follows:

CHILD ABUSE CASES REGISTERED BY COMMUNITY DEVELOPMENT DEPARTMENT FOR THE YEAR 2004-2010⁵¹

CASE	2005	2006	2007	2008	2009	2010
Child abuse	10	5	8	12	12	4

Source: Community Development Department, Ministry of Culture, Youth and Sports

44 Azaraimy HH, 'Police Urge Abused Wives to Speak Up.'

45 Berita, 'Diskriminasi terhadap wanita masih wujud di Brunei,' accessed March 9, 2012, <http://www.aspirasi-ndp.com/arkib/JUN08/DiskriminasiterhadapwanitamasihwujuddiBrunei.html>

46 US Department of State, *2010 Human Rights Report: Brunei Darussalam*, accessed March 9, 2012, <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154379.htm> 11.

47 *Ibid.*

48 UN Convention on the Rights of the Child, Committee on the Rights of the Child, *Consideration of Reports submitted by States Parties under Article 44 of the Convention*, CRC/C/15/ADD.219, (Committee on the Rights of the Child: 2003), accessed March 9, 2012, [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/39be9d499b7a0157c1256df00031b980/\\$FILE/G0344676.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/39be9d499b7a0157c1256df00031b980/$FILE/G0344676.pdf).

49 ASP Mariyani Abdul Wahab, Letter to Editor: 'Awareness, Prevention and Intervention.'

50 *Ibid.*

51 Department of Community Development, Brunei Darussalam.

**CASES RELATED TO CHILDREN REGISTERED BY
COMMUNITY DEVELOPMENT DEPARTMENT
FOR THE YEAR 2004-2010**

No.	CASE	2005	2006	2007	2008	2009	2010
1.	Abandoned baby	2	2	2	-	1	1
2.	Custody rights battle (children)	8	2	3	4	2	-
3.	Beyond Parental Control	13	5	13	12	17	25
4.	Neglect Case	3	5	10	12	9	7
5.	Attempted Rape on young girls	2	1	2	2	1	-
6.	Rape Case	1	-	-	-	-	-
7.	Incest	2	3	-	5	2	-
8.	Teenage Random Sex Activities	-	1	1	1	6	2
9.	Application from Rehabilitation Program	-	-	7	8	-	2
10.	Temporary Custody of children	-	-	-	1	-	-
11.	Juvenile Cases (Referred Cases)	-	-	1	-	3	12
12.	Housing Problem	-	-	-	-	1	-
TOTAL		31	19	47	57	54	49

Source: Community Development Department, Ministry of Culture, Youth and Sports

b. Root Causes of Violence and Aggravating Practices

General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women, defines violence against women and children as follows:

... gender-based violence, that is, 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.

Article 19 of the Convention of the Rights of the Child cites that:

State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal

guardian(s) or any other person who has the care of the child.⁵²

Legal definitions of violence are provided in the Married Women Act (Amended) 2010, the Islamic Family Law (Amendment) Order 2010 and the Children and Young Persons Order of 2006. The Married Women Act (Amended) 2010 and the Islamic Family Law (Amendment) Order 2010 are not explicit on sexual and psychological violence. The Children and Young Persons Order of 2006 is explicit in its definition of physical, emotional and sexual violence against children.

In the case of Brunei Darussalam, little research has been conducted on the root causes of violence against women and children. The available resources do not employ quantitative and qualitative analysis to support their findings.

Violence in the Family

The exact incidence of domestic violence in Brunei Darussalam is difficult to determine due to social and religious considerations. Senior Investigating Officer from the Criminal Investigating Unit for Women and Child Abuse P/ASP Mariyani bte Abd Wahab states that the statistics available do not represent the full extent of the problem because not all victims report the abuse to the police.⁵³ In the family, the reported cause of domestic violence is stress, as the aggressor's feeling of despair, rage and discontent are often directed towards his wife, children and other family members.⁵⁴

As corporal punishment is not prohibited in the home, violence against children may occur. Article 89 of the Penal Code states that, with certain exceptions,

... nothing which is done in good faith for the benefit of a person under 12 years of age ... 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.⁵⁵

⁵² Article 19 (1) UN Convention of the Rights of the Child.

⁵³ Azaraimy HH, 'Police Urge Abused Wives to Speak Up'

⁵⁴ 'Domestic violence cases on the rise in Brunei Darussalam: Sermon.'

⁵⁵ Peter Newell, Brunei Darussalam Briefing for the Human Rights Council Universal Periodic Review - 6th Session, 2009, accessed March 13, 2012, http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/BN/GIEACPC_BRN_UPR_S06_2009.pdf.

Moreover, the Children and Young Persons Order of 2006 states that:

A child or young person is physically injured if there is substantial and observable injury to any part of his body as a result of the non-accidental application of force or an agent to the child's or young person's body that is evidenced by, amongst other things, a laceration, contusion, abrasion, scar, fracture or other bone injury, dislocation or sprain, haemorrhaging, the rupture of a viscous, a burn or scald, the loss or alteration of consciousness or physiological functioning or the loss of the hair or any teeth;⁵⁶

Hence, corporal punishment not resulting to physical injury as defined in Children and Young Persons Order of 2006 is not punishable under the law. The absence of a prohibition of corporal punishment may be seen as a contributing factor to the occurrence of physical violence against children.

Violence in the Community

The increase of crimes against women is said to be an indication of an increase in social problems in the country. The National Committee for Handling Social Issues identified three major social problems in Brunei Darussalam: free sex, domestic violence, and drug abuse.⁵⁷

The causes of violence against women, mentioned in the book *Penderitaan wanita di Negara Brunei Darussalam: Kes Kajian di Daerah Brunei Darussalam Muara (Torture of Women In Brunei Darussalam: Case Study in Brunei Muara District)* by Rogayah Abdullah (2005), are said to be the following: drug and alcohol addiction, pornographic movies, submissive girlfriends/ spouses and involvement in illegal crimes.⁵⁸

Vulnerability of women, including children below the age of 14, to sexual violence in the community is said to be heightened by the Internet. Cases investigated by the Women and Children Abuse Investigation Unit (WCAIU) shows that the victims of violence, classified as rape,⁵⁹ met

the perpetrators through on-line chat.⁶⁰

Women and Children Abuse Investigation Unit (WCAIU), which was established on 1 Apr 1997, aims to augment and support investigations concerning rape, sexual harassment, and violence against women in Brunei Darussalam. As of May 2010, WCAIU disclosed that there have been 300 reported cases per year; the reported number involving adolescents is expected to double from 10 in the past years, to 20 incidents. WCAIU viewed the following factors as greatly contributing to violence against adolescents: (a) the media's strong influence on the younger generation; (b) availability of internet, access to online content and networking thus making them prone to recruitment by gangs who are involved in engaging in casual sex; (c) globalisation of media resulting to the 'glamorization of sex' thus conveying negative influences; and (d) the vulnerability of young people who are easily victimized by strangers in a chat room.⁶¹

Another factor that may induce physical violence towards children, particularly youth offenders, is the use of corporal punishment as a mode of discipline. Corporal punishment is lawful as a disciplinary measure in penal institutions. Under sections 51-55 of the Youthful Offenders (Places of Detention) Rules (2001), males under the age of 14 may be given up to six strokes with a light cane; older children may be given up to 10 strokes. The medical officer must certify that the person is able to sustain the punishment. Section 76 of the Children and Young Persons Order would permit the use of 'such force as is reasonable and necessary' in order to 'ensure good order and discipline'.⁶² There is no prohibition of corporal punishment in alternative care settings, where article 89 of the Penal Code provides a legal defence for its use.⁶³

c. Impact of Violence

The available reports do not include a thorough study on the physical, psychological and social impact of violence against women and children. Rogayah Abdullah's 2005 book *Penderitaan wanita di Negara Brunei Darussalam: kes kajian di Daerah Brunei Muara (Torture of Women In*

56 Children and Young Persons Order 2006, *loc.cit.*

57 NIEW, The Inaugural Course On Gender And Development: A Report (Malaysia: NAM Institute for the Empowerment of Women (NIEW) and Ministry of Women, Family and Community Development:2007).

58 Rogayah Abdullah, *Penderitaan wanita di negara Brunei Darussalam: kes kajian di daerah Brunei Muara (Torture of Women In Brunei Darussalam: Case Study in Brunei-Muara District)*, (Brunei Darussalam: Dewan Bahasa dan Pustaka, 2005).

59 In Brunei Darussalam, any sexual act with a girl under the age of 16 is illegal under the Unlawful Carnal Act except by way of mar-

riage. Under the Penal Code, rape is defined as 'any man who has intercourse with a woman with or without her consent when she is under 14 years of age.'

60 ASP Mariyani Abdul Wahab, 'Awareness, Prevention and Intervention.'

61 Syazwan Sadikin, 'Speak Out to Stop The Abuse of Children,' *The Brunei Times*, May 1, 2010, accessed March 13, 2012, <http://www.bt.com.bn/features/2010/05/01/speak-out-stop-abuse-children>.

62 Newell, Brunei Darussalam Briefing for the Human Rights Council Universal Periodic Review.

63 *Ibid.*

Brunei Darussalam: Case Study in Brunei Muara District) included a survey conducted among female respondents. The following results were gathered:⁶⁴

- 1) 92% agree that domestic violence can cause divorce and broken families
- 2) 83% agree that domestic violence can affect children's education
- 3) 79% agree that work is disrupted due to the necessity to go to the police and the court
- 4) 79% agree that this incident will bring a negative effect on the family's reputation
- 5) 63% agree that domestic violence would incur more expenses due to frequent visits of the husband to hospital
- 6) 83% agree that violence against women brings a lot of misery, psychological effect and physical injury
- 7) 79% agree that the husband will lose many opportunities if imprisoned
- 8) 50% agree that they would murder their husband due to the injury inflicted upon them

2. De Jure State Responses

a. Bases of State Responsibility

Brunei Darussalam accepts the principles of the United Nations Charter and supports the work of the organization in addressing various international threats, issues, and challenges. It has signed/ acceded to the following Human Rights treaties related to women and children:⁶⁵

- a. 27 December 1995: Convention on the Rights of the Child with reservations to Articles 14⁶⁶, 20⁶⁷, and 21;⁶⁸
- b. 24 May 2006: Convention on the Elimination of all Forms of Discrimination against Women with reservations to Article 9(2) and Article 29 (1);^{69,70}

64 Rogayah Abdullah, *Torture of Women In Brunei Darussalam Darussalam: Case Study in Brunei-Muara District*.

65 UN Human Rights Council, National Report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1 - Brunei Darussalam, A/HRC/WG.6/6/BRN/1, September 9, 2009, accessed March 6, 2012, <http://www.unhcr.org/refworld/docid/4ac9f9dfd.html>, 10.

66 UN Convention of the Rights of the Child, Adopted and Opened for Signature, Art. 14.

67 *Ibid.*, Art. 20.

68 *Ibid.*, Art. 21; see also UN Human Rights Council, *National Report*, 10.

69 Article 9(2) CEDAW.

70 UN Human Rights Council, National Report, 10.

- c. 21 November 2006: Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography;
- d. As signatory on December 18, 2007: Convention on the Rights of Persons with Disabilities; and
- e. June 9, 2008: C182 ILO Worst Forms of Child Labour Convention, 1999.⁷¹

Brunei Darussalam ratified the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women, both of which are considered as the fundamental bases of upholding the protection of women and children against violence and exploitation.

In the CRC, it made reservations to articles 14, 20 and 21. The reservations were made on the basis that these articles may conflict with the Constitution of Brunei Darussalam and the teaching of Islam.⁷² Article 3(1) of the Constitution of Brunei Darussalam provides that: 'The official religion of Brunei Darussalam shall be the Islamic Religion: Provided that all other religions may be practised in peace and harmony by the persons professing them.'

Below are the reservations of Brunei Darussalam made to the CRC:

Article 14: States Parties shall respect the right of the child to freedom of thought, conscience and religion; 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child; 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 20: 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State; 2. States Parties shall in accordance with their national laws ensure alternative care for such a child; 3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in

71 *Ibid.*

72 Amnesty International, Brunei Darussalam: Submission to the UN Universal Periodic Review, April 13, 2009, accessed March 8, 2012, <http://www.amnesty.org/en/library/asset/ASA15/001/2009/en/1f0f2a30-8919-4abb-8e20-d263499cf3d0/asa150012009en.pdf>, 4.

suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21: States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary; (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption; (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it; (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Similarly, Brunei Darussalam also made reservations to Articles 9(2) and 29(1) of CEDAW on the basis that the said articles can possibly be in conflict with the Constitution of Brunei Darussalam and the teaching of Islam.⁷³ As part of its regional commitment as a member of the ASEAN, the following regional agreements were signed/ adopted by Brunei Darussalam:

- 1) 5 July 1988 – Declaration on the Advancement of Women in the ASEAN Region;
- 2) 2 August 2011 – Declaration on the Commitments for Children in ASEAN;
- 3) 30 June 2004 – Declaration on the Elimination of Violence Against Women in the ASEAN Region;
- 4) 29 November 2004 – ASEAN against the

trafficking in Persons Particularly Women and Children

- 5) 13 January 2007– Cebu Declaration Towards One Caring and Sharing Community⁷⁴

b. National Policies against Violence

Various legal provisions are in place to uphold the welfare of women and children in Brunei Darussalam. As acknowledged by Rogayah Abdullah in a report presented during the Inaugural Course on Gender and Development in 2006, that although there is no specific policy on the protection of women, Brunei Darussalam had nevertheless established various domestic legislations that can protect women and children from violence.⁷⁵

The following are domestic laws protecting women and children from violence:

The Women and Girls Protection Act (Cap 120) provides protection for women and girls through provisions that criminalize any act that may harm and threaten, such as: 'selling or hiring women and girls for the purpose of prostitution; harbouring women and girls by false pretences of fraudulent means; setting up of brothels; detaining women and girls in a brothel or in any place for prostitution; trafficking in women and girls; and living in or trading in prostitution.'⁷⁶

The Unlawful Carnal Knowledge Act (Cap 29) penalizes sexual intercourse with a girl below the age of 16 years.⁷⁷

The Penal Code (Cap 22) provides for various offences which may be used for the protection of basic human rights such as offences affecting the human body, offences relating to religion, offences against property, defamation. It also contains provisions to protect children involved in criminal cases. The Penal Code protects the child under the age of 12 years by not considering any act done by him as an offence, and thus that child is exempted from any criminal liability due to his insufficient maturity and lack of understanding of the nature and consequences of the act. The Penal Code also penalises criminal acts against children, including:

- 1) Infanticide, exposure and abandonment of children;
- 2) Procreation of minor girl and importation of girl from foreign country for the purpose of forceful

73 *Ibid.*

74 UN Human Rights Council, National Report, 11.

75 NIEW, The Inaugural Course On Gender And Development.

76 *Brunei Darussalam: Millennium Development Goals*, 44.

77 *Ibid.*, 45.

- illicit intercourse;
- 3) Kidnapping or abducting children;
- 4) Selling and buying children for prostitution purposes; and
- 5) Rape and incest of children.⁷⁸

In abuse cases, the Penal Code (Cap 22) also provides protection for women generally, by criminalising acts that cause hurt and grievous hurt to any person, rape, incest, insult to the modesty of women and voluntarily causing a woman with a child to miscarry.⁷⁹

Married Women Act (order) of 1999, now Married Women Act (Amended) 2010 'governs the rights of married women as well as provides for matters incidental thereto such as rights to maintenance, respect of property, remedy, civil actions and legal representation and protection of a spouse physically injured. This Act however, does not apply in any matter where any of the parties professes the Islamic religion.'⁸⁰

In the absence of a special law penalizing domestic violence, the Married Women Act (Amended) 2010 defines domestic violence as the commission of any of the following acts:

- (a) wilfully or knowingly causing, or attempting to cause, a family member to be in fear or hurt;
- (b) causing hurt to a family member by such act which is known or ought to have been known would result in hurt;
- (c) compelling the family member by force or threat to engage in any conduct or act which he has the right to abstain;
- (d) wrongfully confining or restraining a family member against his will;
- (e) continual harassment with intent to cause distress, annoyance or humiliation, or knowing that it is likely to cause distress, annoyance or humiliation, to a family member; or
- (f) causing destruction, damage, or loss to property of a family member or causing financial loss to a family member.⁸¹

Other amendments include protection order, expedited order, compensation, procedure, and power of arrest.⁸² Further, the *Married Women Act (Amended) 2010* (as also contained in the *Married Women Act of 1999*) provides for the promotion of women's equality. It provides that the husband and the wife have the right to engage in their own chosen profession, including social activities. The wife has the right to use her own surname and the husband and wife have equal rights in the management of the household. This law, however, provides no particular protection with respect to the property of the wife, any effort to secure her property must be done through civil or criminal action. This law does not apply to Muslim marriages.⁸³

The *Islamic Family Law* of 1999, now the *Islamic Family Law (Amendment) Order 2010*, provides guidelines and rules to an Islamic family in terms of 'marriage, divorce, maintenance, guardianship and other matters. It provides protection for women and children by preserving and safeguarding their interests and rights in order to guarantee and promote their welfare, such as: maintenance and accommodation of married women; division of and partaken in matrimonial property for women after divorce; ill treatment of wife or husband; maintenance of dependants; and guardianship of children.'⁸⁴ The 2010 amendments include provisions pertaining to '*dharar Syar'ie*' or domestic violence with the same definitions as that of the *Married Women Act (Amended) 2010*.⁸⁵

Marital rape can fall under the definitions of 'domestic violence' and '*dharar Syar'ie*' in the preceding two orders. These orders state that causing hurt to a family member by such act that would result in injury or compel the family member by force or threat to engage in any act, from which he or she has a right to abstain, falls under the definition of '*dharar Syar'ie*' and 'domestic violence'.⁸⁶

The Criminal Procedure Code prohibits the imposition of a death sentence on a pregnant woman convicted of a capital offence, prohibition of whipping of women, and that body searches on a woman must be done by another

⁸² *Ibid.*

⁸³ Datin Hajah Adina Bte Othman, Director of Department of Community Development, Brunei Darussalam, to United Nations, High Commission for Human Rights, October 15, 2005, Brunei Darussalam Report on Violence against Women, accessed March 12, 2012, www.japem.gov.bn.

⁸⁴ *Brunei Darussalam: Millennium Development Goals*, 44.

⁸⁵ Married Woman Act Amendment Order 2010.

⁸⁶ Zareena Amiruddin, "Marital Rape: Are Women In Brunei Darussalam Protected From It?" *The Brunei Times*, August 13, 2010, accessed March 8, 2012, <http://www.bt.com.bn/news-nation-al/2010/08/13/marital-rape-are-women-brunei-protected-it>.

⁷⁸ UN Human Rights Council, National Report, 6-7.

⁷⁹ *Ibid.*

⁸⁰ *Brunei Darussalam: Millennium Development Goals*, 45.

⁸¹ Woman Act Amendment Order 2010, Article 83(3), June 28, 2010, accessed March 12, 2012, http://www.agc.gov.bn/agc1/images/LAWS/Gazette_PDF/2010/EN/s063.pdf.

woman; the *Prisons Act* contains provisions for the protection of a woman prisoner's welfare.⁸⁷

One significant development after CRC is the issuance of the Children and Young Persons Order, 2006.⁸⁸ Under this Order, several legal actions can be executed to protect the children and young persons in Brunei Darussalam. The Children and Young Persons Order 2006 includes:

- 1) Protectors, Registrar and Register (Part II)
- 2) Juvenile Courts (Part III)
- 3) Action Teams on Child Protection (Part IV)
- 4) Temporary Custody, Medical Examination and Treatment (Part V)
- 5) Offences in relation to Health and Welfare of Children and Young Persons (Part VI)
- 6) Notification on taking Child or Young Persons into Care, Custody or Control (Part VII)
- 7) Trafficking in Children and Young Persons (Part VIII)
- 8) Procedure in Juvenile Courts (Part IX)
- 9) Remand Homes (Part X)
- 10) Places of Detention (Part XI)
- 11) Approved Schools and Proved Homes (Part XII)
- 12) Provisions Applicable to persons Being Detained in Approved Schools, Approved Homes,
- 13) Remand Homes and Places of Detention (Part XIII)⁸⁹

Section 3(a) of the Children and Young Persons Order, 2006 also contains the definition of violence against children:

- (a) a child or young person is physically injured if – there is substantial and observable injury to any part of his body as a result of the non-accidental application of force or an agent to the child's or young person's body that is evidenced by, amongst other things, a laceration, contusion, abrasion, scar, fracture or other bone injury, dislocation or sprain, haemorrhaging, the rupture of a viscus, a burn or scald, the loss or alteration of consciousness or physiological functioning or the loss of the hair or any teeth;
- (b) a child or young person is emotionally injured if there is substantial and observable impairment of his mental or emotional functioning that is

evidenced by, amongst other things, a mental or behavioural disorder, including anxiety, depression, withdrawal, aggression or delayed development;

- (c) a child or young person is sexually abused if he has taken part, whether as a participant or an observer, in any activity which is sexual in nature for the purposes of any pornographic, obscene or indecent material, photograph, recording, film, videotape or performance or for the purpose of sexual exploitation by any person for that person's or another person's sexual gratification.⁹⁰

The *Childcare Centres Order 2006* 'regulates the registration, supervision and inspection of Childcare Centres, to ensure that the well-being, health and safety of every child under the childcare centres are given the utmost priority. The Department of Community Development is the licensing authority for Childcare Centres and coordinates the registration process with all relevant government agencies.'⁹¹

To address the issues of adoption in Brunei Darussalam, the *Islamic Adoption of Children Order of 2001 as revised in 2010*⁹² is being utilized to enforce the conditions and limitations prior to the grant of an adoption order, taking into consideration the welfare and protection of the child. For non-Muslims, the Adoption of Children Order of 2011 and the Guardianship of Infants Act are enforced.⁹³

c. Assessment of State Policies

During the 13th session of the Human Rights Council on 4 January 2010, the Brunei Darussalam delegation highlighted its high Human Development Index, with Brunei Darussalam ranking 30th out of 177 nations, attributing this to its national efforts to achieve national harmony, unity, stability and prosperity by guaranteeing equitable socio-economic development, an approach to promote respect towards human rights.⁹⁴

Brunei Darussalam's Long-term Development Plan (*Wawasan Brunei Darussalam 2035*) or the National Vision

⁸⁷ *Brunei Darussalam: Millennium Development Goals*, 45.

⁸⁸ Children and Young Persons Order 2006.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ UN Human Rights Council, National Report, 6.

⁹² Islamic Adoption of Children, 2010, accessed March 9, 2012, <http://www.agc.gov.bn/agc1/images/LOB/PDF/Cap206.pdf>.

⁹³ UN Human Rights Council, National Report, 8.

⁹⁴ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 5.

2035 is contained in the report Millennium Development Goals. This report cites various developmental plans for women and children. It also includes its commitment to gender development and empowerment; and states that between 2004 and 2008, there is a recorded increase from 63,500 to 70,600 of women in employment, an 11% increase in women's participation to the labour force.⁹⁵

The institutionalization of women's support through the creation of the Women's Unit under the Department of Community Development is part of Brunei Darussalam's National machinery for Women Development. The objective of the Unit is to:

[U]ndertake and coordinate programmes and activities pertaining to women affairs; undertake research/studies on women in development; collect and disseminate information on women; implement awareness programmes on women issues including the rights and responsibilities of women as agents of development including their responsibilities in strengthening the family unit in order to achieve harmonious living in family life, society and the nation; undertake awareness programmes designed to eliminate discrimination against women, such as violence against women, legislation, trafficking etc.; and encourage the participation of women in national development without compromising the stability of their marriage/family life.⁹⁶

That said, a number of suggestions were made by other member countries of the Human Rights Council regarding the improvement of Brunei Darussalam's policies on the protection of women and children.⁹⁷

Protection of Women and Children from Violence

The US State Departments 2010 Human Rights Report on Brunei Darussalam states:

... there is no specific domestic violence law, but arrests have been made in domestic violence cases under the Women and Girls Protection Act. A special unit staffed by female officers existed within the police department to investigate domestic abuse and child abuse complaints. A hotline was available for persons to report domestic violence.⁹⁸

During the 13th session of the Human Rights Council held on 8 February 2011, it was recorded that 'the delegation cited various laws regarding the protection of women's rights, including the Women and Girls Protection Act (chapter 120), the Married Women Act (chapter 190), the Islamic Family Law Order 1999, the Penal Code (chapter 22) and the Criminal Procedure Code (chapter 7)'⁹⁹ However, it must be noted that both the Married Woman Act of 1999 and Islamic Family Order of 1999 had been amended on 28 June 2010.¹⁰⁰ The amendment included provisions pertaining to '*dharar Syar'ie*' or domestic violence.

During the 34th session of the Committee on the Rights of the Child held on 27 October 2003, part of its concluding observations for Brunei Darussalam with regard to violence, abuse and maltreatment are as follows:

The Committee notes the adoption of the Children's Order 2000 and welcomes the special unit of the police established in 1997 to deal with child victims of abuse and violence, but remains concerned that there is insufficient information and awareness in the State party of the ill-treatment and abuse of children within the family and institutions. The Committee recommends that the State party:

- (a) Conduct a study to assess the nature and extent of ill-treatment and abuse of children, and design policies and programmes to address these practices;
- (b) Take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children, in the family and in institutions;
- (c) Carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;
- (d) Establish effective child-sensitive procedures and mechanisms to receive, monitor, and investigate complaints, including intervening where necessary;
- (e) Investigate and prosecute cases of ill-treatment, ensuring that the abused child is not victimized in legal proceedings and that his/her privacy is protected;
- (f) Provide care, recovery and reintegration for

⁹⁵ *Brunei Darussalam: Millennium Development Goals*, 43.

⁹⁶ *Ibid.*, 44.

⁹⁷ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 7.

⁹⁸ US Department of State, 2010 Human Rights Report.

⁹⁹ UN Human Rights Council, Report of the Human Rights Council on its thirteenth session, 177.

¹⁰⁰ Attorney General's Chamber, accessed on March 3, 2012, <http://www.agc.gov.bn/>

- child victims;
- (g) Train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill-treatment;
 - (h) Rehabilitate offenders;
 - (i) Seek assistance from, among others, the World Health Organization (WHO).¹⁰¹

Also during the 34th session of the Committee on the Rights of the Child held on October 27, 2003, the Committee expressed its concern that:

[T]he minimum age for marriage is 14 years, which the Committee considers as being far too low. The Committee is further concerned that even younger children may marry under Islamic law. The Committee recommends that the State party:

- (a) Review and, accordingly, take steps to amend its legislation so that the minimum-age requirements are gender neutral and explicit and ensure that they are enforced by law;
- (b) In particular, increase the minimum age for marriage and make it the same for boys and girls.¹⁰²

Protection of Women and Children from Rape

In the Report of the Working Group on the Universal Periodic Review during the 13th session of the Human Rights Council on 4 January 2010, the Netherlands observed that Brunei Darussalam had made broad reservations on CEDAW and CRC, and that its 'Penal Code does not criminalize marital rape if the wife is not under 13 years of age, and the rape of men and boys'. Along with this, the Netherlands made its recommendations.¹⁰³ Similarly, the 2010 Human Rights Report: Brunei Darussalam of the US State Department cites that:

[T]he law does not criminalize spousal rape; it explicitly states that sexual intercourse by a man with his wife, as long as she is not under 13 years of age, is not rape. Protections against sexual assault by a spouse are provided under the amended Islamic Family Law Order 2010 and Married Women Act Order 2010, and the penalty for breaching a protection order is a fine not exceeding BN\$2,000 (\$1,538) or imprisonment not exceeding six months.¹⁰⁴

101 UN Convention on the Rights of the Child, Consideration of Reports, 8.

102 *Ibid.*, 5.

103 UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 7.

104 US Department of State, 2010 Human Rights Report.

As stated in the Human Rights Council Working Group on the Universal Periodic Review, 6th session held in Geneva from 30 November to 11 December 2009, Amnesty International also expressed a similar observation, noting that Brunei Darussalam's Penal Code with regards to rape stipulates that 'sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.' Amnesty International said this amounts to legalisation and legitimization of marital rape, including the rape of children, in flagrant violation of international human rights law. It added that the offence of rape is limited to acts against women and girls, thus providing no protection for men and boy victims of rape.¹⁰⁵

As mentioned above, marital rape can fall under the definitions of 'domestic violence' and *dharar Syar'ie* in the Married Women Act (Amended) 2010 and Islamic Family Law (Amendment) Order 2010, respectively. These orders state that causing hurt to a family member by such act that would result in injury or compel the family member by force or threat to engage in any act, from which he or she has a right to abstain, falls under the definition of *dharar Syar'ie* and 'domestic violence'.¹⁰⁶ In Brunei Darussalam, any sexual act with a girl under the age of 16 is illegal under the Unlawful Carnal Knowledge Act (Cap 29), while its Penal Code defines rape as 'any man who has intercourse with a woman with or without her consent when she is under 14 years of age.'¹⁰⁷

On Corporal Punishment and Juvenile Justice

In the 34th session of the Committee on the Rights of a Child held on 27 October 2003, the committee expressed concern that corporal punishment is not prohibited at home, in schools or institutions and remains acceptable in the society. The Committee noted that the new book of discipline for schools does not specifically prohibit corporal punishment nor does it even refer to it as a form of discipline.¹⁰⁸ The CRC Committee 'strongly recommend[ed] that the State party prohibit corporal punishment at home, in schools and institutions and

105 UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 - Brunei Darussalam, A/HRC/WG.6/6/BRN/3, July 21, 2009, accessed March 6, 2012, <<http://www.unhcr.org/refworld/docid/4acc63f7d.html>>, 3.

106 Zareena Amiruddin, "Marital Rape: Are Women in Brunei Darussalam Protected from It?"

107 ASP Mariyani Abdul Wahab, 'Awareness, Prevention and Intervention.'

108 UN Convention on the Rights of the Child, Consideration of Report, 7.

undertake education campaigns to educate families on alternative forms of discipline.¹⁰⁹ The same report states that:

The Committee is concerned that the minimum age of criminal responsibility is set at 7 years, which is far too low. The Committee is further concerned that there is no juvenile justice system although it is foreseen in law, that children are detained with adults and that whipping is used as a form of punishment for boys.

The Committee recommended as follows:

- (a) ensure that its legislation and practice concerning juvenile justice fully reflect the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the Vienna Guidelines for Action on Children in the Criminal Justice System;
- (b) raise the minimum age of criminal responsibility to an age which is internationally acceptable;
- (c) ensure that deprivation of liberty is used only as a measure of last resort, for the shortest possible time, and that persons under 18 are not detained with adults;
- (d) abolish the sentence of whipping for boys¹¹⁰

During the Human Rights Council Working Group on the Universal Periodic Review, 6th session, held in Geneva from 30 November to 11 December 2009, the Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment is lawful in the home, in schools, and in penal institutions as a disciplinary measure. It is not prohibited in alternative care settings. GIEACPC further noted that corporal punishment can be used in the penal system as a sentence for a crime. For instance, males aged 7-17 may be sentenced to be whipped up to 18 strokes for a range of offences under the Penal Code and other laws. The Children and Young Persons Order would allow such a sentence to be passed only by the High Court. GIEACPC highlighted the concerns of the Committee on the Rights of the Child on corporal punishment and its recommendations for explicit prohibition in the home,

schools and institutions, and as a sentence of the courts. Amnesty International also recommended that Brunei Darussalam repeal or amend all provisions in domestic laws providing for caning, whipping or any other cruel, inhuman or degrading punishment.¹¹¹

Further, during the 13th session of the Human Rights Council on 4 January 2010, the Report of the Working Group on the Universal periodic Review cited the following recommendations from the member countries:

- (a) Specifically prohibit corporal punishment at home and in schools and undertake appropriate campaigns to educate families on alternative forms of discipline (Germany);
- (b) Prohibit corporal punishment at home and in schools and sensitize families in this respect (Italy);
- (c) Establish an appropriate system of juvenile justice in conformity with international standards and its international commitments (Argentina);
- (d) Take further practical steps to enhance the administration of juvenile justice (Belarus);
- (e) Continue efforts to combat ill-treatment of children and design policies and programmes to address these practices (Brazil);¹¹²
- (f) Specifically prohibit corporal punishment in institutions (Germany); prohibit corporal punishment in other public institutions and abolish whipping as a form of punishment (Italy); abolish the practice of corporal punishment (France); legally prohibit any form of corporal punishment of children and adolescents (Chile);¹¹³

During the same session, the delegation of Brunei Darussalam explained as follows:

In relation to questions on corporal punishment and sexual violence, Brunei Darussalam explained that its society was underpinned by the family system, but that there were also specific laws that sought to address all forms of physical and psychological violence and sexual abuse against children. These laws were generally in conformity with the principles and articles of CRC. Furthermore, regular and systematic awareness programmes were undertaken by the Department of Community Development to

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, 11-12.

¹¹¹ UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights, 3.

¹¹² UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 14-17.

¹¹³ *Ibid.*, 18.

publicize and sensitize society on the rights of the child, for instance, by having weekly road shows in schools and weekly media programmes. On corporal punishment in schools, the delegation indicated that it had been prohibited since 1984.¹¹⁴

In the Report of the Human Rights Council on its Thirteenth session held on 8 February 2011, the delegation of Brunei Darussalam cited an important development since its review in December 2009: the entry into force of the Children and Young Persons Order on 1 March 2010 and its replacement of the Children Order 2000. The new Order included the establishment of juvenile courts and action teams on child protection. It further enhanced the rights of children and safeguarded their welfare, and also provided for approved homes and approved schools for children in need of protection, and proper remand homes and places of detention for children admitted to legal custody. There were also provisions ensuring the recovery and social reintegration of child victims of crimes. In response to questions raised during the interactive dialogue, the delegation informed the Council that, with regard to articles 37, 39 and 40 of the CRC, those provisions had been included in chapter 22 of the Penal Code, chapter 7 of the Criminal Procedure Code and in the recently enforced Children and Young Persons Order 2006.¹¹⁵

Other Concerns

Also during the 13th session of the Human Rights Council on 4 January 2010, several recommendations from the member countries were acknowledged by Brunei Darussalam. Suggestions concerning the welfare of women and children are as follows:¹¹⁶

- (a) Consider acceding to the remaining major international human rights law instruments (Egypt, Azerbaijan, Jordan, Japan, Argentina, Algeria, Slovenia, Bangladesh);
- (b) Undertake, as recommended by the Committee on the Rights of the Child, a comprehensive review of existing legislation from a rights-based perspective, to ensure its conformity with the principles and provisions of CRC (Turkey);
- (c) Continue efforts aimed at strengthening the roles, functions and capacities of national institutions and mechanisms responsible for the

promotion and protection of human rights and fundamental freedoms, including the sharia legal system (Malaysia);

- (d) Consider potential areas of expansion for the National Council on Social Issues to enable it to further promote respect for fundamental rights and freedoms for all Brunei Darussalam Darussalam's citizens (Australia);
- (e) Continue its efforts to further strengthen its human rights infrastructure (Pakistan); continue its efforts to develop its legal and institutional framework with respect to the promotion and protection of human rights (Jordan);
- (f) Continue on-going efforts for the betterment of the rights of children and women and other vulnerable groups (Vietnam); continue to strengthen the promotion and protection of the rights of vulnerable groups, such as women, children, persons with disabilities and the elderly (Thailand); continue its efforts in strengthening, promoting and protecting the rights of women (Bahrain);
- (g) Intensify efforts to eliminate all forms of discrimination against women, inter alia through advocating and promoting women's empowerment, capacity building, gender sensitivity training and public awareness-raising activities (Malaysia);
- (h) Take concrete measures to increase the proportion of women in senior management positions in the civil service (Norway);
- (i) Further promote the proper use of technologies, with particular attention to the Internet, based on human values, respect for self and others and children's rights (Islamic Republic of Iran);
- (j) Continue to carry out its excellent effort to ensure nine years' compulsory education for all children from the age of six (Bhutan);
- (k) Continue to strengthen economic, political and social development with full participation of the population of all strata (Lao People's Democratic Republic);¹¹⁷

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanism

The agencies involved in the implementation of the national policies to protect women and children and

¹¹⁴ *Ibid.*, 13.

¹¹⁵ UN Human Rights Council, Report of the Human Rights Council on its 13th Session, 176-177.

¹¹⁶ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 14-17.

¹¹⁷ *Ibid.*

the monitoring of its operation are the Royal Brunei Darussalam Police Force, the Community Development Department, the National Children's Council and the Courts.

Royal Brunei Darussalam Police Force

The forefront in the implementation of the mechanisms for the protection of women and children is the Women and Children Abuse Investigation Unit, formerly Domestic Violence and Child Abuse Unit. This Special Unit is composed of female officers and tasked to investigate domestic violence complaints.¹¹⁸ The Domestic Violence and Child Abuse Unit was established in 1997. 'This unit was incorporated under the Anti-Vice Unit in 1999. The main focus of the unit is to protect women and children from domestic violence whether physical or mental, and its work also covers cases involving injury or abuse, neglect, maltreatment or exploitation including sexual abuse.'¹¹⁹ The unit was then renamed the Women & Children Abuse Investigation Unit (WCAIU) in 2009, still under the supervision of the Royal Brunei Darussalam Police Force. It works closely with the Medical Social Workers and the Social Affairs Services Unit, the latter being the responsible agency to provide shelter for the victims.¹²⁰

Department of Community Development

Under the Department of Community Development is the Women's Unit, which performs the following functions:

- (a) provide protection, counselling and advice to women and girls who are victimized by marital abuse, sexual abuse, drug abuse and other social ills; to provide welfare benefits, emergency relief, educational guidance, training and temporary shelter to women who are destitute, elderly, widowed, divorced, disabled or victims of natural disaster;
- (b) organize and implement self-reliant/entrepreneurial programmes in helping women become economically-independent; and
- (c) monitor the activities of women's associations in the country in order to ensure that they are in line with national development objectives.¹²¹

118 US Department of State, 2010 Human Rights Report.

119 UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of the Child: State Party report: Brunei Darussalam, CRC/C/61/Add.5, accessed March 7, 2012, <http://www.unhcr.org/refworld/docid/3f25933f2.html>, 137

120 *Ibid.*

121 *Brunei Darussalam: Millennium Development Goals*, 44.

Ministry of Culture Youth and Sports

The Social Affairs Services Unit, Ministry of Culture Youth and Sports is the coordinating body for the implementation of the CRC. For abused children, a shelter home under the supervision of the Social Affairs Services Unit, Ministry of Culture Youth and Sports, is provided. This shelter home provides the abused children counselling services, skills training, Islamic teachings and an educational facility.¹²²

National Children's Council

The National Children's Council, which was established in 2001, is responsible for formulating and monitoring the implementation of legislation related to children.¹²³ However, the CRC Committee 'notes that the National Children's Council is entrusted with the coordination of the activities of the various bodies with regard to children, while the Social Affairs Services Unit of the Ministry of Culture, Youth and Sports is the coordinating body for the implementation of the Convention. The Committee is therefore concerned that this may lead to duplication and lack of effectiveness in the implementation of the Convention.'¹²⁴ The CRC Committee also 'recommends that the State party establish a clear mandate for the National Children's Council enabling it to perform an effective coordination of the activities of government ministries and NGOs for the implementation of the Convention with adequate power, a legal framework and a general secretariat with sufficient human, financial and other resources.'¹²⁵

Attorney General's Chambers

The Islamic Family Law (Amendment) Order and the Married Women Act (Amendment) Order were promulgated on 28 June 2010. To promote the awareness and understanding of the provisions of these Orders, the Chambers has continuously made these orders known to the public with the collaboration of the Department of Community Development, Royal Brunei Darussalam Police Force, the Syariah Affairs Department, Islamic

122 UN Committee on the Rights of the Child (CRC), UN CRC: State Party Report: Brunei Darussalam, 37.

123 Representing Children Worldwide, 'Brunei Darussalam', accessed March 9, 2012 <http://www.law.yale.edu/rcw/rcw/jurisdictions/asse/bruneidarussalam/frontpage.htm>

124 UN Convention on the Rights of the Child, Consideration of Reports, 3.

125 *Ibid.*

Legal Unit of the Ministry of Religious Affairs, the Ministry of Health and the relevant enforcement agencies.

b. Complaints Process

The Women & Children Abuse Investigation Unit (WCAIU) is responsible for receiving complaints and investigation of abuse cases against women and children.¹²⁶ This special unit is staffed by female officers who investigate domestic abuse and child abuse complaints.¹²⁷ A hotline, which was initiated in 1995, is in service for abused spouses and for the public to report domestic violence.¹²⁸

The Married Women (Amended) Order 2010 and Islamic Family Law (Amendment) Order 2010 defines the power of arrest of a police officer and duties of the enforcement officer, respectively:

18H (1) Where a police officer believes on reasonable grounds that domestic violence has been committed or is likely to be committed by a person against a family member and that it is necessary for the protection of the family member for the person to be detained until a protection order or expedited order is obtained, the police officer may without warrant arrest such person and every person so arrested shall be taken to a police station; (2) Such person shall thereafter be dealt with under section 33 of the Criminal Procedure Code.

18J. (1) The duties of an enforcement officer include:

- (a) Assisting a victim to file a complaint regarding the domestic violence;
- (b) Providing or arranging transportation for the victim to an alternative residence or to a place of protection if such transportation is required
- (c) Providing or arranging transportation for the victim to the nearest hospital of medical facility for treatment of injuries if such treatment is needed
- (d) Explaining to the victim his rights to protection against domestic violence;
- (e) Accompanying the victim to his residence or previous residence to collect his personal belongings;

- (f) Such other duties as are necessary or expedient for giving effect to and carrying out the provisions of this Part

60F. (1) Where a police officer believes on reasonable grounds that *dharar Syar'ie* has been committed or is likely to be committed by a person against a family member and that it is necessary for the protection of the family member for the person to be detained until a protection order or expedited order is obtained, the police officer may without warrant arrest such person and every person so arrested shall be taken to a police station; (2) Such person shall thereafter be dealt with under section 33 of the Criminal Procedure Code (Chapter 7).

60H. (1) The duties of an enforcement officer include:

- (a) Assisting a victim to file a complaint regarding the domestic violence;
- (b) Providing or arranging transportation for the victim to an alternative residence or to a place of protection if such transportation is required
- (c) Providing or arranging transportation for the victim to the nearest hospital of medical facility for treatment of injuries if such treatment is needed
- (d) Explaining to the victim his rights to protection against domestic violence;
- (e) Accompanying the victim to his residence or previous residence to collect his personal belongings;
- (f) Such other duties as are necessary or expedient for giving effect to and carrying out the provisions of this part

c. Protection and Rehabilitation

The Women's Unit of the Department of Community Development provides the following services:

- (a) protection, counselling and advice to women and girls who are victimized by marital abuse, sexual abuse, drug abuse and other social ills;
- (b) provide welfare benefits, emergency relief, educational guidance, training and temporary shelter to women who are destitute, elderly, widowed, divorced, disabled or victims of natural disaster;
- (c) organize and implement self-reliant/entrepreneurial programmes in helping women

¹²⁶ UN Committee on the Rights of the Child (CRC), UN CRC: State Party report: Brunei Darussalam

¹²⁷ US Department of State, 2010 Human Rights Report.

¹²⁸ Online Women, 'Women's Rights Situation in Brunei Darussalam,' accessed March 10, 2012, <http://www.onlinewomeninpolitics.org/womensit/brun.pdf>.

- become economically-independent; and
- (d) monitor the activities of women's associations in the country in order to ensure that they are in line with national development objectives.¹²⁹

For abused children, a shelter home under the supervision of the Social Affairs Services Unit, Ministry of Culture Youth and Sports, is provided. This shelter home provides the abused children counselling services, skills training, Islamic teachings and an educational facility.¹³⁰ According to Datin Hj Adina Othman, Director of Jabatan Pembangunan Masyarakat (JAPEM) or the Community Development Department, a department under the Ministry of Culture, Youth and Sports 'the government has programmes such as counselling and family conferencing that can help these victims of abuse.'¹³¹

Based on individual circumstances, some female and minor victims were placed in protective custody while waiting for their cases to be brought to court.¹³² The court may also, upon being satisfied that domestic violence has been committed or is likely to be committed by any person against a family member and that is necessary for the protection of that family member, make a protection order restraining that person from using domestic violence against that family member.¹³³

Under the Children and Young Persons Order 2006, action teams on child protection shall be created. The established groups of persons known as Action Team on Child Protection, has the purpose of coordinating locally-based services to families, children and young persons who are or suspected being in need of protection. Each Action Team on Child Protection shall be co-ordinated by the Department of Community Development.¹³⁴ This Order also provides protection and rehabilitation of children and young persons.¹³⁵

129 *Brunei Darussalam: Millennium Development Goals*, 44.

130 UN Committee on the Rights of the Child (CRC), UN CRC: State Party Report: Brunei Darussalam

131 Rachel Thien, 'Govt ready to help victims of domestic violence,' *The Brunei Times*, November 28, 2009, accessed January 12, 2012, <http://news.brunei.fm/2009/11/27/govt-ready-to-help-victims-of-domestic-violence/>

132 US Department of State, 2010 Human Rights Report.

133 Mohammad Yusree Junaidi and Zuraini Sharbawi, "The Protection of Victims, Particularly Women and Children, Against Domestic Violence, Sexual Offences and Human Trafficking - The Brunei Experience," ASEAN Law Association, accessed January 4, 2012, http://www.aseanlawassociation.org/9GAdocs/w5_Brunei.pdf, 7-8.

134 Children and Young Persons Order 2006.

135 *Ibid.*, See especially, section 56, 57, 58, 61-63.

d. Prevention Strategy

The National Machinery for Women Development, as specified in Brunei Darussalam's Millennium Development Goals, identifies the Department of Community Development as the national focal point for all matters pertaining to women issues. Under the DCD is the Women's Unit, which is responsible to:

- (a) undertake and coordinate programmes and activities pertaining to women affairs;
- (b) undertake research/studies on women in development;
- (c) collect and disseminate information on women;
- (d) implement awareness programmes on women issues including the rights and responsibilities of women as agents of development including their responsibilities in strengthening the family unit in order to achieve harmonious living in family life, society and the nation;
- (e) undertake awareness programmes designed to eliminate discrimination against women, such as violence against women, legislation, trafficking etc.; and
- (f) encourage the participation of women in national development without compromising the stability of their marriage/family life.¹³⁶

ASP Mariyani Abdul Wahab, from the Women and Child Abuse Investigation Unit of the Royal Brunei Darussalam Police Force (RBPF), shares that their awareness campaigns are strongly directed to secondary school children 'to empower them with knowledge by sharing about the modus operandi of the perpetrator, the offence of violence against women, what they can do if they themselves were victim or know of someone who is a victim and discuss on how they can avoid to be victimized.'¹³⁷

4. Role of Non-State Actors

a. Assistance to Victims

The Department of Community Development works closely with the Council of Women of Brunei Darussalam (CWBD), an NGO established on 6th April 1985. It is an umbrella NGO for 13 women's organizations that

136 *Brunei Darussalam: Millennium Development Goals*, 44.

137 ASP MARIYANI Abdul Wahab, 'Awareness, Prevention and Intervention.'

represent the views and aspirations of women in the country. CWBD's main objective is to improve the status of women in areas like education, economy, welfare, culture and society. It aims for gender equality and the promotion of women's role in national development. Its agenda includes the pursuit of gender equality and gender mainstreaming in national development plans including gender budgeting. CWBD is engaged in providing inputs and decision making in implementing national, regional and international commitments by partnering with various government agencies. It is also a member of the ASEAN Confederation of Women's Organisations (ACWO).¹³⁸ CWBD has established its own counselling unit, which is open every Friday and Saturday to women in need of someone to confide in on issues such as domestic violence.¹³⁹

The Women's Business Council of Brunei Darussalam (WBC) is an NGO that represents the interests and concerns of women in the area of business. It empowers women by creating an avenue for the exchange of ideas and developing entrepreneurship skills, and provides support for quality businesses for women. Among its activities are trade fairs, business matching and networking and training at local, regional and international levels.¹⁴⁰

Aside from government support, non-governmental organizations such as Sultan Haji Hassanal Bolkiah Foundation and associations such as the Rotary Club and Lions Club are main contributors to the operation of the medical social work services. The medical social work services, which is under the Ministry of Health, is tasked to work on the following concerns: management of suspected child abuse cases, child protection work in relation to suspected at risk children, management of crisis in relation to family violence, assessment of the socioeconomic status of children with disabilities as well as family psychodynamics welfare advocacy work, family counselling and community service.¹⁴¹

138 *Brunei Darussalam: Millennium Development Goals*, 47.

139 Hana Roslan and Ubaidillah Masli, 'Women's Counselling Unit Created,' *The Brunei Times*, 9 April 2011, accessed March 12, 2012, <http://www.bt.com.bn/news-national/2011/04/09/womens-counselling-unit-created>.

140 *Brunei Darussalam: Millennium Development Goals*, 47.

141 7th Asean and Japan High Level Officials, 'Towards an Inclusive Society Strengthening Collaboration Between Social Welfare, Health And Medical Systems,' August 31 – September 3, 2009, The 7th Asean and Japan High Level Officials Meeting on Caring Societies in Japan, Brunei Darussalam Country Report, accessed March 11, 2012, http://www.jicwels.or.jp/about_jicwels/ASEAN&JapanHighLevelOfficialsMeeting/7th_2009_pdf/Brunei_Country_Report.pdf.

b. Prevention Programs

There are few recorded prevention programs initiated by the non-state actors in Brunei Darussalam. However, NGOs such as the Child Rights International Network (CRIN) and the End All Corporal Punishment of Children provide reviews on protection of children's rights in Brunei Darussalam. On women concerns, the Council of Women of Brunei Darussalam (CWBD) organized a Training Workshop on Handling Violence Against Women on 5-7 July 2010.¹⁴²

c. Monitoring and Cooperation

The 34th Session of the Committee on the Rights of the Child held on 27 October 2003, in its Concluding Observations on Brunei Darussalam cites its concern that insufficient efforts have been made to involve civil society in the full implementation of the Convention and in the reporting process.¹⁴³ In addition, the Committee expressed concern on the absence of an independent monitoring mechanism with a mandate to receive individual complaints from children.¹⁴⁴

The CRC Committee then 'recommend[ed] that the State party involve systematically non-governmental organizations (NGOs) and other civil society groups, including children's associations, throughout all stages of the implementation of the Convention, including the formulation of the national plan of action, policies and programmes, and in the drafting of the next report to the Committee.'¹⁴⁵

As stated in the Millennium Development Goals, the Ministry of Culture, Youth and Sports now works closely with the NGOs on issues concerned with women's rights. The collaboration is maintained through an umbrella NGO, the Council of Women of Brunei Darussalam (CWBD), to improve the status of women in different areas like education, health, welfare, culture and society.¹⁴⁶ The reports, however, do not provide details on how the local non-state actors monitor the State in the implementation of laws and policies against violence.

142 Berita, Women's Business Council, No. 4 July-Dec 2010, accessed March 11, 2012 <http://issuu.com/bruneilibraryassociation/docs/140.berita-jul10-dec10>.

143 UN Convention on the Rights of the Child, Consideration of Reports, 3.

144 *Ibid.*

145 *Ibid.*

146 *Brunei Darussalam: Millennium Development Goals*, 40.

5. Progress Indicators and Challenges

With reference to the CEDAW, notwithstanding the reservations of Brunei Darussalam to Articles Article 9(2) and Article 29 (1), the efforts of Brunei Darussalam to address the issue of domestic violence include the promulgation of the Married Women Act (Amended) 2010, the Islamic Family Law (Amendment) Order 2010. These laws provide not only women, but also the rest of the household members' protection from violence. However, the above-mentioned laws are observed to be ambiguous in their treatment of marital rape. Another concern that remains unaddressed is the recommendation to criminalize all acts of rape without exception, irrespective of the marital status and gender of the victim.

To date, Brunei Darussalam does not have a law against discrimination or harassment in workplace for the women.¹⁴⁷ The lack of express and explicit prohibition of corporal punishment remains a concern, as this renders children vulnerable to abuse.

On the establishment of a national human rights institution, the following are recommendations from the member countries and the response of Brunei Darussalam during the Report of the Working Group on Brunei Darussalam's Universal Periodic Review:

Undertake a comprehensive study on the feasibility and relevance of establishing a national human rights institution in conformity with the Paris Principles (Malaysia); consider the establishment of an independent national human rights institution in conformity with the Paris Principles (Egypt).

The response of Brunei Darussalam to this recommendation is as follows:

The existence of an inter-agency consultative mechanism, which works closely with NGOs and civil society, has ensured human rights in the country are well promoted and protected. At the regional level, the ASEAN Intergovernmental Commission on Human Rights (AICHR), where Brunei Darussalam was involved intensively in its establishment, sets the stage for further understanding the roles and functions of a human rights institution.¹⁴⁸

¹⁴⁷ Zohari, Maryani, 'Ensuring Equal Rights for Women', The Brunei Times, June 29, 2011, accessed May 17, 2012, <http://www.bt.com.bn/opinion/2011/06/29/ensuring-equal-rights-women>.

¹⁴⁸ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review on Brunei Darussalam – Addendum, A/HRC/13/14/Add.1, March 19, 2010, accessed March 5, 2012 www.upr-info.org/IMG/pdf/A_HRC_13_14_Add-1_E.pdf, 3.

As mentioned above, there are significant inconsistencies in the statistics provided by various agencies. Further, these statistics do not provide the definition of its indicators and scope of its research. As there is no particular agency designated to collect and monitor statistics on the occurrence of violence against women and children, the available data may not be a reliable representation of the actual prevalence of violence. Academic research on the matter of violence against women and children are very limited, mostly presenting only case studies but not the causative elements of violence.

In the absence of a holistic database, quantitative and qualitative research, and policy assessment analysis, it will be difficult to monitor the progress indicators. As the incidents of violence are increasing every year, it is important that a comprehensive study of the occurrence of this type of violence in the society be conducted.

C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

Sex Trafficking of Children in Brunei Darussalam, a publication of ECPAT International, states that there is insufficient reliable data in Brunei Darussalam, making the number of trafficking victims in distinguishable. The report observes that the presence of large numbers of young migrant workers in the country poses the possibility that some may encounter conditions of involuntary labour. The same publication presents its concerns that there may be child trafficking in Brunei Darussalam. Further, as there are numerous men and women from Indonesia, Philippines, Bangladesh, China and Thailand who migrate legally to Brunei Darussalam as domestic or low skilled workers, a marginal group may be subjected to involuntary labour after their arrival.¹⁴⁹

It also raised concern that Brunei Darussalam has been used as a transit point to transmit smuggled persons to another country. The case of four trafficked women who were rescued by a foreign mission with the assistance of local migration officials on 24 September 2008, is an example. These women were being exploited in another country, but were in Brunei Darussalam to obtain work visa re-entry permits.¹⁵⁰

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

Forced Labour

The 2011 Trafficking in Persons report by the US Department of State describes Brunei Darussalam as a destination and to a lesser extent, a source and transit country for men and women who are subjected to forced labour and forced prostitution. It elaborates as follows:

Men and women from Indonesia, Malaysia, the Philippines, Pakistan, India, Bangladesh, China, and Thailand migrate to Brunei Darussalam for domestic work or other low-skilled employment, but sometimes face conditions of involuntary servitude after arrival. There are over 87,500 migrant workers in Brunei Darussalam, some of whom face debt bondage, non-payment of wages, passport confiscation, confinement to the home, and contract switching – conditions widely recognized as key indicators of human trafficking. There were credible reports of South Asian nationals in Brunei Darussalam who are subjected to non-payment of wages and debt bondage of up to a year's wages in order to pay off fees owed to labour recruitment agencies. Some of the 25,000 female domestic workers in Brunei Darussalam were required to work exceptionally long hours without being granted a day for rest, creating an environment consistent with involuntary servitude.¹⁵¹

Also in the 2011 Trafficking in Persons report by the US Department of State, it is reported that:

Although it is illegal for employers in Brunei Darussalam to withhold wages of their domestic workers for more than 10 days, some families are known to withhold wages to compensate for labour broker or recruitment fees they are charged and as a tool with which to maintain the service of the workers. Although government regulations prohibit wage deductions by agencies or sponsors and mandate that employees receive their full salaries, some foreign workers continued to pay high fees to overseas recruitment agents to obtain work in Brunei Darussalam, leaving them vulnerable to debt bondage.¹⁵²

Forced Prostitution

It is also reported that while Asian children and women are being smuggled to Brunei Darussalam, there are also young people from Brunei Darussalam and other countries in Southeast Asia who are trafficked to Australia using student visas. They are said to be forced by their

traffickers to sell drugs or engage in prostitution. It is reported that Brunei Darussalam has limited capacity to protect foreign victims of trafficking and there are no NGOs to assist these victims, they were subjected to prosecution for violations of immigration and labour laws. In addition, it is cited that there is no formal system of protection or assistance to victims of foreign trafficking. However, in cases where the government recognizes that the victim is a material witness in the prosecution of the human smugglers, the former is to be provided with temporary shelter and protection.¹⁵³

There are also some incidents of women forced into prostitution in Brunei Darussalam. Some Asian children and women who are initially promised employment as house helpers may end up sexually exploited as in the case of two Filipina victims who were promised jobs as guest relations officers or restaurant helpers, but were forced into prostitution upon their arrival. In 2007, it was reported that the Brunei Darussalam police conducted investigation and made arrests on 10 cases concerning foreign women engaged in prostitution. These women were from Thailand, Indonesia, the Philippines, and China and had entered the country as tourists; of which in one case, two women asserted that they were trafficked by their handlers. These women later declined to cooperate with police investigation and were repatriated. Also in 2007, two Thai nationals were arrested 'for living, in part, on the earnings of prostitution from three Thai nationals who were possible trafficking victims. However, due to lack of evidence of trafficking and non-cooperation of the victims, the suspected human smugglers were prosecuted under another criminal law.'¹⁵⁴

According to the 2011 Trafficking in Persons report by the US Department of State, there are reports of women forced into prostitution in Brunei Darussalam, and that women arrested for prostitution attest to having been victims of trafficking. Many of these victims enter the country on social visit passes or tourist visas. Brunei Darussalam is said to be a transit country for trafficking victims in Malaysia, including Filipinas, who are brought to Brunei Darussalam for visa renewals before being returned to Malaysia.¹⁵⁵

151 US Department of State, 'Country Narratives – Brunei Darussalam,' in Trafficking in Person Report 2011, <http://www.state.gov/documents/organization/164453.pdf>, 100.

152 *Ibid.*

153 The Body Shop and ECPAT, 'Stop Sex Trafficking of Children and Young People.'

154 *Ibid.*

155 US Department of State, 'Country Narratives – Brunei Darussalam,' 100.

b. Root Causes of Exploitation and Aggravating Practices

There is no available study that examines the root causes of exploitation. However, the United Nations Office for the Coordination of Humanitarian Affairs equates the incidence of human trafficking to the law of supply and demand, it cites that, like most global trade flows, supply and demand conditions drives trafficking in persons. Supply is provided by vulnerable persons seeking a better life and who correspondingly meet the demand for cheap labour and prostitutes.¹⁵⁶

In addition to this, the UN Office for the Coordination of Humanitarian Affairs also cites the influence of the global and financial crisis to human trafficking, stating that with an estimated 50 million jobs cut globally by the end of 2009, the global financial and economic crisis may make more people and communities vulnerable to human trafficking. The global financial and economic crisis has also fuelled the demand for trafficking in persons. Economic hardship in destination countries has increased the desire for cheap goods and services. Moreover, as profits fall, a greater number of businesses move their operations underground to avoid taxes and to produce cheaper goods under conditions that are unacceptable under unionized labour laws in destination countries.¹⁵⁷

Brunei Darussalam has not adopted an aggressive stance against trafficking. As 2011 US Department of State's Trafficking in Persons Report noted:

The Government of Brunei Darussalam does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these efforts and ample resources, the government has not shown evidence of increasing efforts to address human trafficking over the previous year; therefore, Brunei Darussalam is placed on Tier 2 Watch List. The government has yet to prosecute a human trafficking case using its 2004 anti-trafficking law. In November 2010, authorities announced plans to create an anti-trafficking unit within the Royal Brunei Darussalam Police Force, though the unit has yet to begin operations. During the year, the government did not identify or assist any trafficking victims. The government has yet to develop or implement formal procedures to identify victims of trafficking.¹⁵⁸

¹⁵⁶ UN Office for the Coordination of Humanitarian Affairs, 'Trafficking in Persons.'

¹⁵⁷ *Ibid.*

¹⁵⁸ US Department of State, 'Country Narratives – Brunei Darussalam.'

c. Impact of Exploitation

There is no in-depth study on the impact of exploitation in Brunei Darussalam. The information provided by the United Nations Office for the Coordination of Humanitarian Affairs however states that trafficked persons suffer atrocious living and working conditions that physically injure, psychologically traumatize and, in some cases, cost their lives.¹⁵⁹

2. De Jure State Responses

a. Bases of State Responsibility

The CRC obliges Brunei Darussalam to take all necessary actions to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Brunei Darussalam's response. The CEDAW obliges Brunei Darussalam to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.¹⁶⁰

Brunei Darussalam has signed or acceded to the following human rights related treaties that are considered to aid in the prevention of exploitation of children and women:

- (a) Convention on the Rights of the Child (27 December 1995);
- (b) Convention on the Elimination of All Forms of Discrimination against Women (24 May 2006);
- (c) Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography (21 November 2006);
- (d) Convention on the Rights of Persons with Disabilities (as a signatory on 18 December 2007)
- (e) United Nations Convention against Transnational Organised Crime (25 March 2008);
- (f) C182 ILO Worst Forms of Child Labour Convention, 1999 (9 June 2008); and
- (g) UN Convention against Corruption (2 December 2008).

However, it must be noted that Brunei Darussalam is not a party to the UN Trafficking Protocol or the Migrant Smuggling Protocol, and has not concluded any bilateral treaties concerning mutual legal assistance to recover

¹⁵⁹ UN Office for the Coordination of Humanitarian Affairs, 'Trafficking in Persons.'

¹⁶⁰ Junaidi and Sharbawi, *The Protection of Victims*, 12.

proceeds of crime. Brunei Darussalam, on the other hand, is a party to United Nations Convention against Transnational Organized Crime (UNTOC), United Nations Convention against Corruption (UNCAC) and to the ASEAN Mutual Legal Assistance Treaty (MLAT).¹⁶¹

In the absence of any bilateral extradition arrangement between Brunei Darussalam and any other country, there is an existing 'simplified extradition' in the domestic laws of Brunei Darussalam, similar to that of Malaysia and Singapore. Notably, the Extradition Act of Singapore (sections 33-39) and Malaysia (Part V) allows endorsements of warrants issued by Malaysia, Singapore and Brunei Darussalam.^{162,163}

b. State Policies against Exploitation

Brunei Darussalam employs the following domestic legislation as its legal response to trafficking in persons: the Trafficking and Smuggling of Persons Order (2004), Mutual Assistance in Criminal Matters Order (2005), Criminal Conduct (Recovery of Proceeds) Order (2000) and Extradition Order of 2005.

A specific legislation in Brunei Darussalam that addresses exploitation is the Trafficking and Smuggling of Persons Order (2004):

Under Trafficking and Smuggling Persons Order, a person convicted of trafficking persons, harbouring smuggled persons or endangering the lives or safety of trafficked or smuggled persons can be fined up to B\$1 million (\$700,000), imprisoned for up to 30 years and caned. A person convicted of facilitating trafficking or smuggling persons can be fined up to B\$50,000 (\$35,000) and imprisoned for up to 10 years. Immigration and other law enforcement officials received training to investigate and prosecute suspected offenders and to deal with trafficked victims. In 2008, there were no reported cases of prosecutions for human trafficking, nor were there any reports of government officials involved in trafficking. A national committee coordinates government-wide strategies for combating transnational crime, including trafficking.¹⁶⁴

The Mutual Assistance in Criminal Matters Order of 2005 is a national law that defines the requirements and limitations for mutual legal assistance requests made by and to Brunei Darussalam. Under this Order, assistance may be provided for criminal offenses, which includes criminal investigation, proceedings and other matters relating to a trafficking offense. The following are the requirements:

- (a) Evidentiary Test: Where there is a request for the taking of evidence or production of documents, articles or other things in Brunei Darussalam, the Attorney General is to be satisfied that: the request relates to a criminal matter in that country; and there are reasonable grounds for believing that the evidence can be taken or the documents, articles or other things can be produced in Brunei Darussalam - Sec. 27. Further, where a production order is sought, the Court is to be satisfied that the requested production of the document, article or other thing is necessary or desirable for the purposes of the criminal matter to which the request relates - Sec. 29.
- (b) Dual Criminality: A request may be refused if the relevant act or omission would not have constituted an offence in Brunei Darussalam - Sec. 24(2)(c).
- (c) Reciprocity: There is no reciprocity provision.
- (d) Specialty: A request shall be refused if the Requesting State has failed to undertake that the article or thing requested will not be used, except with the consent of the Attorney General, for a matter other than the criminal matter in respect of which the request was made - Sec. 24(1)(g)

Restrictions and exceptions of this Order are as follows:

- (a) Double Jeopardy / Ongoing Proceedings: A request shall be refused if the provision of assistance could prejudice a criminal matter in Brunei Darussalam - Sec. 24(1)(j).
- (b) Human Rights: A request shall be refused if there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to the person on account of his/her colour, race, ethnic origin, sex, religion, nationality or political opinions - Sec. 24(1)(c).

161 David et al., *ASEAN Handbook*, 157-159.

162 *Ibid.*, 117.

163 *Ibid.*, 120.

164 The Body Shop and ECPAT, 'Stop Sex Trafficking of Children and Young People.'

- (c) Death Penalty: There is no death penalty exception.
- (d) Political / Military Offence: There is no political or military offence exception.
- (e) National / Public Interest: A request for assistance shall be refused if it would be contrary to the interests of the public and prejudicial to the sovereignty, security or national interests - Sec. 24(1)(e).
- (f) Bank Secrecy / Fiscal Measures: There is no bank secrecy or fiscal measures exception.¹⁶⁵

The request form is prescribed in Section 23 of the Order and must be submitted in English. For urgent matters, requests may be verbally made but be subsequently confirmed in writing, as provided for in section 23.b of the Order. There is no provision as to the attendance of officials during the submission of the form. For requests under ASEAN MLAT and UNCAC, the Attorney General is the designated Central Authority. Similarly, requests under the Mutual Assistance in Criminal Matters Order of 2005 are to be coursed through the Attorney General.¹⁶⁶ The Criminal Conduct (Recovery of Proceeds) Order of 2000 or the CCRPO and the MACMO provide mutual legal assistance in the recovery of proceeds of crime.¹⁶⁷

The Extradition Order (2005) provides for repatriation procedures to and from Brunei Darussalam. For arrest warrants issued in Singapore and Malaysia, chapter 154 of the Extradition (Malaysia and Singapore) Act provides that these warrants be endorsed and executed as if these were arrest warrants issued in Brunei Darussalam and renders the person in custody to be transferred to the relevant court in either Singapore or Malaysia. The Extradition Order (2005) considers the crime of people or child trafficking referred to in Section 4 or 5 of the Trafficking and Smuggling of Persons Order (2004) as an extradition offence as the latter has a maximum penalty of more than one year imprisonment.¹⁶⁸

The Extradition Order (2005) entails the following requirements:

- (a) Evidentiary Test: There is no evidence test in most cases, though supporting documentation must be provided in accordance with Sec. 15. However in the case of extradition to Commonwealth countries a 'prima facie' test may be applied and a 'record of the case' may be required.

¹⁶⁵ David et al., *ASEAN Handbook*, 157-158.

¹⁶⁶ *Ibid.*, 158.

¹⁶⁷ *Ibid.*, 158-159.

¹⁶⁸ *Ibid.*, 159.

- (b) Dual Criminality: Dual criminality is required under Sec. 3.
- (c) Specialty: The Attorney General may refuse to surrender the person under Sec. 17 if the requesting country has not given a specialty undertaking.¹⁶⁹

Restrictions and Exceptions of the Extradition Order (2005)

- (a) Double Jeopardy / Ongoing Proceedings: There is an extradition objection under Sec. 4(g) if the person has already been acquitted or punished for the offence in either Brunei Darussalam or in the requesting country. Surrender may also be refused under Sec. 17(e) if a prosecution is pending in Brunei Darussalam for the offence for which extradition is sought.
- (b) Citizen: The Attorney General may refuse the surrender of a citizen - Sec. 17(d).
- (c) Political / Military Offence: There is an extradition objection under Sec. 4(a) if the offence is of a political nature, and under Sec. 4(d) if it is purely a military offence.
- (d) Human Rights: There is also an extradition objection if there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to the person on account of his / her race, religion, nationality, political opinions, sex or status, or if his / her trial would be prejudiced for these reasons. Surrender may also be refused under Sec. 17(i) if the person has been tortured or subjected to cruel, inhuman or degrading treatment or punishment in the requesting country.
- (e) Death Penalty: There is no death penalty exception.
- (f) Jurisdiction: Surrender may be refused under Sec. 17(g) on the basis that the offence was committed wholly or partly within the territory of Brunei Darussalam.¹⁷⁰

Other Domestic Laws Protecting Women and Children from Exploitation

In addition, the Women and Girls Protection Act, Cap 120 provides for the protection of women and young girls by, inter alia, penalising the act of:

- (a) Selling, letting, hiring, buying or obtaining

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, 160.

- woman or girl for the purposes of prostitution, whether in Brunei Darussalam or elsewhere
- (b) Selling, buying, procuring, trafficking in or importing into Brunei Darussalam woman or girl, whether or not for present or subsequent prostitution,
 - (c) By threat or intimidation procures any woman or girl to have carnal connection within Brunei Darussalam or elsewhere
 - (d) Procuring by or under false pretence, false representation, or fraudulent or deceitful means within or without Brunei Darussalam, bringing or assisting in bringing into Brunei Darussalam any woman or girl with intent that such woman or girl shall be employed or used for the purpose of prostitution either within or without Brunei Darussalam, or knowing or having reason to believe that such woman or girl will be employed or used
 - (e) Bringing into Brunei Darussalam, receiving or harbouring any woman or girl under the age of 21 years or any woman or girl of or above that age not being a prostitute or of a known immoral character knowing or having reason to believe that such woman or girl has been procured for the purpose of carnal connection except by way of marriage, with any other person or for purpose of prostitution either within or without Brunei Darussalam and with intent to aid such purpose
 - (f) Detaining any woman or girl in a brothel against her will
 - (g) Detaining any woman or girl in any place against her will with intent that she be used or employed for the purpose of prostitution or any unlawful or immoral purposes
 - (h) Living wholly or in part on the earnings of prostitution of any other person
 - (i) Persistently soliciting or importunes on behalf of any woman or girl in a public place, for immoral purposes

The Penal Code (Cap 22) provides for various offences which may be used for the protection of basic human rights such as offences affecting the human body, offences relating to religion, offences against property, defamation, etc. It also contains provisions to protect children involved in criminal cases. The Penal Code protects the child under the age of 12 years by not considering any act done by him as an offence, and thus that child is exempted from any

criminal liability due to his insufficient maturity and lack of understanding of the nature and consequences of the act. The Penal Code also penalises criminal acts against children, including:

- (a) Infanticide, exposure and abandonment of children;
- (b) Procreation of minor girl and importation of girl from foreign country for the purpose of forceful illicit intercourse;
- (c) Kidnapping or abducting children;
- (d) Selling and buying children for prostitution purposes; and
- (e) Rape and incest of children.¹⁷¹

c. Assessment of State Policies

Brunei Darussalam is not a party to the UN Trafficking Protocol of the Migrant Smuggling Protocol and to the Protocol to Prevent, Suppress, and Punish Trafficking in persons, especially Women and Children. It has also not concluded any bilateral treaties concerning mutual legal assistance in criminal matters, or mutual legal assistance to recover proceeds of crime and bilateral extradition.¹⁷²

However, it is a party to UNTOC, UNAC and the ASEAN Mutual Legal Assistance Treaty (MLAT).¹⁷³ It also acceded to the Convention on the Rights of a Child on 27 December 1995, the Optional protocol on the sale of children, child prostitution and child pornography on 21 November 2006 and the ILO Convention no. 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 9 June 2008.¹⁷⁴

The Committee on the Rights of Child (CRC) was concerned that the minimum age for marriage is 14, which it considered far too low, and that even younger children may marry under Islamic law.¹⁷⁵ Hence it is suggested that the minimum age for marriage be increased and should be the same for both boys and girls, to prevent the threat to children being trafficked for early marriage.¹⁷⁶

According to the compilation of UPRs to OHCHR, which was prepared by the Office of the High Commissioner

171 UN Human Rights Council, National Report, 18, 6-7.

172 David et al., ASEAN Handbook, op.cit., 157-159.

173 *Ibid.*, 157.

174 The Body Shop and ECPAT, 'Stop Sex Trafficking of Children and Young People.'

175 UN Convention on the Rights of the Child, Consideration of Reports, op.cit., 5.

176 The Body Shop and ECPAT, 'Stop Sex Trafficking of Children and Young People.'

for Human Rights, the CRC expressed concern that the minimum age for employment is not clear. It recommended that the State party establish a clear minimum age for employment in line with the existing international standards such as those enshrined in ILO Conventions No. 138 concerning the Minimum Age for Admission to Employment of 1973 and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999.¹⁷⁷

The 2011 Trafficking in Persons report by the US Department of State cites that while Brunei Darussalam prohibits both sex and labour trafficking through its Trafficking and Smuggling Persons Order of 2004, and that the government used its 2004 law to prosecute a smuggling case during the year, it has yet to use the law to prosecute or convict a human trafficking offender. The 2004 Order prescribes punishments of up to 30 years' imprisonment, which is sufficiently stringent and commensurate with penalties prescribed for other serious offenses, such as rape.¹⁷⁸

In November 2010, the government announced its plans to create an anti-trafficking unit within the Royal Brunei Darussalam Police Force, but the unit has not yet begun operations, and no date has been set for the unit to begin work, as it has not yet received budgetary approval.¹⁷⁹

Authorities continued to rely on victims coming forward or being identified by foreign embassies to begin investigations, and did not make efforts to proactively identify suspected trafficking victims among vulnerable groups, such as women in prostitution. During the year, there continued to be complaints by foreign workers, some of whom may have been trafficking victims, against employers who failed to pay salaries; however, authorities did not investigate these cases for potential trafficking.¹⁸⁰

The government often relied on mediation or administrative rather than criminal penalties in labour-related offenses. Two employers received a punishment of a fine or imprisonment for failure to pay wages to their employees, but authorities did not report investigating these cases to see if there was any further evidence of trafficking.¹⁸¹ Further, it was observed that

the government did not provide legal alternatives to the removal of foreign trafficking victims to countries where they may face hardship or retribution.¹⁸²

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

Under the Trafficking and Smuggling of Persons Order, 2004, the Royal Brunei Darussalam Police Force, the Immigration Department and the Royal Customs and Excise are empowered to carry out investigations (including the powers of search) into any alleged offences committed under the Order and to arrest without warrant any persons reasonably believed to have committed such offences. Although currently, there is no specialist unit within the Immigration Department, this department takes the lead role in trafficking investigations.¹⁸³

The National Committee on Transnational Crime (NCTC) is established to combat transnational crimes such as trafficking and smuggling of persons. The NCTC is chaired by the Permanent Secretary of the Prime Minister's Office and includes Attorney-General's Chambers, Ministry of Finance, Royal Brunei Darussalam Police Force, Ministry of Foreign Affairs and Trade, Ministry of Defence, the Internal Security Department, Immigration and Customs.¹⁸⁴ The Committee acts as a coordinating body between these agencies and acts as a focal point for combating transnational crimes. The Committee is also responsible to initiate and coordinate national action plans and programmes in this area.¹⁸⁵

b. Complaints Process

In the Progress Report on Criminal Justice Responses to Trafficking in Persons, it states that Brunei Darussalam does not, at this time, have a specialist unit. This situation, however, is said to be likely remedied in the near future. The Immigration and National Registration and Royal Customs and Excise Departments are currently mandated to investigate TIP. In addition to obstacles caused by competing demands, immigration and customs officials are rarely trained to deal with complex crimes such as trafficking. These factors lessen the likelihood that cases of trafficking are quickly and accurately identified and

177 UN Human Rights Council, Compilation Prepared by the Office of the High Commissioner for Human Rights, 7.

178 US Department of State, 'Country Narratives – Brunei Darussalam,' 100.

179 *Ibid.*

180 *Ibid.*

181 *Ibid.*

182 *Ibid.*, 101.

183 Junaidi and Sharbawi, *The Protection of Victims*, 22.

184 *Ibid.*, 12.

185 'Statement of H.E. Dato Haji Kifrawi Dato Haji Kifli, Attorney General Of Brunei Darussalam,' The Eleventh United Nations Congress On Crime Prevention And Criminal Justice, United Nations, http://www.un.org/webcast/crime2005/statements/25brunei_eng.pdf.

investigated.¹⁸⁶

The Trafficking and Smuggling of Persons Order 2004 provides the guidelines for the powers of arrest and investigation as follows:

15. (1) Any police officer, Immigration Officer or officer of customs may arrest without warrant any person who he reasonably believes has committed an offence under this Order or any regulations made thereunder. (2) When any person is arrested by an Immigration Officer or officer of customs, such officer shall comply with the provisions of section 33 of the Criminal Procedure Code [Chapter 7) as if he were a police officer. (3) In any case relating to the commission of any offence against this Order or any regulations made thereunder, any Immigration Officer or any officer of customs shall have the same powers of investigation of a police officer under Chapter XIII of the Criminal Procedure Code (Chapter 7).¹⁸⁷

The powers of search under the Trafficking and Smuggling of Persons Order 2004 are as follows:

16. (1) Any police officer, Immigration Officer or officer of customs may without a warrant -

- (a) enter and search any premises; and
- (b) stop and search any ship, vehicle and person, whether in public place or not, if he has reason to believe that any evidence of the commission of an offence against this Order or any regulations made hereunder is likely to be found on such premises or person or in such ship or vehicle and may seize any evidence so found.

(2) No woman shall be searched under this section except by a woman.¹⁸⁸

The offences under the Trafficking and Smuggling of Persons Order 2004 are non-bailable. No prosecution for any offence under this Order shall be instituted except with the consent in writing of the Public Prosecutor.¹⁸⁹

186 Fiona David et al., Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region, (Association of Southeast Asian Nations, 2011), accessed March 13, 2012, http://www.artipproject.org/progress-report/Progress%20Report_Criminal%20Justice%20Responses%20to%20TIP%20in%20the%20ASEAN%20Region_2011.pdf, 36.

187 Trafficking and Smuggling of Persons Order 2004, Article 83(3), <http://www.protectionproject.org/wp-content/uploads/2010/09/BRUNEI.pdf>, Sec 15.

188 *Ibid.*, Sec 16.

189 *Ibid.*, Sec 17- 18.

The offences created by this Order shall be –

- (a) offences to which the Criminal Conduct (Recovery of Proceeds) Order, 2000 (S 52/00) apply;
- (b) deemed to be included in the list of extradition crimes described in the First Schedule to the Extradition Act (Chapter 8);
- (c) offences in respect of which mutual legal assistance may be granted under any law relating to mutual legal assistance in criminal matters.¹⁹⁰

c. Protection and Rehabilitation

The 2011 Trafficking in Persons Country Narrative Report of the US Department cites that there are insufficient efforts on the part of Brunei Darussalam to identify and protect victims of human trafficking. It further cites that Brunei Darussalam does not have in position a pre-emptive system to formally identify victims of trafficking among susceptible groups such as foreign workers and foreign women and children that may be engaged in prostitution. The Brunei Darussalam government officials are not equipped with the proper training on how to identify trafficking victims.

In 2011, its authorities reportedly identified and deported one trafficking victim but the person turned out to be a smuggled migrant instead. As to the provision of assistance to the victim, the government did not classify or assist any victim of trafficking. On the other hand, its immigration authorities identified and charged violators of immigration law; none of these were classified as trafficking victims during the reporting period. Those foreign females in prostitution are often arrested and deported without proper screening or determination if these women were exposed to involuntary prostitution. During the reporting period, two Chinese women were indicted and imprisoned for three months for the crime of prostitution; the TIP report accentuates that some women may have been penalized for illegal acts which may have been the result of they were being trafficked and that the victims of trafficking may even be imprisoned with their traffickers, in close proximity, while the legal proceedings are on-going. In the same report, it is also noted that while Brunei Darussalam government reported the funding of three shelters that may be used to assist victims of trafficking, none of these shelters had actually been used.¹⁹¹

190 *Ibid.*, Sec 24.

191 US Department of State, 'Country Narratives – Brunei Darus-

The Attorney-General's Chambers had established a victim response unit within the Criminal Justice Division to explain to the victims the criminal justice process and inform them of the current status of their cases.¹⁹² The Ministry for Culture's Social Affairs Services Unit, on the other hand, operates shelters known as Taman Nur Hidayah, Darussyafaah and Darussakinah.¹⁹³

The trafficking law in Brunei Darussalam does not specify an obligation on the State to provide victims with immediate protection and support. However, under the Women and Girls Protection Act, women and girls who may be considered in 'moral danger' or who are believed to have been ill-treated and in need of protection may be detained in a 'place of safety'. The Act also authorises the competent authority to make rules for the care, detention, maintenance, and education of women and children detained. It is, however, unclear whether this Act has been used in trafficking cases.¹⁹⁴

d. Prevention Strategy

It has been observed that Brunei Darussalam has shown limited efforts in preventing trafficking in persons. It is reported that there had been efforts by the government to prompt the publication of articles in the newspapers on problems experienced by foreign workers, such as non-payment of salaries but there were no efforts on the part of the government to conduct any public awareness campaigns on trafficking. The actions of Brunei Darussalam towards the prevention of trafficking in persons include: hosting of regional anti-trafficking training organized with the French government, provision of arrival orientation for foreign workers and provision of hotline for worker complaints. The government also convicted two employers for failing to pay wages to their domestic workers while a Vietnamese national was indicted for hiring women in prostitution.¹⁹⁵ In 2008, the Brunei Darussalam police ran an internal workshop for members of the anti-vice unit on how to identify trafficking victims. Law enforcement officials participate in several regional training programs on trafficking.¹⁹⁶

salam, 100-101.

192 Junaidi and Sharbawi, *The Protection of Victims*, 23.

193 *Ibid.*

194 David et al., *Progress Report on Criminal Justice Responses*, 23.

195 US Department of State, 'Country Narratives – Brunei Darussalam', 101.

196 US Department of State, 'Country Narratives – Brunei Darus-

4. Role of Non-State Actors

a. Assistance to Victims

To date, there are no NGOs or international organizations in Brunei Darussalam providing support to victims of human trafficking. However, several embassies, in coordination with the Brunei Darussalam government, provide shelter, mediation, and immigration assistance to its own nationals. There are also no recorded funding provided by Brunei Darussalam to the civil society sector to provide assistance to victims of trafficking.¹⁹⁷

b. Prevention Programs

In the absence of non-state actors in the prevention of the occurrence of exploitation, particularly human trafficking, in Brunei Darussalam, there are no recorded prevention programs undertaken by NGOs. However, non-government groups such as the ECPAT International and UNODC have released information that can aid in the prevention of exploitation in Brunei Darussalam.

c. Monitoring and Cooperation

The Annual Trafficking in Persons Report of the US State Department, and other non-government groups such as the ECPAT International and UNODC monitor the efforts towards the elimination of human trafficking.

5. Progress Indicators and Challenges

The limited information on the area of exploitation in Brunei Darussalam cannot result to a reliable assessment of the current situation. The information gathered from both the local and the independent agencies indicate that there is lack of statistics and, as mentioned earlier, government officials are not equipped with the proper training on how to identify trafficking victims.¹⁹⁸ Despite the existence of the Trafficking and Smuggling of Persons Order 2004, which defines trafficking and smuggling of persons, there is indication that there is no proper method

salam,' in *Trafficking in Person Report 2009*, accessed January 15, 2012 <http://www.state.gov/j/tip/rls/tiprpt/2009/123135.html>.

197 US Department of State, 'Country Narratives – Brunei Darussalam', 101.

198 *Ibid.*, 100-101.

in the identification of trafficking victims. Hence, success indicators and progress reports that are made available may not be a reliable indicator. However, the reports utilized in this review have discussed the weaknesses of the state agencies, citing in detail vulnerabilities that may induce the occurrence of the exploitation.

In the country narrative report of the 2011 TIP, it reflects that the Brunei Darussalam government does not fully comply with the minimum standards for the elimination of trafficking but it is undertaking significant efforts to do so. It is recommended that Brunei Darussalam utilize the 2004 Anti-trafficking in Persons law to increase its number of investigations and prosecutions of human trafficking.¹⁹⁹

In its concluding observations for Brunei Darussalam during the 34th Session of the Committee on the Rights of the Child, the CRC Committee recommended that the State party:

- 1) Carry out public education campaigns about the negative consequences of ill-treatment of children;²⁰⁰
- 2) Establish effective child-sensitive procedures and mechanisms to receive, monitor, and investigate complaints, including intervening where necessary;²⁰¹
- 3) Ensure the protection of child victims during legal proceedings, recovery and reintegration;²⁰²
- 4) Train teachers, law enforcement officials, care workers, judges and health professionals in the identification, reporting and management of cases of ill-treatment of children;²⁰³
- 5) Rehabilitate offenders.²⁰⁴

Further, the CRC Committee is concerned at the existing lack of systematic and comprehensive collection of disaggregated data for all areas covered by the Convention and in relation to all groups of children in order to monitor and evaluate progress achieved and assess the impact of policies adopted with respect to children.²⁰⁵ Thus, the Committee recommends that the State party develop

a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, and urban and rural area. This system should cover all children up to the age of 18 years with specific emphasis on those who are particularly vulnerable, including child victims of abuse, neglect, or ill-treatment; children with disabilities; children belonging to ethnic groups; refugee and asylum-seeking children; children in conflict with the law; working children; adopted children; street children; and children living in urban areas. It further encourages the State party to use these indicators and data to formulate policies and programmes for the effective implementation of the Convention.²⁰⁶

D. ABUSE AND DISCRIMINATION IN MIGRATION

Migration Situation in Brunei Darussalam

The Situation Report on International Migration in East and South-East Asia shows that in Brunei Darussalam, the local population is a mix of several ethnic groups (with Malays as the dominant group), comprising seven ethnic sub-groups, which make up two-thirds of the population. The largest minority group is Chinese (11%). Indian migrants make up a small portion of the population and are engaged mainly in trade and commerce. The remainder of the population (nearly 15%) are foreign nationals. The Government is the largest employer (37.5% of the working population, 91% of whom are citizens or permanent residents).²⁰⁷

Also in the same report, the Labour Department's survey in 2005 found that, of the 106,820 persons employed in all industries in the Private Sector, 69.3% were foreign nationals. Local workers dominate only in the oil and gas industry (73.1 per cent) and financial, insurance and business services (65.4 per cent).²⁰⁸

¹⁹⁹ *Ibid.*, 100.

²⁰⁰ UN Convention on the Rights of the Child, Consideration of Reports, 8.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*, 4.

²⁰⁶ *Ibid*

²⁰⁷ Regional Thematic Working Group on International Migration including Human Trafficking, Situation Report on International Migration in East and South-East Asia Brunei Darussalam, (Bangkok: International Organization for Migration, 2008), accessed March 13, 2012, http://www.unicef.org/eapro/IOM_Situation_Report_-_Final.pdf, 6.

²⁰⁸ *Ibid.*

Table 1. Percentage of local and foreign workers in major industries by gender, Brunei Darussalam, 2005.

Industry	Local (%)			Foreign (%)		
	Male	Female	Total	Male	Female	Total
Agriculture, forestry and fisheries	22.6	71.6	29.8	77.4	28.4	70.2
Oil and liquefied natural gas	68.2	96.6	73.1	31.8	3.4	26.9
Sawmilling and timber processing	10.1	63.2	14.6	89.9	36.8	85.4
Mining, quarrying and manufacturing	12.3	18.7	15.2	87.7	81.3	84.8
Construction	9.2	74.0	13.4	90.8	26.0	86.6
Wholesale and retail trade	29.7	55.1	40.0	70.3	44.9	60.0
Coffee shops, restaurants and hotels	26.6	35.0	30.8	73.4	65.0	69.2
Transport, storage and communications	40.1	81.4	50.1	59.9	18.6	49.9
Services: financial, insurance, business	51.9	84.8	65.4	48.1	15.2	34.6
Services: community, social, personal	24.6	53.6	35.8	75.4	46.4	64.2

Source: Labour Department, Ministry of Home Affairs, Brunei Darussalam, no date.

It was also shown in the Situation Report on International Migration in East and South-East Asia that locals tend to have the larger share of high-wage jobs and of low-wage clerical employment. Migrant workers are mainly employed as craftsmen, labourers, cleaners, machine operators, and in sales and commercial services. Expatriate professionals and executives made up 11-22% of those respective occupational groups.²⁰⁹

Table 2. Local and foreign workers in occupational groups by gender, Brunei Darussalam, 2005

Major occupational group	Local (%)			Foreign (%)		
	Total	Male	Female	Total	Male	Female
Administration, executive	77.7	74.0	88.3	22.3	26.0	11.7
Professionals	70.7	65.7	78.6	29.3	34.3	21.4
Technical	82.5	77.9	87.5	17.5	22.1	12.5
Clerical	88.7	85.3	90.4	11.3	14.7	9.6
Sales and services	67.2	70.8	58.2	32.8	29.2	41.8
Skilled agriculture, fisheries	45.3	39.0	80.7	54.7	61.0	19.3
Crafts, trade	26.3	29.2	16.9	73.7	70.8	83.1
Factory and machine operators	44.7	44.6	47.0	55.3	55.4	53.0
Cleaners, labourers	23.9	31.6	18.2	76.1	68.4	81.8
Unclassified	85.9	85.6	86.5	14.1	14.4	13.5
All groups	53.7	54.7	52.3	46.3	45.3	47.7

Source: Department of Statistics, Brunei Darussalam, 2005

Immigration has contributed significantly to Brunei Darussalam's population growth, particularly since the mid-1970s. Foreign-born residents increased by nearly 80% between 1981 and 2001.²¹⁰ Brunei Darussalam is a receiving country for migrant workers, especially domestic workers or maids. The sources for this labour are mainly Malaysia, the Philippines, Indonesia and Thailand. The demand for migrant domestic workers is on the rise because local workers increasingly seek employment outside of the domestic sphere.²¹¹

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ United Nations Development Fund for Women (UNIFEM), Good

As of February 2007, the Department of Immigration and National Registration had issued 94,258 passes to migrant workers and their families. Migrants from Indonesia (42.7% of all migrants), Malaysia and the Philippines make up 78.4% of the migrant population. Nearly half of the migrants from Indonesia and a third from the Philippines are domestic workers. Nearly half (45.9%) of dependent migrants, mostly females, are from Malaysia.²¹²

As of 2010, there were 148,123 immigrants representing 36.4% of the population; 45.5% of these immigrants are female. The top source countries are: Malaysia, the Philippines, Thailand, Nepal, Indonesia, India, the United Kingdom, China, Singapore and Sri Lanka.²¹³ Below is the bilateral remittance estimate for 2010, with Nepal, Malaysia and the Philippines as the highest remittance sending countries:

Bilateral Remittance Estimates for 2010 using Migrant Stocks and Host Country Incomes (millions of US\$), BRUNEI DARUSSALAM ²¹⁴	
Australia	4
Bangladesh	9
China	15
India	28
Indonesia	35
Malaysia	62
Nepal	75
Netherlands	1
Pakistan	2
Philippines	61
Sri Lanka	3
Thailand	26
United Kingdom	4

1. Description of the Problem

a. Prevalence of Abuse and Discrimination in Migration

In a report for the WTO General Council Review of the Trade Policies of Brunei Darussalam, women migrant

Practices to Protect Women Migrant Workers, High Level Government Meeting of Countries of Employment, (Bangkok: UNIFEM, 2005), 32.

²¹² Regional Thematic Working Group on International Migration including Human Trafficking, Situation Report.

²¹³ WorldBank, 'Brunei Darussalam', Migration and Remittances Factbook 2011, accessed March 10, 2012, <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/BruneiDarussalam.pdf>.

²¹⁴ *Ibid*

domestic workers reportedly complain of beatings, long working hours and withholding of wages. Female domestic workers have been subjected to abuse, but are said to be incapable or reluctant to complain to the authorities, as they are highly dependent on their employers.²¹⁵ Statistics at the Labour Department show that 273 complaints of unpaid wages were registered with the Department in 2008. The records show a drastic drop to 81 complaints in 2009 and 30 in 2010.

The figures, however, do not include complaints made by domestic workers, only migrant workers employed in private sector companies. The sharp decline can be attributed to the stricter enforcement of the laws contained within the Employment Order 2009, which allows enforcement agencies to exercise greater authority in monitoring and curbing labour offences. In the past year, the Labour Department has stepped up its crackdown on errant employers by increasing the number of enforcement operations from 15 in 2009 to 79 in 2010 — a four-fold increase.²¹⁶

TYPE OF WORKER COMPLAINTS (COMPANIES)			
	2010	2009	2008
> Salary not paid	30	81	273
> Claim for return passage	6	11	21
> Salary not paid and claim for return passage	43	34	137

Source: labour Department
Graphic: Gillbert | THE BRUNEI TIMES

Source: The Brunei Darussalam Times, 'Migrant workers' Complaint drop', 20th August 2011

b. Root causes of Abuse and Discrimination in Migration

Brunei Darussalam, despite being an attractive destination for migrant workers as its national workforce is still too small to sustain the economy and to develop the country, does not have an immigration programme and never adopted an open door policy because of concerns that immigrants would easily overwhelm the local population.²¹⁷ It should be noted, however, even

though Brunei Darussalam does not have an immigration program, the Employment Order 2009 now provides protection to workers.

The difficulties in the local economy result to smaller profit margins, thus placing employers and entrepreneurs under pressure. As a result, wages given to the workers are less than the contractual agreements and employees' benefits have been reduced to the bare minimum. Irregular migrant workers, who are not entitled to any protection under the law, are the most exploited.²¹⁸

In the Situation Report on International Migration in East and South-East Asia, it was reported that in 2000, there were 4,320,660 crossings through the 10 immigration posts in Brunei Darussalam. By 2006, the number had increased to 5,651,267.²¹⁹ Further, cheaper air travel has further increased migration rates over the past three to five years. The opening up of borders through bilateral or multilateral agreements, allowing nationals to enter countries without a visa, coupled with increasing human mobility has also opened up the opportunity for irregular migration. Many foreign nationals, mainly from the Asia-Pacific region, enter the country as visitors but are actually seeking employment. They take advantage of the above said immigration agreements by exiting and returning, usually on the same day, to extend their stay in the country without a visa. Once employed (illegally), visitors continue to extend their stay in this way. Some buy 'employment passes' from local service providers in order to remain in the country. Such misuse of an employment pass is punishable by a jail term, a fine or whipping.²²⁰

c. Impact of Abuse and Discrimination in Migration

At present, no specific and in-depth study to determine the impact of abuse and discrimination on women and children migrants in Brunei Darussalam can be found. There is no reported abuse against migrant children.

2. De Jure State Responses

a. Bases of State Responsibility

Brunei Darussalam has been a member State of the ILO since January 2007. Discussions with ILO are being conducted to establish the priorities in the Decent Work

215 International Trade Union Confederation (ITUC), Internationally – Recognized Core Labour Standards in Brunei Darussalam, accessed March 13, 2012 http://www.ituc-csi.org/IMG/pdf/Brunei.final_1_.pdf, 6.

216 Quratul-Ain Bandial, 'Migrant workers' complaints drop', The Brunei Times, August 20, 2011, accessed March 14, 2012, <http://www.bt.com.bn/news-national/2011/08/20/migrant-workers-complaints-drop>.

217 Regional Thematic Working Group on International Migration including Human Trafficking, Situation Report, 8.

218 *Ibid.*

219 *Ibid.*

220 *Ibid.*

Country Programme, of which will be influenced by Brunei Darussalam's obligations under the International Labour Conventions, as well as by the capacity of the workers' and employers' organizations to engage in dialogue with the Government.

Brunei Darussalam also ratified the following ILO Conventions:

- (a) International Labour Organization Convention No. 138 (1973) – Concerning Minimum Age for Admission to Employment (17 June 2011)
- (b) International Labour Organisation Convention No. 182 – Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (09 June 2008)

In the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, Brunei Darussalam, along with the other ASEAN Member States committed to protect and promote the rights of migrant workers.²²¹

b. National Policies

In Brunei Darussalam, several laws are in place to aid the protection of migrant workers. These include:

- (a) The Labour Act, 1954 (amended in 1984, revised in 2002) which defines the rights and responsibilities of employers and employees.
- (b) Supplementary legislation, such as the Workmen's Compensation Act, 1957 (amended in 1984), places the responsibility for the safety of workers with the employers.
- (c) The Trade Union Act, 1961 (amended in 1972) and the Trade Dispute Act, 1961 were enacted to resolve conflicts that arise between employer and employee.
- (d) The Employment Information Act, 1974 (amended in 1978) was enacted to improve governance through better monitoring and data management. Other regulations provide for maternity benefits, protection of children against exploitation, safety of workplaces, rules on public holidays, protecting the rights of domestic helpers and the payment of wages.²²²

221 'ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers,' January 13, 2007, 12th ASEAN Summit in Philippines, Association of the Southeast Asian Nations, accessed March 13, 2012 <http://www.aseansec.org/19264.htm>.

222 Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report*, 3.

(e) The Employment Agencies Order of 2004 was introduced to control the activities of employment agencies relating to employment in the private sector, such as domestic workers. This Order was introduced to control the activities of employment agencies relating to employment in the private sector, such as domestic workers. Previously, there was no law to regulate the activities of employment agents who bring foreign workers into Brunei Darussalam. Before the enforcement of this Order, employers who had licenses to bring in foreign workers normally used the services of agents to recruit them based on the quota approved. Such activities raised many complaints from employers about instances of misuse and abuse of their licenses. There are also instances where domestic workers have been brought into the country without the knowledge of the actual employer. Many have been brought in without confirmed employment; Thus, forcing them to look for jobs or work as 'freelancers.' This practice has consequently tarnished the good name of the country, with reports published by foreign media of alleged human trafficking in Brunei Darussalam. With the enforcement of the new Order, entry of foreign workers has been controlled and the welfare of the foreign workers is protected from irresponsible employers. At the same time, employment agencies must operate according to regulations established under the Order and the Department of Labour takes firm legal action against those who violate it.²²³

- (f) To indemnify the Government against any costs incurred during the recruitment of foreign workers such as repatriation, the payment of a deposit was introduced in 1986. This deposit is usually used either in cash or in the form of a 'Banker's Guarantee' to settle any dispute between a worker and his employer. The deposit serves to cover the airfare for the worker's return home. In cases where salaries are unpaid, the deposit is crucial to send the worker back to her home country because the employer often fails to pay for the ticket.²²⁴
- (g) Migrants can be granted permanent resident status after 15 years of residence and under the fulfilment of other conditions. However, Brunei Darussalam has resisted international pressure to accept asylum seekers or refugees on political or humanitarian grounds.²²⁵

223 UNIFEM (now UN Women), *Good Practices to Protect Women Migrant Workers*, 33.

224 *Ibid.*, 34.

225 Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report*, 25.

(h) The Employment Order 2009, which was passed in September 2009 and its Employment (Domestic Workers) Regulations 2009, provided comprehensive measures to further stabilize security, welfare, safety and the protection of workers' rights by taking into account the standards of the International Labour Organizations. This Order incorporated aspects such as legal action in the event of non-payment of salary, worker health, accommodation and medical care standards as well as responsibility for repatriation expenses. It covered all employees with no differentiation between local and foreign employees.²²⁶

c. Assessment of State Policies

As the majority of labour laws only apply to citizens of Brunei Darussalam, skilled and unskilled migrant workers are often unprotected from violations. Further, migrant workers do not enjoy freedom of association. Brunei Darussalam became a member of the ILO on 17 January 2007, but has not yet ratified the conventions on freedom of association and collective bargaining.²²⁷ With the promulgation of the Employment Order 2009, migrant workers, including domestic workers, are given more protection. Further, the Employment Order of 2009 may partly, albeit inadequately, compensate for the absence of a clear compliance to CEDAW Recommendations No. 26 on Women Migrant Workers.

During the 13th Session of the Human Rights Council on January 4, 2010, Brunei Darussalam addressed its issues on migrant workers. It stated that it welcomes workers of other nationalities provided that the established labour and immigration requirements are fulfilled to ensure that their rights and welfare are protected. Also during this session, member countries of the Human Rights Council stated their recommendations concerning Brunei Darussalam's migration policies:

- 1) Take effective measures to guarantee respect for the rights of migrant workers (Algeria);
- 2) Seek to better enforce statutes protecting immigrant workers from exploitation and mistreatment (United States);

²²⁶ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 13.

²²⁷ International Trade Union Confederation, *2009 Annual Survey of violations of trade union rights - Brunei Darussalam*, 11 Jun 2009, accessed March 12, 2012 <http://www.unhcr.org/refworld/docid/4c52cafdc.html>.

- 3) Reconsider the practice of confiscating the passports of migrants who bring to the courts a dispute with their employers, or consider an emergency judicial procedure which makes it possible to fully guarantee the rights of migrant workers on its territory (France).²²⁸

However the recommendation of Mexico for Brunei Darussalam to 'adhere to principles of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and consider favourably possibly ratifying it; and that of Canada to repeal or amend all provisions in domestic laws which provide for caning for administrative offences involving immigration law' did not enjoy the support of Brunei Darussalam.²²⁹

3. Implementation, Monitoring and Enforcement

a. Monitoring Mechanisms

The Labour Department is the agency responsible for monitoring compliance with labour regulations; the Enforcement Unit of the Labour Department is responsible for discrepancies made by employers. On the other hand, migration issues are handled by Immigration and National Registration Department.

b. Complaints Process

The Labour Department has a unit on addressing complaints of abuse of migrant workers in Brunei Darussalam. Most of the complaints that occurred are related to non-payment of salaries as indicated above whereas female domestic helpers tend to be sexually abused or exploited by the employers. The Labour Department also has enforcement officers available to assist the problems faced by migrant workers.

The embassies of Indonesia and Philippines have established Units especially to address issues on abuses or exploitation of their respective citizens. Under the Section 126 of the Employment Order 2009, the complainant should present a written statement or in person make a statement, to the Labour Commissioner, of his complaint and of the remedy that he seeks. The Commissioner shall then, as soon as practicable, examine the complainant

²²⁸ UN Human Rights Council, Report of the Working Group on Brunei Darussalam, 21.

²²⁹ *Ibid.*

on oath and record the substance of the complainant's statement in his casebook. The Commissioner may make such inquiry as he thinks necessary and may summon the person complained against. Part VII- Sections 123 to 136 states in detail the compliant process that the offended may undergo.²³⁰

c. Protection and Rehabilitation

Aside from the protection provided for in Employment Order 2006 and Employment Agencies Order of 2004, there are no provisions for the rehabilitation of abused migrant workers. In practice, the migrant workers are repatriated, as provided for in section 114(1) of the Employment Order 2009, which states that:

Every immigrant employee who is a party to a contract of service under this Order and who has been brought to Brunei Darussalam by an employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to his place of origin or to the place of engagement ...²³¹

The embassies of the Philippines and Indonesia provide shelter to their nationals. The Labour Department of Brunei Darussalam aids the migrant workers to claim any unpaid wages. Under Section 39(1) of the Employment Order 2009, employers are required to settle all wages owed to their employees by the seventh day of the working month. Those who fail to comply with these regulations can be fined up to \$3,000 and jailed for one year. Some of the other chief complaints filed by migrant workers include employers terminating contracts without notice, illegal deduction of wages, unpaid overtime and failure to provide return passage at the end of a contract. Statistics reveal that in 2010, 43 foreign workers filed complaints stating their salaries had not been paid and no return passage was provided to their home country. This is a sharp decrease from 2008, when 137 complaints of the same nature were made. The overall number of complaints received by the Labour Department from migrant workers in private companies also fell from 468 in 2008 to 99 in 2010 — a 78-per cent decrease.²³²

²³⁰ *Employment Order 2009, Article 83(3)*, September 5, 2009, accessed March 14, 2012, http://www.agc.gov.bn/agc1/images/LAWS/Gazette_PDF/2009/EN/s037.pdf.

²³¹ *Ibid.*

²³² Quratul-Ain Bandial, 'Migrant workers' complaints drop.'

The Employment Order 2009 also promises better protection of employees' welfare and rights. Under the Order, the entry of foreign workers is controlled by the Labour Department and their welfare is protected from irresponsible employers. They are also accorded the same rights as Bruneian citizens under civil and criminal laws. All new employers are briefed on labour laws and regulations and are encouraged to adopt 'good employment practices, harmonious working relationships and mutual respect'. Domestic workers are also required to be present during the signing of employment contracts so that Labour officers can brief them on their rights and obligations. They are also given the department's hotline number if they need to report any abuse or complaints.²³³

d. Prevention Measures

The measures taken by Brunei Darussalam to prevent abuse and exploitation of migrant workers, as cited in publication Good Practices for Migrant Workers in Brunei Darussalam, are:

- 1) Conduct of Pre-Employment Briefing: when signing the Contract of Agreement, domestic workers are required to be present at a briefing session that is conducted by Labour Officers. The meeting briefs them regarding their rights, the do's and do not's. They are also given the Labour Hotline Number for their access to report any abuse or complaints.
- 2) Promotion through the Media: all court cases are publicized through the media as a reminder to employers of the need to comply with prevailing laws and regulations.²³⁴

4. Role of Non-State Actors

To date, there are no non-government organizations established to assist migrant workers in Brunei Darussalam.

- a. **Assistance to Victims**
There is no available information.
- b. **Prevention Programs**
There is no available information.
- c. **Monitoring and Cooperation**
There is no available information.

²³³ *Ibid.*

²³⁴ UNIFEM, (now UN Women) Good Practices to Protect Women Migrant Workers, 34.

5. Progress Indicators and Challenges

There is limited information on the situation of migrants and migrant workers in Brunei Darussalam. The absence of such information renders it difficult to determine the progress in the provision of protection to women migrants and women migrant workers. A report published in the *Brunei Times* on August 20, 2011 cites that the number of complaints from migrant workers in Brunei Darussalam over unpaid wages has dropped by 89 per cent over the past three years; this was attributed to stricter law enforcement.²³⁵

6. Recommendations for Further Study

With reference to all the three sections: violence, exploitation and, abuses and discrimination in migration, the primary concern should be the generation of baseline statistics. The efforts of Brunei Darussalam in protecting the welfare of its people is commendable. However, it is observed that there is inadequate data available in databases provided by UNICEF,²³⁶ World Databank,²³⁷ and UN Secretary-General's database on violence against women,²³⁸ which may be an indicator that national statistics are unavailable. The statistics may serve as the basis for the subsequent researches such as quantitative and qualitative analysis; cause, effect and impact of these occurrences; profiling of victims and perpetrators; assessment of national policies; and progress indicators, among others.

Meanwhile, in the absence of adequate statistics, more case studies may be conducted so as to ascertain the situation of women and children who are victims of violence and exploitation, or who have been abused or discriminated in the course of their migration. Academic institutions, on the other hand, can encourage the members of the academe to conduct and publish more researches on the plight of women and children, both nationals and migrants, in Brunei Darussalam. It has been observed that there is a significant lack of academic journals, books and other publications that discuss the situation of children and women and Brunei Darussalam.

235 Quratul-Ain Bandial, 'Migrant workers' complaints drop.'

236 UNICEF, 'At a glance: Brunei Darussalam.'

237 World Databank

238 UN Secretary-General's database on violence against women, accessed March 13, 2012, <http://sgdatabase.unwomen.org/country-Ind.action?countryId=269>.

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Cambodia

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



**Violence, Exploitation, and Abuse and Discrimination
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A Baseline Study**

**by
Sovanna Sek**

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Formal Name: Kingdom of Cambodia
Capital City: Phnom Penh

Population	Male: Female: Both sexes: 14,701,717 ¹
Life expectancy ²	Male: 60.31 years Female: 65.13 years Both sexes: 62.67 years
Age structure ³	0-14 years: 32.2% (male 2,375,155/female 2,356,305) 15-16 years: 64.1% (male 4,523,030/female 4,893,761) 65-over: (male 208,473/female 344,993) (2011 est.)
Sex ratio ⁴	At birth: 1.045 male(s)/female(s) Under 15: 1.02 male(s)/female(s) 15-64 years: 0.95 male(s)/female(s) 65-over: 0.6 male(s)/female(s) Total: 0.96 male(s)/female (2011 est.)
Religions ⁵	Buddhist (official) 96.4%, Muslim 2.1%, other 1.3%, unspecified 0.2% (1998 census)
Ethnic groups ⁶	Khmer 90%, Vietnamese 5%, Chinese 1%, other 4%
Functional literacy rate ⁷	Male: 85.08% Female: 70.86% Both sexes: 77.59%
Net enrolment ratio in secondary school ⁸	Male: 10 years Female: 9 years (2007)
Migration rate	Net: -0.34 migrant(s)/1,000 population (2011 est.) ⁹
Number of citizens working overseas	Male: Female: Total: 350,000 Cambodian migrant workers (2010) ¹⁰
Percentage of female-headed households	25.6% ¹¹

1 Central Intelligence Agency (CIA), The World Fact Book 2011-Cambodia Demographics Profile; available at http://www.indexmundi.com/cambodia/demographics_profile.html.

2 *Ibid.*

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*

6 *Ibid.*

7 Royal Cambodian Government, Leaflet on Key Gender Statistics in Cambodia, dated August 2010.

8 Central Intelligence Agency (CIA), The World Fact Book 2011-Cambodia Demographics Profile; available at http://www.indexmundi.com/cambodia/demographics_profile.html.

9 *Ibid.*

10 The Mirror, "The Number of Cambodian Migrant Workers Is Increasing – Monday, 21.6.2010," available at <http://www.cambodiamirror.org/2010/06/23/the-number-of-cambodian-migrant-workers-is-increasing-monday-21-6-2010/>

11 Royal Cambodian Government, Leaflet on Key Gender Statistics in Cambodia, dated August 2010.

Labour force participation rate	Male: Female: 49.4% ¹²
Unemployment rate	Male: Female: Total: 3.5% (2007 est.) ¹³
Proportion of unpaid family worker ¹⁴	Male: 76% Female: 83%
Fertility rate ¹⁵	2.84 children born/woman (2011 est.)
Maternal mortality rate	140 death/100,000 live births (2009) ¹⁶
Infant mortality rate	55.49 deaths/1,000 live births ¹⁷
Legal definition of “Child”	Person under the age of eighteen ¹⁸
Age of majority	18 years old ¹⁹
Marriageable age	18 years old However, if one of the parties has attained the age of majority and the other party is a minor at least 16 years of age, the parties may marry with the consent of the parental power holders or guardian of the minor. ²⁰
Age of consent	15 years old ²¹
Age of criminal responsibility	14 years old ²²
Minimum age of employment	15 years old ²³
Minimum age for military recruitment and participation	18 years old ²⁴

12 UNDP-Cambodia, “Key Fact about Gender Equality in Cambodia”, Last update 09 March 2011, available at <http://www.un.org.kh/undp/what-we-do/gender-equality/gender-equality>.

13 Central Intelligence Agency (CIA), The World Fact Book 2007- “Cambodia Unemployment Rate”.

14 UNDP-Cambodia, “Key Fact about Gender Equality in Cambodia”, Last update 09 March 2011.

15 Central Intelligence Agency (CIA), The World Fact Book 2011- Cambodia Demographics Profile.

16 Robert Carmichael, “Alarming Maternal Deaths Require a Mix of Solutions”, 12 October 2009 (IPS).

17 Central Intelligence Agency (CIA), The World Fact Book 2007- “Cambodia Unemployment Rate.”

18 Civil Code of Cambodia, Article 17.

19 *Ibid.*

20 New Civil Code of Cambodia, Article 948.

21 Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human Beings, Chapter 4, article 8

22 Criminal Procedure Code of Cambodia 2007, Article 224

23 Labour Law of Cambodia 1999, Article 177; and Convention Number 138, Article 2.

24 Central Intelligence Agency (CIA), The World Factbook “Military: Cambodia”, 9 November 2011

A. Overview

Cambodia has been through many decades of civil war and internal conflicts. The country is now in the process of transition for justice to rebuild social trust, repair its justice system, and build a democratic system of governance. While the body of laws concerning women and children still need to be refined and systems to effectively enforce and monitor their implementation still need to be properly established, it should be recognized that Cambodia, with the vigorous participation of civil society organisations, has made significant positive changes in the recent years.

Cambodia is a signatory to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC). Despite the fact that many national steps are already being taken, violence, exploitation, and abuse and discrimination in migration against women and children remain extremely important issues in Cambodia.

Cambodia submitted its combined Initial, Second, and Third national report to the CEDAW Committee in February 2004 (“The Initial, 2nd, and 3rd CEDAW Report”).²⁵ The CEDAW Committee considered Cambodia’s report at its 34th session on January 16 to February 3, 2006. The following documents arising from Cambodia’s Initial, 2nd, and 3rd CEDAW Report form part of the primary sources reviewed concerning violence, exploitation and migration of women and children:

- The initial, 2nd, and 3rd CEDAW Report, 2004;
- Joint report submitted by non-governmental organisations to the CEDAW Committee, for the 34th CEDAW Session in 2006 (“NGO CEDAW Shadow Report 2006”);²⁶
- Cambodia’s responses to the CEDAW Committee’s list of issues and questions for consideration, 2006 (“Cambodia’s CEDAW Responses”);²⁷

25 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined initial, second and third periodic reports of States parties: Cambodia*, 11 February 2004, CEDAW/C/KHM/1-3, available at: <http://www.unhcr.org/refworld/docid/411749bb4.html> (accessed 12 September 2012).

26 The NGO Committee on CEDAW and the Cambodian Committee of Women (CAMBOW), *Joint Coalition Shadow Report for the CEDAW Committee: Cambodia: Submitted for 34th CEDAW Session, January 2006*, available at: <http://www.iwraw-ap.org/resources/pdf/Cambodia2005.pdf> (accessed 5 August 2012).

27 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *Responses to the list of issues and questions for consideration of the combined initial, second and third periodic*

- Concluding Comments by the CEDAW Committee, 2006 (“CEDAW Concluding Comments”);²⁸

Cambodia also submitted its combined 4th and 5th national report to the CEDAW Committee in May 2010 (“4th and 5th CEDAW Report”).²⁹ The following documents arising from Cambodia’s CEDAW Report form part of the primary sources herein reviewed concerning violence, exploitation and migration of women and children:

- The 4th and 5th CEDAW Report, 2010;
- Joint report submitted by non-governmental organisations to the CEDAW Committee, 2011 (“NGO CEDAW Shadow Report 2011”);³⁰

Cambodia submitted its Initial Report to the Committee on the Rights of the Child in 2000³¹ and its Second and Third report in 2007 (“2nd and 3rd CRC Report”)³². Much focus is given on the 2nd and 3rd CRC report. The CRC Committee considered the 2nd and 3rd CRC Report at its 57th session in May 2011. The following documents arising from Cambodia’s CRC Report form part of the

report: Cambodia, 4 January 2006, CEDAW/C/KHM/Q/1-3/Add.1, available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws34.htm>.

28 UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Cambodia*, 25 January 2006, CEDAW/C/KHM/CO/3, available at: <http://www.unhcr.org/refworld/docid/441183478.html> (accessed 12 September 2012).

29 Royal Government of Cambodia, *4th and 5th National Report Fourth and Fifth National Report on Implementation of the International Convention on the Elimination of All Forms of Discrimination Against Women in Cambodia*, May 2010, available at: http://cncw.gov.kh/userfiles/FINAL%20FINAL%20edited%20Eng_4th_and_5th_National_report_RGC%20Final%20Edit.pdf (accessed 10 August 2012).

30 NGO-CEDAW and CAMBOW, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women In Cambodia, 2010*, March 2011, available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/JointNGOSubmission_Cambodia56.pdf (accessed 5 August 2012).

31 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Initial reports of States parties due in 1994: Addendum: Cambodia, 24 June 1998, CRC/C/11/Add.16*, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/166/27/PDF/G9816627.pdf?OpenElement>; and UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Cambodia*, 28 June 2000, CRC/C/15/Add.128, available at: <http://www.unhcr.org/refworld/docid/3ae6afc524.html> (accessed 12 September 2012)]

32 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Second periodic report of States parties due in 1999: Cambodia*, 4 June 2010, CRC/C/KHM/2-3, available at http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.KHM.2-3_en.pdf (accessed 10 July 2012).

primary source utilized in this Study:

- The 2nd and 3rd CRC Report, 2007;
- Written Replies by the government of Cambodia concerning list of issues received by the committee, 2011 (“CRC Written Replies”);³³ and
- Shadow or alternative reports submitted by non-governmental organizations;³⁴
- CRC Committee’s Concluding Observations, 2011.³⁵

Cambodia submitted a National Report to the Human Rights Council in 2009 (“UPR Report”).³⁶ It was considered by the Human Rights Council in its sixth session. The following documents arising from Cambodia’s UPR Report are here in reviewed:

- UPR Report, 2009;
- Stakeholders’ Submissions to the Universal Periodic

Review, 2009 (“UPR Stakeholder’s Submissions”);³⁷

- Report of the Working Group on the Universal Periodic Review, 2010 (“UPR Working Group Report”).³⁸

Among others, the following reports and documents prepared by government agencies provided much valuable information:

- A Five-Year Strategic Plan: 2010 – 2014;³⁹
- Five Year Strategic Plan 2009-2013: Neary Rattanak III;⁴⁰
- National Action Plan to Prevent Violence on Women (2009-2012);⁴¹
- Policy on Migration Labour for Cambodia;⁴²
- Report Reply to the List of Issues Raised by the Office of the Special Representative of the Secretary General on Violence against Children in Cambodia, 2006-2011.⁴³

There are many publications made by NGOs that provide valuable information on the situation of women and children in Cambodia. These NGO publications include those by Cambodian Committee of Women (CAMBOW), ADHOC, Coordination of Action Research on AIDS and Mobility (CARAM), US Department of State, International Labour Organization, International Organization for Migration, UNIAP and other bodies of the United Nations, and Human Rights Watch. It should be noted that women and children’s rights groups

33 UN Committee on the Rights of the Child, Written replies by the Government of Cambodia to the list of issues (CRC/C/KHM/Q/2-3) in connection with the consideration of the combined second and third periodic reports of Cambodia (CRC/C/KHM/2-3), 17 May 2011, CRC/C/KHM/Q/2-3/Add.1, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/429/17/PDF/G1142917.pdf?OpenElement> (accessed 3 July 2012).

34 Cambodia Children and Young People’s Movement (CCYMCR), *My Life...My Suggestions*, October 2011, available at [http://www.crin.org/docs/Cambodia%20\[Children's%20Report\]_My%20Life...My%20Suggestions_CCYMCR.pdf](http://www.crin.org/docs/Cambodia%20[Children's%20Report]_My%20Life...My%20Suggestions_CCYMCR.pdf), (accessed 30 June 2012); Cambodian Human Rights and Development Association (ADHOC), *Sexual Violence Against Children in Cambodia*, April 2011, available at http://www.crin.org/docs/Cambodia_ADHOC_CRC%20Report.pdf; IIMA – Istituto Internazionale Maria Ausiliatrice, *Alternative Report on The implementation of the Convention on the Rights of the Child in Cambodia*, May 2011, available at http://www.crin.org/docs/Cambodia_IIMA_CRC%20Report.pdf (accessed 5 August 2012); Human Rights Watch, *Skin on the Cable: The Illegal Arrest, Arbitrary Detention and Torture of Children in Drug Detention Centres in Cambodia*, October 2010, available at http://www.crin.org/docs/Cambodia_Skin%20on%20the%20Cable_NGO_Report.pdf (accessed 10 August 2012); NGO Committee on the Rights of the Child (NGOCRC) (Cambodia), *Alternative Report on the Implementation of the UN Convention on the Rights of the Child in Cambodia: 2000-2009*, October 2010, available at http://www.crin.org/docs/Cambodia_NGOCRC_NGO_Report%20FINAL.pdf (accessed 3 June 2012); and Kelsey Hayes, *Convention on the Rights of the Child: Shadow Report on Cambodia*, 12 April 2011, available at http://kelseyhayes.com/essay_2.pdf (accessed 10 July 2012).

35 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Cambodia*, 3 August 2011, CRC/C/KHM/CO/2-3, available at: <http://www.unhcr.org/refworld/docid/4ef1f0df2.html> (last accessed 12 September 2012).

36 UN Human Rights Council, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Cambodia*, 16 September 2009, A/HRC/WG.6/6/KHM/1, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_WG6_6_KHM_1_E.pdf.

37 UN Human Rights Council, *Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Cambodia*, 9 September 2009, A/HRC/WG.6/6/KHM/3, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_WG6_6_KHM_3_E.pdf.

38 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Cambodia*, 4 January 2010, A/HRC/13/4, available at: <http://www.unhcr.org/refworld/docid/4bde9311107d9.html> (accessed 12 September 2012).

39 Cambodian National Council for Women, *A Five-Year Strategic Plan: 2010 – 2014*, available at <http://sgdatabse.unwomen.org/uploads/A%20Five-Year%20Strategic%20Plan%202010-2014.pdf>.

40 Ministry of Women’s Affairs, *Five Year Strategic Plan 2009-2013: Neary Rattanak III*, September 2009, available at <http://sgdatabse.unwomen.org/uploads/Five-Year%20Strategic%20Plan%20%20-%20Neary%20Rattanak%20III%20-%202009-2013.pdf>.

41 Ministry of Women’s Affairs, *National Action Plan to Prevent Violence on Women*, July 2009, available at <http://sgdatabse.unwomen.org/uploads/National%20Action%20Plan.pdf>.

42 Ministry of Labour and Vocational Training and ILO, *Policy on Labour Migration for Cambodia*, June 2010, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_145704.pdf.

43 Cambodia National Council For Children (CNCC), *Report Reply to the List of Issues Raised by the Office of the Special Representative of the Secretary General on Violence against Children in Cambodia, 2006-2010*.

constitute some of the most active segments of civil society in Cambodia.

B. VIOLENCE

1. Description of the Problem

a. Prevalence of Violence

At the outset, it should be stated that Cambodia lacks a comprehensive monitoring system on violence at the national level. The Ministry on Women’s Affairs stated as follows:⁴⁴

Currently in Cambodia there is no comprehensive system monitoring violence on women and no data available at the national level...

Due to a lack of consistent data and information, the Royal Government of Cambodia could not basically evaluate and monitor the frequency and extent of domestic violence.⁴⁵

The absence of a monitoring system is also true relative to violence committed against children. The Cambodia National Council For Children (CNCC) has acknowledged that the government still lacks reliable data on violence against children.⁴⁶ “The majority of studies focus on child rape or forced sex, leaving out a range of other abuses.”⁴⁷ It was indicated that the government intends to conduct a detailed research study into violence against children in 2012.⁴⁸

Domestic Violence

Domestic violence, which the Law on the Prevention of Domestic Violence and the Protection of Victims describes as the kind of violence that happens towards a husband or wife; dependent children; and persons living under one roof and who are dependents of the said household,⁴⁹ appears to be an issue of concern in Cambodia. The 2009 UPR Stakeholders’ Submission noted the high level of domestic violence, which affects 20% to 25% of Cambodian women.⁵⁰ According to

the results of a 2005 baseline survey by the Ministry of Women’s Affairs, which sampled 3,000 persons from the general population and 300 local authorities, equally distributed in 13 provinces and chosen at random, 64% of the sample knew a husband who acted violently towards his wife; 22.5% of female respondents had suffered violence from their husbands.⁵¹

A 2010 report of the Ministry of Women’s Affairs, which compared data from the commune on prevalence of violence from 2006 to 2009 in 24 provinces, however, showed an encouraging decrease of 16.56%, from a total of 41,474 cases in 2006, to 35,408 cases in 2009.⁵²

Category	2006	2007	2008	2009
Total number of families in 24 provinces	2,596,322	2,657,820	2,760,576	2,852,943
Number of families experiencing domestic violence	42,436	38,062	36,182	35,408
Percentage of families experiencing domestic violence	1.63%	1.43%	1.31%	1.24%

Below is a comparison of frequencies or percentages of domestic violence as compiled by government institutions and Non Governmental Organizations (NGOs):⁵³

Government or NGOs	Institutions	Data on Violence)
Government	National Institute of Statistics (2006)	12.8% 426,598 victims
	Commune (2009)	1.24% 35,408 victims
	Police (2009)	127 cases
	Ministry of Health (2009)	27 cases
	Ministry of Women Affairs (2009)	108 cases
NGOs	ADHOC (2009); BanteaySrei (2009); CWCC (2009); LAC (2008); LICADHO (2009)	1,690 victims

44 MoWA, *National Action Plan to Prevent Violence on Women*, 12.

45 *Ibid.*

46 CNCC, *Report Reply to the List of Issues*, 3.

47 *Ibid.*

48 *Ibid.*, 45-46.

49 Law on the Prevention of Domestic Violence and the Protection of Victims (2005), Article 2. Unofficial translation by the GTZ-Promotion of Women’s Rights available at http://iknowpolitics.org/sites/default/files/cambodia_dv_victims2005.pdf.

50 UN HRC, 2009 UPR Stakeholders Submission, paragraph 19.

51 Ministry of Women’s Affairs, *National Action Plan to Prevent Violence on Women*, July 2009, 4, citing *Baseline Survey Violence Against Women, Final Report Cambodia 2005*, 2.

52 Marion Bihler (commissioned by GIZ in cooperation with the Ministry of Women’s Affairs of Cambodia), *Report on Data Collection and Monitoring of Violence against Women, 2010*, 21.

53 *Ibid.*

Literature indicates that women suffering domestic violence find it difficult to divorce their husbands.⁵⁴ Once married, men move into their wives' homes and live with her family; this may give protection to wives from violence by husbands. However, often, family members of the wives are the ones encouraging them to try to make their marriage work, no matter what the cost may be. Most women are also financially or otherwise dependent on their husbands, making it difficult for women to leave, especially if there are children involved.⁵⁵

Cambodia still lacks reliable data on abuses against children.⁵⁶ While no official figures on domestic violence are available, it should be noted that Article 1045 of the Civil Code allows a "parental power holder to personally discipline the child to the extent necessary" and Article 8 of the Prevention of Domestic Violence and Protection of the Victims Law implicitly authorizes corporal punishment of children for disciplinary purposes. Hence, physical punishment is frequently viewed as a culturally acceptable form of discipline by parents and teachers. As a result, a report shows that 50.5% of boys and 36.4% of girls admitted to having been beaten by their parents. A total of 82.4% of girls and 81.1% of boys say they have seen other children being beaten by their parents.⁵⁷

Violations of the Right to Marry

According to the Cambodian Committee of Women (CAMBOW), traditionally, women are encouraged and sometimes pressured by their families to marry at a young age.⁵⁸ Arranged marriages reportedly still occur, particularly in rural areas. Once a couple is married there is great pressure on them to stay married.⁵⁹ In some cases, women are forced to marry the father of their unborn child or marry her rapist.⁶⁰

54 The Cambodian Committee of Women (CAMBOW), *Violence Against Women: How Cambodian Laws Discriminate Against Women*, November 2007, 14."

55 *Ibid.*

56 CNCC, *Report Reply to the List of Issues*, 3.

57 Child Welfare Group, Summary Report on Stop Violence against Us; A preliminary research study into the prevalence and perception of Cambodian Children to violence against children in Cambodia; page L, available at <http://vac.wvsiapacific.org/downloads/tear2.pdf>

58 CAMBOW, *Violence Against Women: How Cambodian Laws Discriminate Against Women*, 14.

59 *Ibid.*; and Ngo Menghak, "Arranged marriage in modern times," *The Phnom Penh Post*, 8 July 2010, <http://www.phnompenhpost.com/index.php/2010070840360/LIFT/arranged-marriage-in-modern-times.html>.

60 *Ibid.*, 14.

In relation to the right to marry and found a family, it should be noted that male foreigners over the age of 50 are prohibited from marrying Cambodian women in the country.⁶¹ Foreigners who earn less than \$2,550 per month are also barred from marrying local women. The restrictions do not apply to weddings taking place overseas. The Cambodian foreign ministry has sent a diplomatic note to all the embassies and consulates in the country informing them of the new regulation. These rules, which came into effect on 1 March 2011, were established to deter fake marriages and human trafficking.⁶² However, this rule has been criticized by NGOs in Cambodia, including by the League for the Protection of Human Rights (LICADHO) and Cambodian Center for Human Rights, for being discriminatory against women.⁶³

Rape

Although available information makes it difficult to accurately assess the full extent of the problem of rape, data indicates that rape and other forms of sexual abuses are serious concerns. Below is a comparison of data on rape cases as compiled by government institutions and NGOs:⁶⁴

Government or NGOs	Institutions	Data on Rape
Government	Commune database	558 cases (2009)
	Police	365 cases (2009)
	Ministry of Health	6 cases of sexual assault (2009)
	Ministry of Justice	74 convictions of rape cases (2010)
NGOs	NGO Joint Statistics from ECPAT	709 cases (2008)
	Newspaper articles analysed by the Ministry of Women Affairs	76% of the cases were investigated by the police; 40% of reported cases were investigated by NGOs

61 AFP, "Cambodia sets age limit for foreign husbands," *ABC News*, 16 March 2011, <http://www.abc.net.au/news/2011-03-16/cambodia-sets-age-limit-for-foreign-husbands/2653258>.

62 *Ibid.*

63 Julie Masis, "Cambodia: No country for old men," Cambodian Center for Human Rights, (undated), http://www.cchrcambodia.org/media/files/news/203_ncfom_en.pdf

64 Marion Bihler, *Data Collection and Monitoring of Violence against Women in Cambodia*, 2010, 17; and Tim Vutha, "Domestic Violence Cases Fall 24 per cent," *The Southeast Asia Weekly*, 25 September 2011, <http://thesoutheastasiaweekly.com/?p=1369>.

A joint NGO report explained that there is limited data on the number of rape and other sexually violent crimes in Cambodia, with “no single comprehensive source of information.”⁶⁵ The report states that the existing numbers indicate a disparity between the number of reported rape cases and the number of offenders brought to trial. For the year 2009, literature identified 535 suspected rape incidents, involving 541 victims, with 72% involving children victims. In the same reporting period, there were 627 offenders who were cited as familiar to the victims, with only 1% of rape cases attributed to strangers.⁶⁶

There appears to be a high prevalence of rape committed against minors. The Cambodian National Council for Children (CNCC) confirmed the lack of reliable data on violence against children and said sexual and gender-based violence remained a significant issue.⁶⁷ In 2009, 45% of the total 364 cases of rape and attempted rape reported to the Anti-Human Trafficking and Juvenile Protection Police involved victims under the age of 18, with the majority being female.⁶⁸ Of the 460 rape cases the Cambodian Human Rights and Development Association (ADHOC) investigated in 2009, 366 involved rape of minors. Four hundred nineteen (419) cases of rape were investigated in 2008, with 280 cases involving minors. In 2007, 523 cases were investigated and 375 of these cases involved minors.⁶⁹ A report states that a high percentage of the population surveyed (63.5% of girls and 64% of boys) said they know children who have been raped.⁷⁰ It also showed that 21.4% of girls and 23.5% of boys said they have witnessed the rape of a child by an adult.⁷¹ Thirteen and a half per cent (13.5%) of girls and 15% of boys said they have been sexually touched on the genitals before nine years old; and 13.5% of girls and 18.9% of boys said they have been sexually touched on

the genitals after nine years old.⁷²

Violence Against Women in the Entertainment Industry

It has been reported that young women in the “entertainment industry,” which category includes beer promotion girls, massage girls, karaoke parlour staff, and direct sex workers, are at great risk of economic exploitation and sexual abuse.⁷³ Four out of five women in the entertainment industry report that they have been victims of sexual harassment.⁷⁴ Human Rights Watch also reported that sex workers are subjected to arbitrary detention and other forms of abuses. “Women and girls involved in sex work face beatings, rape, sexual harassment, extortion, arbitrary arrest and detention, forced labour, and other cruel and degrading treatment at the hands of police, public park security guards, government officials, and those working in the centres and offices run by the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSAVY).”⁷⁵

Acid Attack

Acid attack is reportedly an act of revenge and usually done out of jealousy or hatred. The acid is usually thrown at the victim’s face, causing him or her embarrassment and affecting the latter’s day-to-day living. There are as yet no official statistics on acid attacks and many cases go unreported.⁷⁶ However, the Cambodian Acid Survivors Charity (CASC) recorded 287 acid attacks from 1982 to 2011, injuring more than 300 people. CASC recorded 10 attacks that burned 16 people in the first nine months of 2011. CASC likewise said that there are few acid convictions and 90% of cases have not gone to court.⁷⁷ The legislature has taken steps to address this issue by passing a law that imposes sentences ranging from two years to life in prison and regulates the licensing and sale of the caustic liquid.⁷⁸

65 Cambodian Human Rights and Development Association (ADHOC), Cambodian Defenders Projects (CDP), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Transcultural Psychosocial Organization (TPO), Cambodian Human Rights Action Committee (CHRAC), *Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia*, October 2012, 41, paragraph 114.

66 *Ibid.*

67 CNCC, *Report Reply to the List of Issues*, 3.

68 *Ibid.*

69 *Ibid.*

70 Child Welfare Group, Summary Report on Stop Violence against Us; A preliminary research study into the prevalence and perception of Cambodian Children to violence against children in Cambodia; page L, available at <http://vac.wvasiapacific.org/downloads/tear2.pdf>

71 *Ibid.*

72 *Ibid.*

73 NGO-CEDAW and CAMBOW, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women In Cambodia*, 2010, March 2011, 52.

74 *Ibid.*, citing Care 2005, ILO and World Bank 2006.

75 Human Rights Watch, *Off the Streets Arbitrary Detention and Other Abuses against Sex Workers in Cambodia*, July 2010, 4.

76 PTI, “Cambodian lawmakers approve law on acid attacks,” *Zee-news.com* (November 04, 2011): http://zeenews.india.com/news/world/cambodian-lawmakers-approve-law-on-acid-attacks_739966.html

77 *Ibid.*

78 *Ibid.*

Children in Conflict with the Law

While, the Criminal Procedure Code of 2007 and the Criminal Code of 2009 provide limitations on detention of children and the setting of a minimum age of criminal responsibility at 14 years, the CRC Committee expressed concern that there are no children's courts, or specialized judges or prosecutors in children's rights.⁷⁹ Thus, they are often sentenced as adults and generally held in adult prisons.⁸⁰ The Committee also raised the following issues:

- The 2001 Law on Aggravating Circumstances in Felony Cases increases sentencing for theft if committed by two or more offenders and makes no distinction in sentencing between adults and children.
- The vast majority of children do not meet their lawyer until the start of their trial;
- There has been an alarming rise of children being detained in recent years and that alternatives to detention are rarely used despite options provided by the law;
- Approximately half of children in prison are being held in pre-trial detention, often beyond the legal time limit of two months;
- Poor and deteriorating living conditions prevail in detention centres where children are held;
- Children detained have no or little access to education or vocational training, limited access to counselling services, including for drug and alcohol addiction, and to recreational activities;
- Monitoring the situation of children in prisons is subjected to serious restrictions; and
- There is a lack of rehabilitation programmes and a limited number of specialized trained staff and social workers to deal with children in contact with the law.⁸¹

Cruel Treatment of Children in Facilities

In its 2011 Concluding Observations, the CRC Committee showed deep concern about allegations that children and adolescents addicted to drugs, children with mental disabilities and children in street situations were tortured and ill-treated, including being subjected to widespread beatings, whippings and administration of electric shock in drug rehabilitation and youth centres where some of them had been forcibly placed.⁸²

In 2009, LICADHO conducted a national survey of

women living with their children in Cambodian prisons.⁸³ In September 2009, the survey found six pregnant women and 37 mothers living with 40 children in 10 Cambodian prisons located in Phnom Penh and nine provincial towns.⁸⁴ The survey found the children living in over crowded prison cells with limited access to food, clean water, healthcare, education and recreational activities. Children are legally allowed to stay with their mothers until the age of six; however, some children stay in prisons until the age of eight because they have nowhere else to go.⁸⁵ Although the government permits children to stay with their mothers in prison, minimal provision is made for their care.⁸⁶ Several mothers reported that their children were subjected to physical abuse from guards and other prisoners.⁸⁷

Violence Related to Land Grabbing and Forced Evictions

From 2000 to 2010, around 130,000 families living in Phnom Penh were evicted and relocated to the outskirts of the city.⁸⁸ While the evictions affect entire families, the displacements severely affect children and young people. Living outside the city offers less job opportunities and the men often need to seek work in new locations that separates them from the family. This situation is particularly hard for women and children who find themselves alone in new surroundings, often lacking basic access to clean water, electricity and other services such as schools, health centres and markets.⁸⁹ Young people often have to leave their schools; some never return and are forced instead to take work to complement their family's income.⁹⁰

Gender-Based Violence During the Democratic Kampuchea

Although the regime of the Khmer Rouge ended more than 30 years ago, current studies indicate the need to address gender-based violence that occurred during the Democratic Kampuchea (1975 to 1979) so as to raise

79 CRC, 2011 *Concluding Observations*, paragraph 76.

80 *Ibid.*

81 *Ibid.*

82 CRC, 2011 *Concluding Observations*, paragraph 38.

83 Cambodian League for the Promotion and Defense of Human Rights (LICADHO), *Adopt-a-Prison Project*, June 2010, 1, available at <http://www.licadho-cambodia.org/reports/files/1412010-June-Adopt-a-Prison%20Final%20ENG.pdf>.

84 *Ibid.*

85 *Ibid.*

86 *Ibid.*

87 *Ibid.*, 11.

88 Sahnakum Teang Tnaut Organization, "Displaced Youth: Stories of Eviction from the Youth of Phnom Penh," November 2010, 1, available at <http://teangtnaut.org/PDF/Youth-F-and-F.pdf>. See also CRC, 2011 *Concluding Observations*, paragraph 61.

89 *Ibid.*

90 *Ibid.*

awareness on the issue and provide for the needs of survivors.

Of the 104 respondents in a survey published in 2011, 65.4% were aware of rape committed by Khmer Rouge agents; 28.8% were direct witnesses to acts of rape; and one person was herself a victim of rape.⁹¹ As regards sexual mutilation, 24% had knowledge of sexual mutilation that took place during the Democratic Kampuchea and 16.3% were direct witnesses of sexual mutilation.⁹² Respondents recalled seeing female corpses with their breasts “pinched and cut with iron”, Khmer Rouge soldiers cutting the breasts of a woman, vaginas being cut and dried, as well as seeing severed human genitals, sexual organs and buttocks hanging from trees.⁹³ Twenty per cent of the respondents indicated knowledge of sexual abuse and humiliation that included verbal abuse and mockery, forced nudity, forced witnessing of rape and unwanted touching.⁹⁴

Arranged, even forced, marriages also figure prominently in the country’s recent history. The Khmer Rouge is said to have “systematically arranged marriages” for couples.⁹⁵ Threats were made, violence was used, and people were even tortured, imprisoned or killed if they refused to marry.⁹⁶ According to the Closing Order of Case 002, which case is currently being heard at the Extraordinary Chambers in the Courts of Cambodia, throughout the country, people were typically married in mass ceremonies ranging from two couples to over 100 couples;⁹⁷ forced marriages were said to have occurred in “nearly every zone”.⁹⁸

The Closing Order indicates that there are 664 civil parties who have provided sufficient proof tending to establish *prima facie* personal harm as a direct consequence of the

crime of forced marriage.⁹⁹ However, the other forms of gender-based violence were not part of the indictment.

On rape, the Co-Investigating Judges “observed that the official CPK policy regarding rape was to prevent its occurrence and to punish perpetrators.”¹⁰⁰ On this basis, rape outside the context of forced marriage was excluded from the initial indictment as it appears that the prosecution of other gender-based crimes, such as sexual mutilation and torture, were not investigated by the Court.¹⁰¹

b. Root Causes of Violence and Aggravating Practices

Cultural Traditions and Societal Attitudes

The problem of domestic violence is said to be compounded by cultural traditions of inferiority and subservience of women. In Cambodia, women’s inferiority is said to be reflected in traditional codes of conduct such as the *Chbab Srey* (Women’s Law or Code of Women), which teaches women to be subservient to men.¹⁰² The *Chbab Srey* is a written, customary law which is said to go back centuries. It has never been turned into official statute; however, its influence in Cambodian society remains deep-rooted.¹⁰³ Rules that a “perfect girl” need to observe include talking softly, walking softly without making noise, sitting appropriately with her legs to the side, refraining from screaming or yelling, and obeying and pleasing her husband.¹⁰⁴ Thus, it was posited that less frequent communication may result in fewer conflicts as frequent spousal discussion may be perceived as an assertion of power, with men resorting to violence as one means of affirming their power as the household head.

Reports indicate a tendency for society to believe that domestic violence is an internal family problem, leading

91 Katrina Natale, “I Could Feel My Soul Flying Away From My Body”: A Study on Gender-Based Violence During the Democratic Kampuchea in Battambang and SvayRieng Provinces, November 2011, 1.

92 *Ibid.*

93 *Ibid.*, 35-36.

94 *Ibid.*, 1-2.

95 Natalae Anderson, “Memorandum: Charging Forced Marriage as a Crime Against Humanity,” Documentation Center of Cambodia, 22 September 2010, 1, available at http://www.dccam.org/Tribunal/Analysis/pdf/Forced_Marriage_as_a_Crime_Against_Humanity.pdf.

96 *Ibid.*, citing Nakagawa Kasumi, *Gender-Based Violence During the Khmer Rouge Regime: Stories of Survivors from the Democratic Kampuchea* (1975-1979), at 18 (2d ed. 2008).

97 Office of the Co-Investigating Judges, Extraordinary Chambers in the Courts of Cambodia, “Closing Order” (15 September 2010), Case File No.: 002/19-09-2007-ECCC-OCIJ,D427, paragraph 844.

98 *Ibid.*, paragraph 843.

99 *Ibid.*, paragraph 861.

100 Katrina Natale, “I Could Feel My Soul Flying Away From My Body,” 22, citing Case 002 Closing Order, para. 1429.

101 *Ibid.*

102 CAMBOW, *Violence Against Women: How Cambodian Laws Discriminate Against Women*, 7.

103 “Challenging Tradition in Cambodia,” *CEDAW in Action in South-east Asia*, http://cedaw-seasia.org/cambodia_stories_challengingTradition.html (accessed 13 July 2012).

104 Sothy Eng, Yingli Li, Miriam Mulsow, and Judith Fischer, “Domestic Violence against Women in Cambodia: Husband’s Control, Frequency of Spousal Discussion, and Domestic Violence Reported by Cambodian Women,” Published online: 20 October 2009, http://www.engagingmen.net/files/resources/2010/sysop/Cambodia_VAW.pdf (accessed 13 July 2012), 239.

to reluctance on the part of the victim to seek help or even to admit that there is a problem.¹⁰⁵ Rape must also be viewed within the context of Cambodian cultural and social attitudes towards women and sexuality.¹⁰⁶ Men are perceived as having more value than women, and women are supposed to be subservient to them. Thus, men do not always respect the right of women to be free from sexual or other violence and many women do not always have the confidence to stand up for their rights. Women are expected to remain virgins until marriage, and a girl who loses her virginity prior to marriage (even through rape) is often considered to be “unmarriageable.”¹⁰⁷ This leads women to prefer to stay silent and not pursue formal complaints against perpetrators of rape, which “attitude is often encouraged by family and community members, including local authorities such as village and commune chiefs and local police.”¹⁰⁸ Instead, victims and their families prefer to quietly resolve the crime.

It has also been put forward that Cambodia’s experience under the Khmer Rouge has an influence on prevalence of violence; children during the Democratic Kampuchea who suffered violence and are now parents and grandparents still carry insights from this regime.¹⁰⁹

Gaps in Legislation

Reports have indicated that one of the main causes of violence is discrimination in national legislation. This occurs through, among others, gender-specific legal terms which have a greater negative impact on women or through omissions which make legal definitions and prosecutions difficult, resulting to lack of protective measures.

(Discussed further in *B.2.c. Assessment of State Policies.*)

Lack of Legal Knowledge/Awareness

With the passing of the Law on the Prevention of Domestic Violence and the Protection of Victims in 2005, there is some recognition of a woman’s inherent right to be free from violence. However, there are still law enforcement officials and members of the general population who are unaware of this law.¹¹⁰ Interestingly, however, knowledge of the law by itself does not seem to be a major deterrent against violence. A 2005 survey noted as follows:

¹⁰⁵ CAMBOW, *Violence Against Women: How Cambodian Laws Discriminate Against Women*, 7.

¹⁰⁶ *Ibid.*, 19.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ CNCC, *Report Reply to the List of Issues*, 4.

¹¹⁰ CAMBOW, *How Cambodia Laws Discriminate against Women*, 7.

Most people in the sample acknowledged that violent acts, although sometimes acceptable, are also illegal, which demonstrates that laws have a limited influence on attitudes. More than 97% of the sample said that burning or choking, as well as throwing acid, stabbing or shooting, were illegal.¹¹¹

It should be mentioned that the new Civil Code of Cambodia, which is relevant to this Study as the said legislation affects the laws of persons and family relations, went into effect on 22 December 2012. The Code has been described as a “major step forward for Cambodia;” however, a few hurdles were identified, to wit:¹¹²

First, potential conflicts between the pre-existing and often not-repealed Decree Laws must be resolved. Although the Civil Code has attempted in some articles to specify whether new provisions in the Civil Code will take precedence over the older and more specific Decree Laws, there remain many points of law that are still in doubt.¹¹³

Second, the regulatory structure for the implementation of the new code must be created. The provisions of the Civil Code are often not self-executing, particularly in the areas of real property transactions, including transfer of and title to land, and registration of business entities.¹¹⁴

Third, the government personnel who will be charged with implementing the new code provisions must be trained.¹¹⁵ Judges, court clerks, lawyers and ministry personnel will all need to be knowledgeable about the substance of the new code provisions and the regulations that will be drafted to implement them.¹¹⁶

Other Factors

Education has also been associated with prevalence of domestic violence. Women with fewer years of education than their husbands were found to be more vulnerable to physical and emotional violence.¹¹⁷ A 2000 demographic

¹¹¹ Ministry of Women’s Affairs, Kingdom of Cambodia, *Violence Against Women: A Baseline Survey*, 2005, 21.

¹¹² Dolores A. Donovan, USE, “The new Cambodian Civil Code,” *East Asia Forum*, 16 February 2012, <http://www.eastasiaforum.org/2012/02/16/the-new-cambodian-civil-code/>.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*, citing Kevin Boreham and Harry Hobbs, ANU, “Justice denied for Cambodia,” *East Asia Forum*, 22 December 2011, <http://www.eastasiaforum.org/2011/12/22/justice-denied-for-cambodia/>.

¹¹⁶ *Ibid.*

¹¹⁷ Sothy Eng, et. al., “Husband’s Control, Frequency of Spousal Dis-

survey also indicated that history of having witnessed domestic violence against mothers in early life was related to domestic violence in current couple relationships.¹¹⁸ Socioeconomic status was also indicated as a factor because women who are socioeconomically dependent on their husbands are more likely to feel that they have to endure an abusive relationship.¹¹⁹ There are literature correlating alcohol use and physical and emotional abuse.¹²⁰ In 2005, a survey “showed a strong link between alcohol and violence. In general, as the use of alcohol increased, violent behaviour increased as well.”¹²¹ A follow-up survey in 2009, however, found that “results are mixed with no clear correlation between the two.”¹²²

c. Impact of Violence

Women

A 2005 survey prepared by the Ministry of Women’s Affairs showed that physical violence in the domestic setting has significant economic, physical and psychological effects on those who experience it.¹²³ Missing work was the most common impact reported by those who experienced violence,¹²⁴ with around one-fifth reporting that they experienced this impact.¹²⁵ Violence contributed to 16% of the sample losing around one month’s income each year. This impact was more “dramatic” on the poor, who said they had lost almost twice their monthly income in the year prior to the survey.¹²⁶

The respondents also indicated negative effects on their health and well-being, which ranged from anxiety and physical problems to extreme fear.¹²⁷ Thirty nine per cent (39%) of women respondents who experienced violence reported fearing for their lives, while 47% of

women respondents reported fearing for the lives of their children.¹²⁸ Long-term stress indicates a need to improve mental health support services for victims of domestic violence.

The impact of rape is “devastating”, especially in a culture that places such a high value on a woman’s virginity; thus, a rape victim faces strong stigma and shame.¹²⁹ Victims report that their neighbours look down on them; and they blame themselves, or their families blame them for dishonouring the family. Thus, aside from physical injuries, victims suffer severe anxiety, loneliness, depression, lack of confidence, and fear.¹³⁰

Children

Violence affects children physically and psychologically.¹³¹ Abdominal injuries, brain injuries, bruises, cuts, broken bones, eye damage, chronic pain, disability, gastrointestinal problems are reported as some of the physical consequences of domestic violence and corporal punishment. Some of the psychological problems arising from such forms of violence include poor school performance, poor relationships, alcohol/drug abuse, delinquent and violent behaviour, development delays, depression, eating and sleep disorders, feelings of shame and guilt, poor relationship development, phobias and panic disorders, poor self-esteem, post-traumatic stress disorder, psychosomatic disorders, smoking, suicidal behaviour and self-harm, and unsafe sexual behaviour.¹³²

Sexual abuse or rape of children also has physical and psychological consequences, including HIV/AIDS, sexually transmitted infections and pregnancy.¹³³ It can result to a variety of psychological and behavioural problems such as alcohol/drug abuse, depression, eating and sleep disorders, feelings of shame and guilt, phobias and panic disorders, poor self-esteem, post-traumatic stress disorder, psychosomatic disorders, smoking, suicidal behaviour and self-harm, unsafe sexual behaviour, and increased risk of sexual exploitation and trafficking.¹³⁴

cussion, and Domestic Violence,” 239.

118 *Ibid*, citing Yount and Carrera 2006.

119 *Ibid*.

120 *Ibid*, citing Cubbins and Vannoy 2005; Jackson 2008; Kimuna and Djamba 2008; Snow et al. 2006; Stickley et al. 2008.

121 Ministry of Women’s Affairs (MOWA), Kingdom of Cambodia, *Violence Against Women: A Baseline Survey*, 2005, available at [http://sgdatabse.unwomen.org/uploads/Cambodia%20-%20Baseline%20Survey%20\(2005\).pdf](http://sgdatabse.unwomen.org/uploads/Cambodia%20-%20Baseline%20Survey%20(2005).pdf), 44.

122 Neary Rattanak (Ministry of Women’s Affairs), *Violence Against Women 2009 Follow-Up Survey*, available at http://www.un.org.kh/undp/media/files/Violence_Against_Women_2009_Follow-Up_Survey-Executive_Summary.pdf, 21.

123 *Ibid*, 18.

124 MOWA, *Violence Against Women: A Baseline Survey*, 2005, 36.

125 MOWA, *Violence Against Women: 2009 Follow-Up Survey*, 18.

126 *Ibid*.

127 *Ibid*.

128 MOWA, *Violence Against Women: A Baseline Survey*, 2005, 40.

129 *Ibid*, 9, citing LICADHO (2001), *Rape and Indecent Assault: Crimes in the Community* (Phnom Penh), page i.

130 *Ibid*.

131 Glenn Miles and Sun Varin, *Stop Violence Against Us, A Preliminary National Research Study into the Prevalence & Perceptions of Cambodian Children to Violence Against and By Children in Cambodia*, available at <http://vac.wvasiapacific.org/downloads/tear2.pdf>.

132 *Ibid*, 7.

133 *Ibid*, 1.

134 *Ibid*, 7.

Further, in the 2005 survey mentioned above, it showed that a fifth of those who experienced violence by a spouse reported that their children missed school 5 to 20 times in the 12 months prior to the survey.¹³⁵ Seven per cent of women who experienced violence by a spouse said their children missed school 20 times or more during this period due to violence in the family.¹³⁶

2. De Jure State Responsibility

a. Bases of State Responsibility

Cambodia is a party to the following conventions, which are particularly relevant to this area of study:

International Conventions	Entry into Force
International Covenant on Economic Social and Cultural Rights (ICESCR)	16 August 1992
International Covenant on Civil and Political Rights (ICCPR)	26 August 1992
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	28 December 1983
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	14 November 1992
Optional Protocol to the Convention Against Torture	30 April 2007
Convention on the Rights of the Child (CRC)	14 November 1992
Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography	30 June 2002
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"	16 August 2004
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	14 November 1992
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women	13 January 2011

¹³⁵ MOWA, *Violence Against Women: A Baseline Survey*, 2005, 38.

¹³⁶ *Ibid.*

b. National Policies Against Violence

Article 31 of the Cambodian Constitution states as follows:

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.

Further, particularly as regards violence against women and children, Article 38 is of significance, to wit:

The law prohibits all physical abuse of any individual. The law protects the life, honour and dignity of citizens. The prosecution, arrest, or detention of any person shall not be done except in accordance with the law. Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited.

The Constitution also guarantees equal rights and non-discrimination in marriage, as follows:

Article 45: Men and women are equal in all fields, especially in marriage and matters of the family. All forms of discrimination against women shall be abolished.

In addition to the Constitution, the Government has incorporated the principle of equality between men and women into the provisions of national laws. Regulations and concrete measures in order to prohibit discrimination against women have also been adopted. These laws and regulations include the following:

- Law on Prevention of Domestic Violence and Protection of Victims, 2005
- Law on Administrative Management of the Capital, Provinces, Cities, Districts and Khans, 2008, particularly Article 58, which states that, "Any bylaw which discriminates against an individual, or a specific group of persons, based on factors of race, religion, sex, age, colour, nationality at birth or mental or physical disability, shall be invalid."
- New Civil Code, 2011
- Criminal Code of the Kingdom of Cambodia, 2009
- Criminal Procedure Code of Kingdom of Cambodia, 2007

Children

The rights of children is enshrined in the Constitution as follows:

Article 48: The State shall protect the rights of the children as stipulated in the Convention on Children especially the right to life, the right to education, especial protection in times of war and from economic or sexual exploitation. The State shall protect children from acts that are injurious to their education opportunities, health and welfare.

Until now, there is no specific national law for children. However, there are laws that contain provisions relative to children, which include the following:

- New Civil Code
- Criminal Procedure Code of Kingdom of Cambodia, 2007
- Criminal Code of the Kingdom of Cambodia, 2009
- Law on Prevention of Domestic Violence and Protection of Victims, 2005
- Law on Drug Control, 2011
- Law on Education, 2007

There are mechanisms aimed at gender-responsiveness and implementation of relevant laws and policies, which are regularly reviewed for appropriate gender sensitivity. In October 2009, the National Action Plan to Prevent Violence on Women (NAPVW) was launched. The four-year Action Plan (2009-2012) seeks to encourage the participation of relevant institutions, different competences in the government and to encourage the enforcement of the law to prevent and to reduce all forms of violence on women.¹³⁷ There is, however, a lack of a comprehensive national strategy or plan of action for the implementation of the Convention on the Rights of the Child.¹³⁸

c. Assessment of State policies

To make its commitments as expressed in the Constitution and international conventions more effective, the government has created regulations to punish acts that discriminate against women.

Violence in General and Discrimination Against Women

The following provisions in the Criminal Code are relevant in regard to violence and discriminatory acts committed upon a person by reason of his/her sex:

¹³⁷ MoWA, *Violence Against Women: 2009 Follow-Up Survey*, 16.

¹³⁸ CRC, *2011 Concluding Observations*, paragraph 12.

Article 219: The intentional violence is punishable by an imprisonment of between 2 and 5 years and a fine of between 4,000,000 Riels and 10,000,000 Riels when it is committed: 1). on a person particularly vulnerable due to his/her age; 2). on a woman with pregnancy where this pregnancy is apparent or known to the offender; 3). on a person particularly vulnerable due to his/her sickness or disability while his/her conditions are apparent or known to the perpetrator.

Article 265: Acts that refuse to give property or services to any person if such refusal is based on the person's sex shall be subject to a punishment of imprisonment from one month to one year, or a fine from 100,000 riel to 2 million riel.

Article 266: Acts involving the provision of property or services to any person on the condition of the person's sex shall be subject to a punishment of imprisonment from one month to one year or a fine from 100,000 riel to 2 million riel.

Article 267: Refusal to employ any person if such refusal to employ is based on the person's sex shall be subject to a punishment of imprisonment from one month to one year or a fine from 100,000 riel to 2 million riel.

Article 268: Acts involving provision of employment on the condition of the person's sex shall be subject to a punishment of imprisonment from one month to one year or a fine from 100,000 riel to 2 million riel.

Article 269: Any act to fire or remove any person based on the person's sex shall be subject to a punishment of imprisonment from one month to one year or a fine from 100,000 riel to 2 million riel.

Article 270: Acts committed by civil servants in performing their functions or in fulfilling their functions of denying anyone the enjoyment of their rights if such denial is based on the person's sex shall be subject to a punishment of imprisonment from six months to two years and a fine from 1 million riel to 4 million riel.

Rape

As regards rape, Article 239 of the Criminal Code is the governing provision, to wit:

Article 239: All acts of sexual penetration, of any kind whatsoever, or an act of penetrating any object into sexual organs of a person of either the same sex or different sexes by violence, coercion, threat or

surprise constitutes a rape: The rape is punishable by an imprisonment from 5 (five) to 10 (ten) years.

It has been observed that the definition of rape does not specifically mention “consent”. This gap has been criticized as follows:

The law makes no reference to consent. Considering that at the most basic level, rape means sexual penetration without consent, it is crucial that this element be defined. Cambodian law makes “cruelty, coercion and surprise” the defining elements of rape, not the absence of consent. This tends to lead judges to seek evidence of serious violence and injuries in any rape case, ignoring the fact that many victims may not struggle with their attackers for fear of being further injured or killed. In many cases, medical certificates documenting injuries on victims of rape are used to convict perpetrators. However if there is no or little physical evidence of violence and no medical certificate confirming this fact, then judges may declare that the penetration was consensual and not rape.¹³⁹

Particularly on statutory rape, the age of consent in Cambodia is determined by Article 42 of the Law on Suppression of Human Trafficking, and Sexual Exploitation, to wit:

A person who has sexual intercourse with another person of the age of less than fifteen years shall be punished with imprisonment from 5 to 10 years.

Sexual Harassment

The penal code provides as follows:

Article 250: Sexual harassment is punishable by an imprisonment of between 6 (six) days to 3 (three) months and a fine of between 100,000 (one hundred thousand) Riels and 500,000 (five hundred thousand) Riels.

Incest and Sexual Infringement of Minor by an Ascendant

The new Criminal Code punishes sexual infringement on persons related by consanguinity or affinity as follows:

Article 355: Incest is an act of having sexual intercourse among consanguinity or affinity of three generations.

Article 354: An act of having sexual intercourse with a minor of less than 18 (eighteen) years of age

is punishable by imprisonment from 5 (five) years to 10 (ten) years if the perpetrator is an ascendant of the minor.

The Education Law

Article 35 of the Education Law provides that students have the right to be free from torture or physical or mental punishment and requires all educational personnel to observe the code of conduct, which states that “teachers shall not physically and spiritually torment the learners.”

Law Against Domestic Violence

Acts Covered by the Law

Provisions of the Law on Prevention of Domestic Violence and Protection of Victims relating to the acts protected against are as follows:

Article 3.

Violence includes:

- Acts affecting life
- Acts affecting physical integrity
- Tortures or cruel acts
- Sexual aggression.

Article 4.

Acts affecting life include:

- Premeditated homicide
- Intentional homicide
- Unintentional homicide resulted from intentional acts of perpetrators
- Unintentional homicide.

Article 5.

Acts affecting physical integrity include:

- Physical abuses with or without using weapons, with getting or not getting wounded
- Tortures or Cruel acts.

Article 6.

Tortures or cruel acts include:

- Harassment causing mental or psychological, emotional, intellectual harms to physical persons within the households
- Mental/psychological and physical harms exceeding morality and the boundaries of the law.

Article 7.

Sexual aggression includes:

- Violent sex
- Sexual harassment
- Indecent exposures.

¹³⁹ CAMBOW, *Violence Against Women: How Cambodian Laws Discriminate Against Women*, 20.

Article 8.

It is also required to prevent threats aiming at frightening, shocking the victims and acts affecting individuality and properties of the persons living under the roof of the house and who are dependent of the same households.

Every disciplining by giving advice or reminding or appropriate measures taken to allow spouses or children or dependent persons to follow the good ways of living with dignity and the nation's good custom and tradition, if the disciplining and teaching are conducted with the noble nature (consisting of compassion, pity, joy at other's happiness, and sincerity) and inaccordance with the principles of the United Nations Conventions on Human Rights and Child Rights recognized by the Kingdom of Cambodia, shall not be included as the use of violence or domestic violence.

Penalty for Violation of the Law

The law against domestic violence does not contain specific penalty provisions, which means that the law itself cannot punish perpetrators of domestic violence. However, Article 35 of this law states that any acts of domestic violence that can be considered as criminal offenses are punishable under the penal code. As explained in a 2009 report prepared by MoWA and its partners:¹⁴⁰

The Law on the Prevention of Domestic Violence and the Protection of the Victims (DV-Law) does not focus on punitive measures, but on prevention. It must be noted that the DV-Law is neither a general nor a special penal law, as the law does not contain any substantial penal provisions which define crimes or which set out particular punishments.

Thus, in the case of domestic violence, a criminal investigation, prosecution and conviction is possible, but not on the basis of the DV-Law but instead pursuant to the Penal Code, especially as many kinds of actions of domestic violence are criminalized by the Penal Code.¹⁴¹

Persons Protected

Article 2 of the Law on Prevention of Domestic Violence and Protection of Victims states as follows:

Domestic violence is referred to the violence that happens and could happen towards:

- Husband or wife
- Dependent children
- Persons living under the roof of the house and who are dependent of the households

Article 2, as above-quoted, includes in its protection “persons living under the roof of the same house and who are dependent of the household.” Thus, domestic violence occurring between people who are not living in the same house does not fall within the context of the said definition, such as between a man and his mistress, sweetheart relationship, or ex-spouses.¹⁴² Further, The definition of protected persons extends to persons “dependent of the household”. Discrimination could arise in situations where a female adult relative such as an aunt is being abused since she is not considered “dependent of the household”.¹⁴³

Marital Rape

While the law on domestic violence covers “sexual aggression” and may thus be construed as providing protection against marital rape, this law has been deemed inadequate in this aspect. The Cambodian Committee of Women states as follows:

Article 3 and 7 of DV Law effectively recognizes marital rape by including “sexual aggression” as a form of domestic violence and incorporating “violent sex” as an element of “sexual aggression”. Unfortunately there is no definition of the term “violent sex” contained within the law. The act of rape is in itself a violent act, regardless of whether or not additional violence accompanies the rape. Given that many Cambodian wives may not struggle against their husbands and remain silent whilst being raped, the DV Law fails to adequately protect women from marital rape.¹⁴⁴

Further, as mentioned above, the domestic violence law, in itself, does not provide penal sanctions. Thus, the lack of definition of “consent” in the criminal code still serves as an obstacle in the prosecution of marital rape.

Economic Violence

Economic violence is committed by depriving women of job opportunities and the ability to increase income and improve standard of living. It can be used as a means to make women economically dependent on their spouses.

¹⁴² CAMBOW, *Violence Against Women: How Cambodian Laws Discriminate Against Women*, 8.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*, 20.

¹⁴⁰ MoWA, *Violence Against Women: 2009 Follow-Up Survey*, 14.

¹⁴¹ *Ibid.*

Economic violence, nonetheless, is not defined in the law against domestic violence.¹⁴⁵

Self-Defence

There is no provision for the element of self-defence in any Cambodian legislation as regards women protecting themselves from domestic violence. Literature indicates that there were Cambodian women imprisoned for killing their husbands as a result of domestic violence and, in most cases, self-defence has not been considered by the courts. “This missing defence from all legislation discriminates against Cambodian women who may commit violence in order to protect themselves from further abuse.”¹⁴⁶

Disciplining in Accordance with the Khmer Culture

Article 8 of the law states that disciplining persons, including spouses, in accordance with Khmer culture is allowed as long as it is not contrary to the United Nation Convention on human rights and child rights. The pertinent provision reads as follows:

Every disciplining by giving advice or reminding or appropriate measures taken to allow spouses or children or dependent persons to follow the good ways of living with dignity and the nation’s good custom and tradition, if the disciplining and teaching are conducted with the noble nature (consisting of compassion, pity, joy at other’s happiness, and sincerity) and in accordance with the principles of the United Nations Conventions on Human Rights and Child Rights recognized by the Kingdom of Cambodia, shall not be included as the use of violence or domestic violence.

There is potential for Cambodian men who are more likely to be “disciplining” their wives to use this Article to protect themselves from criminal prosecution for domestic violence.¹⁴⁷ There is also the danger that this provision can be used as justification for acts of violence committed against children.

Authorities in Charge

Article 9 of the law states that “the nearest authorities in charge have the duty to urgently intervene in case domestic violence occurs or is likely occurring in order to protect the victims”. However, the law does not clarify

which authorities are referred to.¹⁴⁸

Movement of Victims and Protection Order

Articles 13 (2) and 25 (5) of the law allows authorities to remove victims from the scene of violence in special cases “without a request if there is a necessary reason to do so.” There are, however, no clear guidelines on what these “special cases” are or what “necessary to do so” refers to.

Rehabilitation Measures

CEDAW General Recommendation 19 mandates states to implement “protective measure, including counselling, rehabilitation and services for women who are victims of violence or who are at risk of violence.” There are no provisions concerning rehabilitation in the current domestic violence law in Cambodia to comply with the recommendation.¹⁴⁹

Reconciliation and Mediation

Article 26 of the law provides that, when both parties agree, reconciliation or mediation can be pursued in cases of minor misdemeanours or petty crime or violent acts which cause mental or economic harm. However, “minor misdemeanours” and “petty crimes” are not clearly defined.¹⁵⁰ The same provision also states that “household members” are able to choose arbitrators where there is an agreement to under go reconciliation. Arbitrators may include parents, relatives, and elders. While mediation may be a good manner for dispute resolution, allowing any household member to choose the arbitrator to handle it may create some biases that the law is trying to prevent.

Policy on Forced Marriage

On the issue of the legal framework that addresses forced marriage and other harmful traditional practices, the CNCC in its reply to the Special Representative of the Secretary General on Violence Against Children merely stated that the traditional codes of conduct for men and women have no legal status in Cambodia and are not included in the school curriculum; however, the ethos of these codes are still embedded in society.¹⁵¹

The Cambodian Constitution states that “men and women are equal in all fields especially with respect to marriage

¹⁴⁵ *Ibid*, 9.

¹⁴⁶ *Ibid*.

¹⁴⁷ *Ibid*, 10.

¹⁴⁸ *Ibid*.

¹⁴⁹ *Ibid*, 11.

¹⁵⁰ *Ibid*.

¹⁵¹ CNCC, *Report Reply to the List of Issues*, 22.

and family matters.”¹⁵² However, “forced marriage” is not regarded as an offense. This notwithstanding, invalidity of consent is a ground for voiding a marriage.¹⁵³

Law Against Acid Attack

In 2011, Cambodia approved the Law on Control of Strong Acid, which imposes penalties on perpetrators of acid attacks. The legislation also regulates the licensing and sale of the caustic liquid, which was widely and cheaply available in the country.¹⁵⁴ The law stipulates that those found guilty of the most serious acid attack offenses face a maximum of life imprisonment. Other acid-related offenses carry terms ranging from 2 to 30 years.¹⁵⁵ It appears, however, that the law by itself is not sufficient. Ziad Samman, project manager Cambodian Acid Survivors Charity is quoted to have stated as follows:

Only half of the legislation was essentially approved. All of the regulatory aspects rely on a sub-decree, which has not been developed. So at the moment, if the law has two arms, punishment for perpetrators and regulation, only one of it is officially in effect at the moment.¹⁵⁶

Corporal Punishment

The CRC committee noted that the State party has adopted various legislations prohibiting corporal punishment.¹⁵⁷ However, the Committee is concerned that Article 1045 of the Civil Code allows a “parental power holder to personally discipline the child to the extent necessary” and that Article 8 of the Prevention of Domestic Violence and Protection of the Victims Law

implicitly authorizes corporal punishment of children for disciplinary purposes.¹⁵⁸ The Committee expressed concern that physical punishment as a form of discipline is often viewed as culturally acceptable by parents and teachers and widely practiced in the State party.¹⁵⁹

Policy on Street Children

The CRC Committee noted the lack of specific mechanisms and resources to address the problem of street children and to provide them with adequate assistance.¹⁶⁰ The Committee particularly mentioned “cleaning up the streets” operations by the police, such as the one carried out in early 2008, during which many were sent to two rehabilitation centres (Koh Romduol and Prey Speu) run by the Phnom Penh Department of the Ministry of Social Affairs. Illegal confinement and abuses which, in some cases, resulted in death, including by suicide, reportedly occurred.¹⁶¹

Children in Conflict with the Law

Pending the finalisation and passage of the Draft Juvenile Justice Law, the following laws are pertinent with regard to children in conflict with the law:¹⁶²

- 2007 Criminal Procedure Code
- UNTAC Law (1992)
- *Prakas* No. 303 on the Organization and Function of the Youth Rehabilitation Center (2000)
- Instruction No. 617 on the Use of Court Screens at Hearing of Child Victims/Witnesses (2007)

Article 38 of the Criminal Code of Cambodia states that “the criminal legal age is set at 18 years of age;” however, Article 39 provides that “the court may pronounce a criminal conviction against a minor of 14 years of age or more, if the circumstances of the offence or the personality of the minor justify in doing so.”¹⁶³ The Criminal Procedure Code of Kingdom of Cambodia (2007) provides the procedure for handling minors in conflict with the law, to wit:¹⁶⁴

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁶⁰ CRC, 2011 *Concluding Observations*, paragraph 69.

¹⁶¹ *Ibid.*

¹⁶² Stephanie Huang, *Children’s Rights & Cambodian Law: An Assessment of Gaps in the Law and its Implementation For the International Organization for Migration*, University of San Francisco, School of Law International Internship Program, Phnom Penh, Cambodia, July 2010, 20.

¹⁶³ CNCC, *Report Reply to the List of Issues*, 21.

¹⁶⁴ Criminal Procedure Code of Kingdom of Cambodia (2007), available at <http://www.oecd.org/site/anti-corruptioninitiative/46814242.pdf>.

¹⁵² Constitution of the Kingdom of Cambodia, Article 45.

¹⁵³ New Civil Code, Article 958.

¹⁵⁴ PTI, “Cambodian lawmakers approve law on acid attacks,” *Zeenews.com*, November 04, 2011, http://zeenews.india.com/news/world/cambodian-lawmakers-approve-law-on-acid-attacks_739966.html.

¹⁵⁵ “Cambodia passes long-awaited acid attack law,” *The Nation*, 4 November 2011, <http://www.nationmultimedia.com/breakingnews/Cambodia-passes-long-awaited-acid-attack-law-30169235.html>.

¹⁵⁶ Irwin Loy, “Acid Attacks Continue in Cambodia Despite Harsher Punishments,” *Voice of America*, 20 September 2012, http://www.voanews.com/content/acid_attacks_continue_in_cambodia_despite_harsher_punishments/1511714.html; see also Cambodian Center for Human Rights (CCHR), “CCHR Media Comment – Phnom Penh, 12 March 2012: Latest Acid Attack Horrific Reminder that New Law Must Be Accompanied By Effective Implementation,” 12 March 2012, available at [http://www.sithi.org/admin/upload/media/\[2012-03-12\]Latest/CCHR%20Media%20Comment%20-%20Latest%20Acid%20Attack%20Horrific%20Reminder%20That%20New%20Law%20Must%20Be%20Accompanied%20By%20Effective%20Implementation_ENG.pdf](http://www.sithi.org/admin/upload/media/[2012-03-12]Latest/CCHR%20Media%20Comment%20-%20Latest%20Acid%20Attack%20Horrific%20Reminder%20That%20New%20Law%20Must%20Be%20Accompanied%20By%20Effective%20Implementation_ENG.pdf).

¹⁵⁷ CRC, 2011 *Concluding Observations*, paragraph 40.

Article 96. Police Custody:

In case of felony, a minor aged between 14 years old and less than 16 years old cannot be placed under police custody for more than 36 hours.

In case of misdemeanour, a minor aged between 14 years old and less than 16 years old cannot be placed under police custody for more than 24 hours.

In case of felony, a minor aged between 16 years old and less than 18 years old cannot be placed under police custody for more than 48 hours.

In case of misdemeanour, a minor aged between 16 years old and less than 18 years old cannot be placed under police custody for more than 36 hours.

A minor whose age is less than 14 years old cannot be placed under police custody.

Article 100. Police Custody of a Minor:

When the detained person is a minor, the judicial police officer shall, by all means notify the parents, the legal representative or a person who is responsible for that minor.

3. Implementation, Monitoring and Prevention**a. Implementing and Monitoring Mechanisms**

The Government of Cambodia assigned the Cambodian National Council for Women (CNCW) to continue implementing the recommendations made by the Queen Mother to disseminate the contents of CEDAW and other relevant documents more broadly, as well as to monitor the implementation of national laws relating to the CEDAW and to provide recommendations to the Royal Government of Cambodia.¹⁶⁵ In alignment with the National Strategic Development Plan, CNWC developed a five-year strategic plan for 2010-2014, which serves as a road map to guide CNCW in implementing and achieving its mission.¹⁶⁶

The Ministry of Women's Affairs (MOWA), on the other hand, "acts as a catalyst and advocate to encourage public institutions, civil society and the private sector to integrate gender equality into their policies and programs, and as a coordinator and facilitator."¹⁶⁷ The MOWA is responsible for monitoring and evaluating policies and programs to

assess their contributions to achieving goals in promoting gender equality and the empowerment of women.

In 1999, MoWA prepared and implemented its five-year strategic plan, "Neary Rattanak". In 2003, MoWA and its partners reviewed the effectiveness and efficiency of the implementation of the strategic plan "Neary Rattanak I" and developed "NearyRattanak II". In 2008, MoWA developed its third 5-year strategic plan, the Neary Rattanak III.¹⁶⁸ The strategy aims to ensure the following:

- gender responsive national policies, legislation and reform programs;
- to support the economic empowerment of women;
- ensure legal protection from violence and sexual and labour exploitation;
- to promote change in attitude and behaviour that discriminate against women;
- to develop the capacity of women; and
- address barriers in order for women to access and claim their right to fully participate and benefit from economic and social development, also as decision-makers.¹⁶⁹

Together, the MOWA and the CNCW make up the national machinery for the promotion of gender equality and the empowerment of women.¹⁷⁰

With the objective of creating a permanent body to act as a focal point for children, the Cambodian National Council for Children (CNCC) was established in 1995.¹⁷¹ The CNCC is mandated as the coordinating body for advocacy, monitoring and implementation of the Convention on the Rights of the Child.¹⁷² The CRC Committee, however, found that the CNCC "lacks the necessary human, technical and financial resources to fulfil its coordinating role in relation to the implementation of the Convention, and that there is no obligation for any government department to refer or defer to the CNCC issues related to child rights."¹⁷³

There is also the Committee for Human Rights in Cambodia (CHRC), which serves as the government's human rights body and whose role and responsibility as follows:¹⁷⁴

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ Ministry of Planning, Royal Government of Cambodia, *National Report of Cambodia on the Follow Up to the World Summit for Children*, February 2001, 3.

¹⁷² *Ibid.*

¹⁷³ CRC, *2011 Concluding Observations*, paragraph 10.

¹⁷⁴ CEDAW, *Cambodia's CEDAW Responses*, 2.

¹⁶⁵ The Royal Government of Cambodia, *The 4th and 5th National CEDAW Report 2010*; paragraph 21.

¹⁶⁶ Cambodian National Council for Women, *A Five-Year Strategic Plan: 2010 – 2014*, 2, available at <http://sgdatabase.unwomen.org/uploads/A%20Five-Year%20Strategic%20Plan%202010-2014.pdf>.

¹⁶⁷ Ministry of Women's Affairs, "Ministry Background," <http://mwa.gov.kh/en/ministry-background>.

- Protecting and promoting the exercise of human rights, democracy in Cambodia, and monitoring the violation of human rights and complaints.
- Educating and disseminating to the public and targeted groups on human rights.
- Providing comments and recommendations to the Royal Government on the situation of human rights towards the improvement in the light with the Constitution, domestic laws and international conventions.¹⁷⁵

However, as regards independent monitoring, the CRC Committee observed that the establishment of a mechanism in compliance with the Paris Principles, either as part of a National Human Rights Institution with a Child Unit or a separate mechanism, is necessary to monitor and evaluate progress in the implementation of the CRC and to receive complaints.¹⁷⁶

b. Complaints Process

Article 9 of the Law on Prevention of Domestic Violence and Protection of Victims states that the nearest authorities in charge have the duty to urgently intervene in cases where domestic violence occurs or is likely to occur in order to prevent violence and protect the victims. During the intervention, the authorities in charge shall make a clear record about the incident and then report it immediately to the prosecutors in charge.

The law further provides that officials of the Ministry of Women's Affairs who work on the field in relation to preventing domestic violence and protecting the victims shall obtain legal qualifications as judiciary police and can act as the complaining party in accordance with penal procedures.¹⁷⁷

Based on this law, the government of Cambodia is undertaking a program, called Judicial Police-Agents. The formalities and procedure for qualification are determined by *Prakas* (Circular) 022 of the Ministry of Women's Affairs (issued on 7 September 2007) and by Circular 64 Ministry of Justice (issued on 30 October 2007).¹⁷⁸ However, as mentioned in the Explanatory Notes

on the Law on the Prevention of Domestic Violence and the Protection of the Victims, the qualifications, functions and procedures concerning governing officials or public agents must not undermine the exclusive competencies of the official and actual judicial police officers or judicial police agents.¹⁷⁹ Therefore, Circular 022 limits the responsibilities of the Ministry of Women's Affairs Judicial Police-Agents to the following:¹⁸⁰

- Act as the complaining party instead of the victim
- Make reports (for information)
- Follow up complaints
- Follow up court process.

In the absence of officials who have earned the legal qualification as judiciary police, other officials, including police officials, police agents, Royal Gendarmerie, local authorities in commune/*Sangkak*, officials of the Ministry of Women's Affairs as well as village chiefs who have intervened to prevent domestic violence and protect the victims, have the power to make a record to the court.¹⁸¹ This record has the same value as records made by judiciary police officials.¹⁸²

As the *Violence Against Women 2009 Follow-Up Survey* prepared by the Ministry of Women's Affairs points out, the principle of mandatory prosecution, governed by Articles 42, 43, 44 and 45 of the Criminal Procedure Code, is applicable.¹⁸³ This principle obliges the prosecuting authority to take action upon the slightest suspicion that a crime has been committed. Thus, in general, the prosecuting authority has to open a judicial investigation, whether or not there is a request by the victim or other affected persons. It was indicated that this principle might create a "barrier" for reporting domestic violence: victims will often not report an incident and seek legal protection because the victim does not want the perpetrator, who is often a family member, to be prosecuted or convicted.¹⁸⁴

However, Article 36 of the domestic violence law states that criminal prosecution shall not be possible if there is a request to refrain from prosecuting from an adult victim due to the fact that the offenses are minor misdemeanours or petty crimes. "Through this (Article 36), victims of domestic violence shall be encouraged to make use of the

¹⁷⁵ *Ibid.*

¹⁷⁶ CRC, 2011 *Concluding Observations*, paragraphs 14-15.

¹⁷⁷ Law on Prevention of Domestic Violence and Protection of Victims, Article 10.

¹⁷⁸ The Elimination of Violence Against Women (EVAW) Cluster of UN Women, "Judicial Police - Agents Under the Ministry of Women's Affairs," *The UN Secretary-General's database on violence against women*, <http://sgdatabse.unwomen.org/searchDetail.action?measureId=8501&baseHREF=country&baseHREFId=297>, citing Response of the Government of Cambodia to the questionnaire on

violence against women, 2008.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ Law on Prevention of Domestic Violence and Protection of Victims, Article 11.

¹⁸² *Ibid.*

¹⁸³ MOWA, *Violence Against Women: 2009 Follow-Up Survey*, 14.

¹⁸⁴ *Ibid.*

legal protection provided by the DV-Law.¹⁸⁵

The latest numbers, however, indicate that not many victims are inclined to pursue legal remedies. The 2009 follow-up survey shows that 66% of poorer respondents reported opting to keep quiet, 21% went to village elders, 17% went to relatives, and only 3% went to the police or courts.¹⁸⁶ Among respondents with higher income, an even bigger percentage of 82% reported keeping quiet or doing nothing, while 12% went to village elders, 10% reported the behaviour to relatives, and only 3% went to police/courts.¹⁸⁷

Findings from surveys conducted by MOWA indicate a different attitude when it comes to rape. "Rape is the only situation of domestic violence where a woman is likely to seek help and retribution."¹⁸⁸ In contrast with other cases of violence, only 6% of respondents in the 2009 survey said that the woman they knew who had been raped kept quiet and did nothing.¹⁸⁹ It was also indicated that there is strong support for imposition of prison terms on rapists, but less support for prison terms when the perpetrators are boyfriends or men with mistresses.¹⁹⁰ Reluctance to impose prison terms on boyfriends or married men who rape a mistress was again seen in the 2009 survey.¹⁹¹ The 2005 survey shows that the most common outcome of rape cases was compensation paid by the perpetrator; 30% of rape cases were resolved with a warning or no official outcome.¹⁹² The practice appears to have continued and even increased in 2009, with the report indicating that "[t]here was a 9% increase in victims approaching the family of the perpetrator for compensation (men only reported a 2% increase)."¹⁹³

185 *Ibid.*, 15.

186 *Ibid.*, 30.

187 *Ibid.*

188 *Ibid.*, 19.

189 "Available Options for Seeking Help for Rape: 64-65% of men and 55-56% of women reported women going to police or courts or communal authorities in such cases...; 57% of men and 60% of women reported such victims sought help from friends and relatives...; Around one-quarter of respondents said that the woman had gone to a hospital or medical provider, and a slightly smaller number said the woman sought compensation from the rapist (17% for male respondents reporting and 27% for female respondents)...; Men reported a 7% increase in women they knew contacting communal authorities in such situations and that 4% more women went to hospitals or doctors than in 2005." *Ibid.*, 22.

190 *Ibid.*, 19.

191 *Ibid.*, 21.

192 *Ibid.*, 19.

193 *Ibid.*, 22.

Specifically with regard to children, according to the CNCC, the Ministry of Education has drafted a procedure for complaints filed by students, education staff and parents in November 2011; it is expected to be finalized in 2012.¹⁹⁴

c. Protection and Rehabilitation

Article 14 of the Law on Prevention of Domestic Violence and Protection of Victims provides for the following temporary measures that authorities in charge can issue in order to protect the victims' security:

- Prohibiting from committing domestic violence by themselves or by others
- Prohibiting from destroying the properties or instructing not to put on sale the victims', the victims' relatives' or joint properties.
- Prohibiting from approaching or entering the house shared together or the places where the victims stay or work without the permissions from the victims and the authorities in charge
- Taking other legitimate measures that are necessary to protect the safety of the victims and the household members or the persons involved.

There are regulations that cover situations of children in alternative care settings. These are *Prakas* No. 616 on Minimum Standards on Residential Care for Children and *Prakas* No. 198 on Minimum Standards on Alternative Care for Children in the Community.¹⁹⁵ According to the CNCC, the government encourages the use of counselling and other empathetic mechanisms. However, counselling is not a traditional response to trauma in Cambodia; instead suffering calamity in silence is indicated as the commonly practiced survival mechanism for many Cambodians.¹⁹⁶ The professions of psychologist, psychiatrist or counsellor are not formally established in Cambodia. There is no right to free counselling services for victims contained in current Cambodian legislation.¹⁹⁷

d. Prevention Strategy

Article 13 of the Law on Prevention of Domestic Violence and Protection of Victim states that in order to prevent domestic violence, the authorities in charge shall intervene urgently by:

194 CNCC, *Report Reply to the List of Issues*, 39.

195 *Ibid.*, 37.

196 *Ibid.*, 40.

197 *Ibid.*

- Seizing the weapons or concrete objects that have been used or could be used by the perpetrators
- Moving the perpetrators from the scene or moving the victims if there is a request from the victims. In any special case the victim can be removed without having a request if there is a necessary reason to do so.
- Offering the appropriate assistance to the victims in accordance with their circumstances, especially providing temporary shelter in which safety and urgent medical assistance can be guaranteed.
- Explaining, educating and mediating both parties to stop violence and informing the victims about their rights to prevent violence as stated in Article 20 and Article 26 of this law.

Aside from the above legal provision, the *National Action Plan to Prevent Violence on Women* (2009) provides for the following prevention measures: changing social behaviour, social participation in the prevention of domestic violence, legal measures, and law enforcement.¹⁹⁸ It then goes on to lay out four strategies to achieve its aims and their corresponding activities.

There are several activities being undertaken by the government to prevent violence against women and children, including the following:

1. Lesson Plans on Domestic Violence:¹⁹⁹

The MoWA, together with the German Development Cooperation, has developed lesson plans on domestic violence and the domestic violence law for specific target groups that include the general population, youth groups, victims, perpetrators, the NGOs working in the area of gender-based violence and relevant officials, especially the law enforcers. These trainings began in 2007 and are continue to take place. Further, the Ministry of Women's Affairs has supported the mainstreaming of issues of violence against women and children into the national curriculum of the National Police and Royal School of Judges.

2. Awareness Raising Initiates in School:²⁰⁰

In 2008, issues on gender roles were included in the national education curriculum. However, violence against women was not specifically addressed. The Cambodian Ministry of Women's Affairs with technical assistance and support from the German Development Cooperation, UNFPA and UNIFEM (UNWomen),

¹⁹⁸ MoWA, *National Action Plan to Prevent Violence on Women*, 4-6.

¹⁹⁹ The Elimination of Violence Against Women (EVAW) Cluster of UN Women, "Cambodia," *The UN Secretary-General's database on violence against women*, <http://sgdatabase.unwomen.org/countryInd.action?countryId=297>.

²⁰⁰ *Ibid.*

has piloted awareness-raising initiatives in the schools through forums for young people on gender-based violence. The Ministry is reportedly looking to further enhance and extend the activities nation wide.

3. The 16 days of Activism and the White Ribbon Campaign:²⁰¹

The White Ribbon Campaign during the 16 Days of Activism is celebrated every November in Cambodia. The Prime Minister and senior-ranking officials regularly attend the official ceremonies. Messages on this event are often led by the Deputy Prime Minister and Minister of the Interior and the Minister for Women's Affairs.

Despite the above, it was observed, however, that most of the current actions being taken relative to violence in the domestic setting are more focused on the response to domestic violence and less on primary prevention.²⁰² It was pointed out that there is a need to prioritize focus on behaviour change and investing in socialization processes of boys, men, whole family units, and local officials and police.²⁰³

4. Role of Non-State Actors

a. Assistance to victims

There are several NGOs in Cambodia that assist victims by providing legal assistance, counselling, and rehabilitation services, conducting advocacy campaigns, and monitoring the government's implementation of its international obligations.²⁰⁴ Some entities conduct activities that address assistance, prevention, and monitoring at the same time; thus, inclusion in one category does not necessarily mean that they do not contribute to other forms of intervention as well. Some of the organizations that assist victims of violence are as follows:

Cambodian Human Rights & Development Association (ADHOC). With its 23 provincial offices and 350 activists/human right defenders, ADHOC reaches out to all districts at the local level. ADHOC has a Women's Section that receives complaints from victims of domestic violence, rape, forced prostitution and trafficking in children and women.²⁰⁵

²⁰¹ *Ibid.*

²⁰² MOWA, *Violence Against Women: 2009 Follow-Up Survey*, 32.

²⁰³ *Ibid.*

²⁰⁴ See "Organization Addressing VAW," UNIFEM East and Southeast Asia Region, <http://www.unifem-eseasia.org/projects/evaw/vawngo/vamcam.htm>.

²⁰⁵ "Human Rights and Development Association-ADHOC," *Human-*

Cambodian Women's Crisis Center (CWCC). CWCC focuses on advocating for victims of domestic violence, providing legal assistance to victims, advocating for enforcement of legal verdict, advocating for arrest of rapists, providing rehabilitation services for victims and their families, and providing counselling and refuge for victims.²⁰⁶

Legal Support for Women and Children (LSCW). LSCW provides legal aid to victims of human trafficking, sexual violence, and domestic violence. The LSCW is developing a litigation manual to guide and focus the efforts of junior law graduate interns.²⁰⁷

International Bridges to Justice. An organisation that works in several countries in Asia, including Cambodia, it aims to build an efficient public defence system by providing indigent accused with access to counsel in the country.²⁰⁸

b. Prevention Programs

Civil societies and non-governmental organizations have designed efforts to prevent violence by incorporating a range of strategies at multiple levels, including school and youth programs, media campaigns, programs among particular groups, and grassroots mobilizing. Some of these are as follows:

German Technical Cooperation (GIZ). GIZ's Promotion of Women's Rights Project, in cooperation with the Ministry of Women's Affairs of Cambodia, funded by the German Federal Ministry for Economic Cooperation and Development), aims to build capacity with in the Ministry of Women's Affairs and other relevant actors in order to implement the Law on the Prevention of Domestic Violence and the Protection of the Victim effectively through awareness raising, supporting counselling services for victims and improving the legal framework.²⁰⁹

Gender and Development for Cambodia (GADC). GADC advocates for gender equity and the empowerment of women through training, information-sharing and network building. GADC has trainers who are able to

Trafficking.org, <http://www.humantrafficking.org/organizations/46>.

206 See "Organization Addressing VAW," UNIFEM East and Southeast Asia Region, <http://www.unifem-eseasia.org/projects/evaw/vawngo/vamcam.htm>.

207 See *International Senior Lawyers Project*, <http://www.islp.org/justice.html>.

208 *Ibid*.

209 MOWA, *Violence Against Women: 2009 Follow-Up Survey*, 6.

deliver training on CEDAW and the MDGs.²¹⁰

Cambodian Men's Network. Coordinated by GADC, this network mobilizes Cambodian men to work for the prevention of violence against women.

Peace and Development Institute. This institute advocates for promoting and protecting human rights, rule of law, and good governance; it also focuses on the right to food and sustainable livelihood systems.²¹¹

SILAKA. To advance development and human security, SILAKA focuses on building the capacity of local public, private and government institutions through education and training. SILAKA has produced training materials on CEDAW and the MDGS for use in workshops for government agencies and NGOs.²¹²

Women's Media Centre of Cambodia. This centre delivers innovative, national awareness and informative programs on issues affecting contemporary Cambodia, with a special focus on the roles and rights of Cambodian women.

Cambodia Project Against Domestic Violence (PADV). PADV focuses on the prevention and elimination of domestic violence through education, public awareness and capacity-building.

Committee to Promote Women in Politics (CPWP). CPWP is a coalition of seven NGOs, with SILAKA as its secretariat. It advocates for women's participation in politics; provides training and capacity-building for women candidates; and conducts voter-awareness programs. It conducted a wide-ranging advocacy campaign using CEDAW as a framework during the 2007 commune elections in Cambodia.

The Working Group on Human Rights (WGWR), Cambodian Women Development (CWDA), Cambodian League for Promotion and Defense of Human Rights (LICADHO), Human Rights of Vigilance of Cambodia, Cambodia Institute for Human Rights (CIHR), Legal Aid of Cambodia (LAC), Khmer Women's Voice Center (KWVC), and Women for Prosperity focus on lobbying for legal protection against sexual abuses and raising political awareness of women's issues.

210 See *Gender and Development for Cambodia (GADC)*, <http://www.gadc.org.kh/>.

211 See *Peace and Development Institute*, <http://www.pdi-hre.org/index.php>.

212 See *SILAKA*, <http://www.silaka.org/>.

c. Monitoring and Cooperation

Cambodian Committee for Women (CAMBOW). CAMBOW is a network of 68 Cambodian NGOs that focuses on women's advancement through education, training, research, documentation and advocacy. CAMBOW co-produced the first-ever CEDAW NGO shadow report with the Cambodian NGO CEDAW Committee in 2005.

Cambodian League for the Promotion and Defense of Human Rights (LICADHO). LICADHO advocates for respect and protection of human rights in Cambodia.²¹³ Its Women's Rights Monitoring Office aims to respond to the gap that exists in Cambodia to protect the rights of women. The Office's activities include:²¹⁴

- Identifying women's rights and their violations through data from victims, witnesses and the media
- Responding to these abuses by assisting the victim with legal intervention such as requesting the police or prosecutor to investigate the case or referring the victim to another non-governmental organization providing similar legal services.
- Following up cases with authorities to ensure all relevant steps are taken to investigate and prosecute the perpetrator.
- When necessary, appealing to highest officer of the court to take action or to yet higher levels such as the Ministry of Justice or the Supreme Council of Magistracy.
- Coordinating the provision of first aid, counselling, and other basic material support for victims through the medical office and social work office.
- Working with the Women's Rights Advocacy Office to strengthen focal point persons who educate communities on women's rights and abuses, empower women to assert their rights and provide support to victims at the grass roots level.

5. Progress Indicators and Challenges

Cambodia has in the recent years taken significant steps to address violence in the form of legislation and issuance of regulations. It has also established mechanisms such as the CNWC, MoWA, and CNCC, and has been engaging in active collaboration with NGOs.

As has been indicated, a baseline survey was conducted in 2005 to gather data to help assess violence against women

²¹³ See *Cambodian League for the Promotion and Defense of Human Rights (LICADHO)*, <http://www.licadho-cambodia.org/>.

²¹⁴ LICADHO, "Women Human Rights Monitoring Office," <http://www.licadho-cambodia.org/programs/womenoffice.php>.

and children and to formulate effective solutions.²¹⁵ A follow-up study was conducted in 2009. The 2009 study compared key data from the 2005 and 2009 surveys. Some positive findings were indicated. It was found that recognition of violent acts as illegal was generally on the rise and that women respondents were expressing a much lower tolerance for all categories of violence.²¹⁶ In all categories reported by victims of abuse, levels of abuse by partners have decreased from 2005.²¹⁷ In comparison with the 2005 survey, the greatest shifts in perception occurred in the area of what local authorities feel is acceptable behaviour in response to women arguing, not obeying or showing disrespect to their husbands.²¹⁸ Local authorities' perception that cursing or insulting a wife was acceptable dropped by 17%, while respondents' selection of "throwing something at the other or pushing" as an acceptable response also dropped by 32%.²¹⁹

Many challenges were, however, highlighted in the surveys and in other literature. Primary among these is the need to focus on instilling behavioural changes both in regard to acceptance by society of certain forms of violence as justifiable and the reluctance of victims to pursue formal legal remedies. Further, the practice of compensation payments even for serious crimes such as rape has to be addressed. Thus, intensified educational campaign through schools and mass media is important.

Further, there is a need to increase access to justice and improve the legal mechanism. Victims are discouraged from seeking legal remedies when they do not perceive the justice system to be fair and effective. The attitude of local authorities is also important in this aspect. While positive changes had been noted, continued behavioural change is still needed. For instance, in 2009, 35% to 45% of local authorities still felt that a husband was justified in engaging in the most extreme types of violence, including tying up and hitting, threatening with knife or machete, burning or choking, throwing acid, stabbing or shooting if his wife argued with him, did not obey him or did not show respect.²²⁰

Lastly, there is a need to establish mechanisms that continuously monitor all forms of violence against women and children and to maintain databases that keep

²¹⁵ Ministry of Women Affairs, Follow-Up Survey on Violence against Women, 2009

²¹⁶ MOWA, *Violence Against Women: 2009 Follow-Up Survey*, 20.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*, 22.

²¹⁹ *Ibid.*

²²⁰ *Ibid.*, 30.

track of incidences of violence in a timely manner.²²¹ Data on the incidences of violence against women and children, including rape and other sexual crimes, acid attacks, incidences of corporal punishment in and outside the home, and domestic violence, are not systematically collected and disaggregated in a central database. This gap hinders accurate measurement of progress and constrains stakeholders from developing strategies to appropriately meet challenges.

6. Recommendations for Further Study

Aside from conducting studies on the prevalence, causes, and impacts of the different forms of violence, studies that consider developing indicators, benchmarks against which progress can be measured, and means for systematic data collection would be beneficial. Studies assessing the progress of measures already being implemented by the state, particularly on its efforts at prevention and rehabilitation, is needed.

The surveys conducted by MoWA are helpful in demonstrating the likely options victims of domestic violence take in seeking redress. Aside from conducting similar studies into other forms of violence inflicted against women and children, a study on the reliefs given by authorities, including the courts, to persons who choose to pursue legal action and the victims' satisfaction over such reliefs may also give insight into whether or not legal provisions are actually being applied and also shed some light on why victims of violence do not always choose to approach formal institutions.

Additionally, more studies on gender-based violence that occurred during the Democratic Kampuchea is needed so as to identify and address the needs of the victims, to seek means to afford reparation to victims, to determine and alter social perceptions that allowed these crimes to occur, and to identify its impacts on the persons who suffered them and on society as a whole.

²²¹ See e.g. Marion Bihler, *Data Collection and Monitoring of Violence against Women*, 2010.

C. EXPLOITATION

1. Description of the Problem

a. Prevalence of Exploitation

Estimates from 2006 indicate that, within Cambodia, almost 1.5 million children (7-17 year-olds) are economically active.²²² Around 250,000 children (15-17 years-old) are in the seven of 16 nationally-identified hazardous sectors for which data are available or are working for 43 or more hours per week. This estimate does not include involvement in nine of the 16 nationally-identified hazardous sectors nor involvement in unconditional worst forms of work.²²³ In its 2011 Concluding Observations, the CRC Committee expressed concern that thousands of children work as domestics, mainly in Phnom Penh, in slavery-like conditions.²²⁴ According to the ILO, children are involved in several manifestations of the worst forms of child labour including work in agriculture, brick-making, street vending, and begging; these children are particularly vulnerable to trafficking.²²⁵ The *2012 Trafficking in Persons Report* states that, within Cambodia, parents sometimes sell their children into conditions of forced labour, including domestic servitude, and send them to beg on the streets in Thailand.²²⁶ There are also Cambodian children who are transported to Vietnam for the purpose of forced labour.²²⁷ In the Greater Mekong Sub-region (GMS), trafficked girls and women reportedly endure exploitation in diverse activities including manufacturing, agriculture, domestic service and seafood processing.²²⁸

The CRC Committee also stated that children are exploited into prostitution in the country and child sex tourism has been increasing in recent years. An alarming proportion of children are exposed to sexual violence

²²² UNICEF, *Children's Work in Cambodia: A Challenge for Growth and Poverty Reduction*, December 2006, available at http://www.unicef.org/eapro/Children_work_in_Cambodia.pdf (accessed 24 July 2012), ii.

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ John L. Vighen with contributions by Anoushka Jeronimus, A Joint Research Project Situation Analysis of the Commercial Sexual Exploitation of Children, December 2007, page 13

²²⁶ United States Department of State, *2012 Trafficking in Persons Report - Cambodia*, 19 June 2012, available at: <http://www.unhcr.org/refworld/docid/4fe30cdb32.html> (accessed 1 July 2012).

²²⁷ *Ibid.*

²²⁸ International Labour Organization, *Meeting the Challenge: Proven Practices for Human Trafficking Prevention in the Greater Mekong Sub-region*, 2008, 8.

and pornography, especially through the Internet.²²⁹ Similarly, the US Department of State reports that the sale of virgin girls is a serious problem and that a significant number of Asian and other foreign men travel to Cambodia to engage in child sex tourism.²³⁰ Based on *Situation Analysis of the Commercial Sexual Exploitation of Child*, every year more than 900 children in Cambodia are forced or in other ways pushed to have sex with men for money. Most of these children are females and in their teens, between 14 and 18 years. Foreign sex tourists often want to buy sex with young girls, while paedophiles seek sex with immature girls or boys.²³¹ The Svay Pak brothel area outside Phnom Penh, where children are exploited in the sex trade, continues to operate despite attempts by the police to close it down.²³²

Sexual harassment is another concern for female factory workers. One out of ten female garment factory workers has reported being a victim of sexual harassment at the workplace.²³³ The number of vulnerable females is expected to increase due to the global-economic crisis that has led to the closure of approximately 70 factories and the loss of more than 51,000 jobs.²³⁴

It should be pointed out that there is a lack of comprehensive data on exploitation in Cambodia. Even though a definition of trafficking is commonly accepted, the use of the term for statistical purposes varies; therefore, estimates of the population concerned differ considerably.²³⁵ Some studies consider only women and children, while others include men. Generally, statistical estimates for victims of trafficking are based on small-scale surveys or a few geographical locations.²³⁶

A 2010 report provides the following information as to prevalence according to type and sex:

229 CRC, 2011 Concluding Observations, paragraph 71.

230 US Department of State “Trafficking Persons Report” 14 June 2010

231 John L. Vighen with contributions by Anoushka Jeronimus, A Joint Research Project Situation Analysis of the Commercial Sexual Exploitation of Children, December 2007, page 13

232 *Ibid.*

233 NGO-CEDAW and CAMBOW, *Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women In Cambodia*, 2010, March 2011, 51.

234 *Ibid.*

235 Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report on International Migration in East and South-East Asia*, Bangkok (2008), 17.

236 *Ibid.*

Victims’ Profiles of Human Trafficking and Human Exploitation Cases²³⁷

(Data from the Ministry of Interior’s Department of Anti-Human Trafficking and Juvenile Protection, 2009)

	Human Trafficking		Human Exploitation		Total
	Domestic	Cross Border	Labour	Sexual Exploitation	
Total # of victims	40	1	0	183	224
Total of male	10	1		2	13
Total of female	30	0		181	211

A comparison of the number of trafficking cases as compiled by government institutions and NGOs follows:²³⁸

Institution	Number of Cases of Trafficking, 2009
Commune Data Base	137 cases
Police	224 cases (of the above, 140 cases ended in convictions)
NGOs	73 cases

b. Root Causes of Exploitation and Aggravating Practices

The problem of human trafficking in Cambodia arises largely from a situation wherein the poor wishes to find greater income opportunities.²³⁹ Almost all research and project intervention reports point to poverty as a “root cause” for child prostitution.²⁴⁰ Geographical proximity also influences prevalence of trafficking.²⁴¹ The provinces of Svay Reang and Banthey Meanchey share borders with the booming economies of Vietnam and Thailand and

237 Marion Bihler, *Data Collection and Monitoring of Violence against Women*, 2010, 31.

238 *Ibid.*, 19.

239 Neth Naro, *RSIS Working Paper on Human Rights Trafficking in Cambodia: Reintegration of the Cambodian Illegal Migrant from Vietnam and Thailand*, 29 June 2009, iv.

240 John L. Vighen, with contributions by Anoushka Jeronimus, A *Joint Research Project: Situation Analysis of the Commercial Sexual Exploitation of Children*, December 2007, 13.

241 Neth Naro, *RSIS Working Paper on Human Rights Trafficking in Cambodia*, iv.

these provinces are considered critical areas where high incidences of human trafficking occur.²⁴² The problem is exacerbated by relaxed border control and corruption. Besides widespread poverty, other factors include lack of land for agricultural production, aggravated by common flooding and drought; high unemployment; lack of employment opportunities; isolation from urban areas; lack of access to water or poor quality of surface water; and lack of education.²⁴³ Aside from the above-mentioned “push factors”, the demand for prostitution, including child prostitution, is reportedly increasing while the supply potential is huge.²⁴⁴

c. Impact of Exploitation

Exploitation is a cause for concern for many reasons, including the risk that Cambodian sex workers may suffer from HIV infection.²⁴⁵ The chance for contracting this infection is considerable, as brothel workers cannot always insist that customers wear condoms. Several of the young women indicated an understanding of the risk of acquiring HIV, but all lacked the power to assert protection.²⁴⁶

Trafficking in persons has various impacts on its victims, such as:²⁴⁷

- Malnutrition
- Exposure to sexually transmitted diseases, including HIV/AIDS
- Possible unwanted pregnancies and forced abortions
- Infections and infectious diseases due to unhygienic conditions, overcrowding
- Occupational health risks; injuries, skin infections, respiratory illnesses
- Hazardous working conditions may affect the growth of a child
- Mental and psychological health
- Physical reaction to trauma in the form of psychosomatic pain, change in sleep patterns, weakened immune system and increased use of alcohol
- Psychological reaction to trauma in the form of shock and fear, disorientation, nightmares and flashbacks,

²⁴² *Ibid.*

²⁴³ *Ibid*; see also John L. Vighen, *Situation Analysis of the Commercial Sexual Exploitation of Children*, 13.

²⁴⁴ *Ibid*

²⁴⁵ “Sexual exploitation in Cambodia,” *Third World Network-TWN*, available at <http://www.twinside.org.sg/title/sexual-cn.htm>.

²⁴⁶ *Ibid*

²⁴⁷ United Nations Office on Drugs and Crime, *UN.GIFT, Human Trafficking: An Overview*, 2008, 20.

difficulty in trusting, feelings of betrayal, a tendency to isolate oneself, suicidal thoughts and attempts at suicide, among others.

In addition to these impacts, victims of trafficking often suffer from stigmatization and non-acceptance by their communities. In Cambodia, NGOs have pointed out that, in trafficking, sexual exploitation and sexual harassment, “there is a perverse shift of responsibilities and an unequal and unfair distribution of the consequences for men and women.”²⁴⁸ Some perpetrators continue to live without social stigma, while “the victim is marked as used and worthless woman.”²⁴⁹ Sexual purity for females is considered essential for marriage and motherhood; thus, victims of sexual violence are perceived as tainted.²⁵⁰

2. De Jure State Responsibility

a. Bases of State Responsibility

Aside from the international conventions and agreements already mentioned, Cambodia is like wise a Party to the following conventions which are relevant to this area of study:

International Conventions	Ratification, Succession, Accession
ILO C13 White Lead (Painting) Convention, 1921	24 February 1969
ILO C29 Forced Labour Convention, 1930	24 February 1969
ILO C4 Night Work (Women) Convention, 1919	24 February 1969
ILO C6 Night Work of Young Persons (Industry) Convention, 1919	24 February 1969
ILO C122 Employment Policy Convention, 1964	28 September 1971
ILO C138 Minimum Age Convention, 1973	23 August 1999
ILO C100 Equal Remuneration Convention, 1951	23 August 1999
ILO C105 Abolition of Forced Labour Convention, 1957	23 August 1999
ILO C111 Discrimination (Employment and Occupation) Convention, 1958	23 August 1999

²⁴⁸ NGO-CEDAW and CAMBOW, *Implementation of the CEDAW In Cambodia*, 2010, 63.

²⁴⁹ *Ibid*

²⁵⁰ *Ibid.*

International Conventions	Ratification, Succession, Accession
ILO C150 Labour Administration Convention, 1978	23 August 1999
ILO C87 Freedom of Association and Protection of the Right to Organize Convention, 1948	23 August 1999
ILO C98 Right to Organize and Collective Bargaining Convention, 1949	23 August 1999
The Rome Statute of the International Criminal Court	April 2002
ILO C182 Worst Forms of Child Labour Convention, 1999	14 March 2006
The Hague Convention on Protection of Children and Co-operation in Respect of Inter country Adoption	6 April 2007
The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in July 2007 supplementing the United Nations Convention against Transnational Organized Crime	2 July 2007
The United Nations Convention against Corruption	5 September 2007

Cambodia has entered into a Memorandum of Understanding (MoU) with neighbouring countries, including the People's Republic of China, Lao PDR, Myanmar, Thailand and Vietnam to suppress human trafficking and assist trafficked victims. Thus, the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) was established.²⁵¹

Cambodia has also been engaged in bilateral cooperation by signing an MoU with Thailand and signing an agreement with Vietnam on Eliminating Human Trafficking in Women and Children and Assisting Victims of Trafficking.²⁵² Cambodia has also signed an MoU with the Australian Government for the implementation of the Australian Government's Asia Anti-Trafficking Project. This project has been assisting Cambodia in building the capabilities of law enforcement officers, including police from the special Anti-Human Trafficking and Juvenile Protection Unit, prosecutors and judges through adequate training in the skills needed to investigate, prosecute and punish perpetrators.²⁵³

251 The Royal Government of Cambodia, *The 4th and 5th National CE-DAW Report 2010*, paragraph 85.

252 *Ibid.*, 87.

253 *Ibid.*, 89.

b. National Policies Against Exploitation

The Constitution of Cambodia expressly prohibits trafficking and requires that all international treaties and conventions relating to women and children be implemented.²⁵⁴ It further obliges the state to protect the rights of children as stipulated in the Convention on Children, in particular, the right to life, education, protection during wartime, and from economic or sexual exploitation.²⁵⁵

In order to combat human trafficking and sexual exploitation of women, the Government of Cambodia has formulated an action plan based on the four strategies of the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT).²⁵⁶ This consists of establishing a policy and legal framework; prevention measures; enabling the criminal justice system to effectively respond to the issues; and protection and reintegration of victims.

The government's Policy and Legal Framework Strategy and the Prevention Strategy have been implemented under the leadership of a Working Group headed by MoWA and with the participation of other line ministries.²⁵⁷ The Prevention Strategy for Human Trafficking and Sexual Exploitation has also been implemented by the Inter-Ministerial Task Force, led by representatives of MoWA. This strategy addresses women's migration for employment inside and outside the country by raising awareness on the risks of migration and how to migrate safely and eliminating the forces that make women fall into human trafficking and sexual exploitation through campaigns that enable women to generate income by providing vocational training.²⁵⁸

Aside from the above-mentioned, the following laws and policies are relevant in suppressing exploitation:

- Law on Suppression of Human Trafficking and Sexual Exploitation, 2008
- Law on Tourism, 2009
- Criminal Code of the Kingdom of Cambodia, 2009
- Labour Law, 1997
- *Prakas* No. 297 on Vocational Training to the Minors to Work Underground, 1998
- *Prakas* No. 298 on the Derogation Against the Prohibition of the Minors from Working at Night, 1998
- *Prakas* No. 106 on the Prohibition of Hazardous Child Labor, 2004

254 Constitution, Article 31.

255 *Ibid.*, Article 48.

256 Royal Government of Cambodia, *4th and 5th National*, paragraphs 90-92.

257 *Ibid.*, paragraph 91.

258 *Ibid.*, paragraph 93-94.

- *Prakas* No. 306 Working and Living Conditions on a Farm, (2007)
- *Prakas* No. 307 Sanitation and Employment Safety Conditions in Garment and Footwear Factories, 2007
- *Prakas* No. 308 Working and Living Condition in the Salt Industry, 2007
- *Prakas* No. 309 Working and Living Condition in the Brick-Making Industry, 2007

c. Assessment of State Policies

The Law on Suppression of Human Trafficking and Sexual Exploitation

The Law on Suppression of Human Trafficking and Sexual Exploitation (2008) is the significant law addressing exploitation. As stipulated in Articles 2 and 3, the law has a wide scope for implementation both within and outside the territory of Cambodia. As indicated in Article 1, the purpose of this law is to suppress acts of human trafficking and sexual exploitation in order to protect the rights and dignity of human beings, as well as to comply with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The following acts are penalised under this law:

Chapter 2: The Act of Selling/Buying or Exchanging of Human Being

- Unlawful Removal, inter alia, of Minor
- Unlawful Removal with Purpose
- Unlawful Removal for Cross-border Transfer
- Unlawful Recruitment for Exploitation
- The Act of Selling, Buying or Exchanging of Human Being
- The Act of Selling, Buying or Exchanging of Human Being with Purpose
- The Act of Selling, Buying or Exchanging of Human Being for Cross-border
- Transfer
- Transportation with Purpose
- Cross-border Transportation (The Act of Bringing a Person Cross-border)
- Receipt of Person with Purpose
- Receipt of Human Beings for the Purpose of Assisting the Offender

Chapter 3: Confinement

- Abduction (Arrest), Detention or Confinement

Chapter 4: Prostitution and Child Prostitution

- Soliciting
- Procurement of Prostitution
- Procurement with regard to Child Prostitution
- Procurement of Prostitution by Torture

- Management of Prostitution
- Management of Establishment for Prostitution
- Provision of Premise for Prostitution
- Purchase of Child Prostitution
- Soliciting for Child Prostitution
- Conditional Money Loan in connection with Child Prostitution
- Contract of Child Prostitution

Chapter 5: Pornography

- Pornography
- Child Pornography

Chapter 6: Indecency against Minors under Fifteen Years

- Sexual Intercourse with Minors under Fifteen Years
- Indecent Act against Minors under Fifteen Years

Article 7 of the law defines a minor as a person under the age of 18 years. A person who keeps a minor under his/her supervision or control is presumed to know the minor's age unless the person proves that he/she reasonably believes the minor's age to be 18 years or more. It is worth noting that the law, under Article 24, explicitly exempts a minor from liability for soliciting for the purpose of prostitution. Article 44 also exempts a person under the age of 15 years from punishment for the crimes of Sexual Intercourse with Minors under Fifteen Years and Indecent Act against Minors under Fifteen Years. Article 49 also prohibits newspapers and mass media from publishing, broadcasting, or disseminating any information that can lead to public knowledge of the identities of victims in the offenses covered in this law.

The law defines "prostitution"²⁵⁹ and a penalty is imposed on the act of solicitation in public as follows:

Article 24 Soliciting: A person who willingly solicits another in public for the purpose of prostituting himself or herself shall be punished with imprisonment for 1 to 6 days and a fine of 3,000 to 10,000 riel.

The 2011 Trafficking in Persons Report said as follows regarding Cambodia's law on trafficking:

The February 2008 Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation covers a wide variety of offenses, with 12 of its 30 articles explicitly addressing trafficking offenses. The law prohibits all forms of trafficking and prescribes penalties that are sufficiently stringent and commensurate with penalties

²⁵⁹ "Prostitution" in this law shall mean having sexual intercourse with an unspecified person or other sexual conduct of all kinds in exchange for anything of value." The Law on Suppression of Human Trafficking and Sexual Exploitation, Article 23.

for other serious crimes, such as rape.²⁶⁰

However, it was pointed out that the law does not provide guidelines on assistance for victims and witnesses after a sex crime has been committed. Currently, when victims go to court, there is no support for them.²⁶¹

Criminal Code

Applicable provisions in the Cambodian Criminal Code include Articles 253 and 254, which prohibit illegal detention or confinement, such as during the recruitment and pre-departure stages.²⁶² Further, Article 339 makes an offence the placing of a minor in dangerous working conditions to the detriment of the minor's health or physical well-being. Article 340 of the Criminal Code also makes the resulting death of such a minor an aggravating circumstance. The age of the minor is not specified and the prohibition is not limited to the formal workplace. Other provisions of the Criminal Code that are of relevance are as follows:

Article 344: Incitement of a minor to beg

The act of directly inciting a minor to beg is punishable by an imprisonment from 1 month to 1 year and a fine from 100,000 Riels to 2,000,000 Riels.

Article 345: Count of inciting a minor to commit felonies or misdemeanours

The act of directly inciting a minor to commit felonies or misdemeanours is punishable by an imprisonment from 2 years to 5 years and a fine from 4,000,000 Riels to 10,000,000 Riels.

Article 346: Count of arranging for sexual exhibitions or sexual relations with involvement of minor

The act of, by an adult person, gathering that includes sexual exhibitions or sexual relations at which a minor has seen or participated is punishable by an imprisonment from 1 year to 5 years and a fine from 2,000,000 Riels to 10,000,000 Riels.

Law on Tourism

The Law on Tourism aims to regulate the tourism industry to, among others, prevent sexual exploitation. It provides as follows:

²⁶⁰ US Department of State, *TIP Report 2011*, 110.

²⁶¹ Stephanie Huang, *Children's Rights & Cambodian Law*, 16.

²⁶² United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, July 2011, 49.

Article 11: The Ministry of Tourism shall have shared responsibility for the regulation of other important areas affecting or affected by the tourism industry in cooperation with other concerned ministries and authorities including prevention of sexual exploitation.²⁶³

According to Article 48 (e) of the said law, all tourism business operators and their agents, employees and contractors, shall complain or report to the nearest Tourist Police, authorities in-competence or tourist authority knowledge or suspicion of "drug trafficking and usage, human trafficking and confinement, child trafficking and sexual exploitation/prostitution, disseminations of pornographic pictures and materials or other criminal offences."²⁶⁴ The law designates inspectors with the function of the judicial police, giving them the power to record and investigate suspected criminal offences. They have an obligation to report to the police both in their role as judicial police and under Articles 59 and 60 of the Law on Tourism. Failure to comply with codes of conduct or obligations in the Tourism Law can result in refusal or revocation of a license.²⁶⁵

The Labour Law

Articles 15 and 16 of the labour law prohibit forced labour and debt bondage, which are common forms of trafficking and akin to modern day slavery. However, there are no penalties attached to these violations.²⁶⁶ General minimum age for admission to employment is 15 years old;²⁶⁷ admission to light work activities is 12 years old;²⁶⁸ and admission to hazardous work is at 18 years old.²⁶⁹ The Labour Law requires all employers to annually submit to the inspectorate details of all employees below 18 years of age.²⁷⁰ There are seven *Prakas* that regulate the most dangerous industries,²⁷¹ with *Prakas* No. 2

²⁶³ The Royal Government of Cambodia, *The 4th and 5th National CE-DAW Report 2010*, paragraph 33.

²⁶⁴ CNCC, *Report Reply to the List of Issues*, 38-39.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*, 20.

²⁶⁷ International Programme on the Elimination of Child Labour (IPEC), International Labour Office, *Cambodia: Child Labour Country Brief*, (undated), citing Section 177 (1) of the Labour Law.

²⁶⁸ *Ibid.*, citing Section 177 (4) of the Labour Law.

²⁶⁹ *Ibid.*, citing Section 177 (2) of the Labour Law, Types of hazardous work determined *Prakas* No. 106 MosSALVY on the Prohibition of Hazardous Child Labour, dated 28 April 2004.

²⁷⁰ Labour Law (1997), Articles 179-180.

²⁷¹ CNCC, *Report Reply to the List of Issues*, 20, citing *Prakas* No. 306 (2007), Working and Living Conditions on a Farm, *Prakas* No. 307

(2008) defining types of employment that are suitable for children between 12 to 15 years old.²⁷² The law also provides for sanctions of imprisonment and fines for employers in breach of the law.²⁷³ However, the law does not apply to domestic workers and research indicates that there is a large number of predominantly female child domestic servants in Cambodia.²⁷⁴

Literature points to the need to consider whether or not the law reflects the realities in Cambodia. The following observation was made on the imposition of a general minimum age of 15:

[L]abour laws forbid children under 15 years old from working, but Cambodian families are so poor that children need to work at early ages in order to survive. Such a labour law, influenced by the good intentions of the international community, as expressed through international law, does not take into consideration the special circumstances that Cambodia faces and so has become impractical and unenforceable. Especially in a civil law nation, and even more particularly in Cambodia, where the legal framework is being completely redeveloped, national guidelines and clarification laws that reflect the challenges of the system are needed for effective implementation.²⁷⁵

It was noted that, although the Labour Law allows children from 12 to 15 years old to engage in “light work” activities, “the law as it is written with these exceptions serves to create loopholes through which poor children can be exploited.”²⁷⁶ It thus recommended to “lower the minimum age requirement for child employees and put more effort into government oversight to ensure that, even if very young children are in the work force, that work conditions are safe and fairly maintained.”²⁷⁷

Further, the Labour Code relies on inspectors to ensure compliance with its provisions; however, the Ministry of Labour Inspection reportedly has a limited number of inspectors, who are insufficiently trained and not paid a very high salary.²⁷⁸ The Ministry of Labour is also charged

with writing regulations to clarify the law and guide enforcement, but many of these needed regulations have not yet been written.²⁷⁹

Civil Code

It has been observed that, while the trafficking law and the Criminal Code create a sufficient criminal legal framework to prosecute trafficking and other criminal behaviours, “in practice, evidential burdens make prosecutions difficult and, as such, civil remedies must also be explored as a way of deterring those who profit from exploitation.”²⁸⁰ The Civil Code introduces tort of negligence, which may be employed against persons whose negligent recruiting or training causes harm to migrant workers.²⁸¹ Thus, in addition to criminal and contractual recourse, claims may be made against recruiting agencies that act unreasonably in the course of recruitment and it is foreseeable that their unreasonable behaviour will cause harm.²⁸² The new Civil Code also includes a section on the rules of agency,²⁸³ which provides that the principal is bound by the contracts made by the agent.²⁸⁴ This may be used in filing claims against recruiting agencies even when a worker entered into a contract through the recruiting agencies’ brokers.²⁸⁵

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

The government of Cambodia has established special units tasked with suppressing crimes involving human trafficking, as follows:²⁸⁶

Department of Anti-Human Trafficking and Juvenile Protection-under the General Commissariat of National

the Rights of the Child. Phnom Penh: Legal Aid of Cambodia, 2008, 238.

279 *Ibid*, citing Brown, Sherrie, *Cambodian Law and the Convention on the Rights of the Child*. Phnom Penh: Legal Aid of Cambodia, 2008, 238.

280 USAID and The Asia Foundation, *Cambodia’s Labor Migration: Analysis of the Legal Framework*, April 2011, 50, available at <http://asiafoundation.org/resources/pdfs/LegalFrameworkLabourTrafficking.pdf>.

281 *Ibid*, 7.

282 *Ibid*, 21, citing Article 742 of the Civil Code.

283 *Ibid*, 13, citing Section IV, [Chapter Two, Book Four,] Civil Code.

284 *Ibid*.

285 *Ibid*.

286 The Royal Government of Cambodia, *The 4th and 5th National CE-DAW Report 2010*, paragraph 79.

(2007), Sanitation and Employment Safety Conditions in Garment and Footwear Factories, *Prakas* No. 308 (2007), Working and Living Condition in the Salt Industry, *Prakas* No. 309 (2007), Working and Living Condition in the Brick-Making Industry.

272 *Ibid*.

273 Labour Law (1997), Article 359.

274 CNCC, *Report Reply to the List of Issues*, 20.

275 Stephanie Huang, *Children’s Rights & Cambodian Law*, 3.

276 *Ibid*, 6.

277 *Ibid*, 7.

278 *Ibid*, citing Brown, Sherrie, *Cambodian Law and the Convention on*

Police of the Ministry of Interior, this unit has branch offices in the municipalities and in all provinces.

Royal Gendarmerie Headquarters of the Ministry of National Defence - has established a mechanism to combat human trafficking in municipalities and provinces.

In addition to the above, the National Task Force on Anti-Human Trafficking, Smuggling, Labour Exploitation and Sexual Exploitation of Women and Children (which merges the National Inter-Ministerial Task Force and the Leading Task Force to Fight Human Trafficking, Smuggling, Exploitation and Sexual Exploitation of Women and Children) was established in 2009. The Minister of Interior/Deputy-Prime Minister acts as Chair, with ministers, secretaries of state, under-secretaries of state and representatives of key ministries as vice-chairs and members. It has a secretariat at the Department of Anti-Human Trafficking and Juvenile Protection of the General Commissioner of National Police, Ministry of Interior (MoI).²⁸⁷ It has also established municipal and provincial committees to combat human trafficking, smuggling, exploitation and sexual exploitation of women and children.²⁸⁸

In implementing the multilateral MoU in the Greater Mekong Sub-region, the government established a Cambodian National Working Group (COMMIT-Cambodia), whose role is to coordinate with all sectors in the prevention of human trafficking in the country with countries in the Greater Mekong Sub-region and with the UN Inter-Agency Project on Human Trafficking (UNIAP) in Cambodia, which provides assistance and plays the role of Secretariat for COMMIT.²⁸⁹

To monitor compliance with provisions of law that protect against labour exploitation, the government has established an inspectorate to carry out physical inspections and to inspect records of employees.²⁹⁰

b. Complaints Process

There is no special complaint mechanism for victims of exploitation; instead complaints are filed through the regular courts following the procedure laid down in the Criminal Procedure Code. The Civil Code allows for a victim of a crime to institute proceedings for compensation at any time, even where there are no criminal proceedings or where criminal proceedings are stayed or dismissed. The Criminal Procedure Code 2007 requires a trial judge to decide on the issue of civil compensation for the victim at the same time as deciding on conviction or acquittal.²⁹¹

The Cambodian Bar Association, which had around 700 members all over the country in 2010, and some NGOs provide legal assistance to poor people free of charge.²⁹² Additionally, Article 18 of Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking states that the police, prosecutors, and victim support agencies (VSAs) shall provide information to victims about legal issues and procedures for filing a complaint against the perpetrators.²⁹³ This provision of information shall be done in a language that the victim can understand.

287 "It included six technical inter-departmental and NGO working groups, including the Working Group on Prevention; the Working Group on Protection, Rehabilitation, Reintegration and Repatriation; the Working Group on Law Enforcement; the Working Group on Judicial Affairs; the Working Group on International Cooperation; and the Working Group on Children's Affairs." Ibid, 82.

288 Ibid, paragraphs 80-83.

289 Ibid, paragraph 86.

290 CNCC, *Report Reply to the List of Issues*, 20.

291 Criminal Procedure Code of 2007, Articles 2 and 13.

292 The Royal Government of Cambodia, *The 4th and 5th National CE-DAW Report 2010*, paragraph 38.

293 John L. Vighen, *Situation Analysis of the Commercial Sexual Exploitation of Children*, 33.

Below is the data of the court rulings on human trafficking-related cases in 2009:

Court Rulings on Human Trafficking-Related Cases, 2009²⁹⁴

Related offense	Number of offenses		Acquittal	Imprisonment		Fine		Found not guilty
	Total	2009		Sentence	Perpetrators	Riel	No. of people	
Sex with minor under 15 years old	9	9	1	1 year 5 years 6 years 7 years 15 years	1 1 1 2 2			1
Obscene acts against minor under 15 years old	5	3		6 months 2 years 3 years	1 1 1	4 millions 3 millions	1 1	1
Dealing in human	20	2	11	3 years 4 years 5 years 7 years 8 years 9 years 10 years 12 years 15 years	1 2 1 3 2 1 2 2 2			5
Pornographic pictures	14	10		7 days 10 days 15 days 20 days 1 months	3 2 9 2 1	100,000 150,000 200,000 250,000	1 9 5 2	
Pimping	24	7	7	6 months 2 years 2.5 years 5 years 6 years 7 years 10 years 16 years	1 20 2 10 1 4 3 4	10 millions	1	
Harbouring prostitutes	1			2 years				

294 *Ibid*, 23-24.

Related offense	Number of offenses		Acquittal	Imprisonment		Fine		Found not guilty
	Total	2009		Sentence	Perpetrators	Riel	No. of people	
Buying child prostitution	7	1		3 years 10 years 13 years	3 3 2			Deported to U.S
Taking people out of the country illegally	13	4	9	1 year 2 years 2.5 years 3 years 7 years 16 years	4 1 1 1 1 1			2
Border crossing	4	2	2	2 years 10 years	4 1			
Confinement	1		1					
Total	98	38	25		112	17,700,000		9

Efforts to build the capacity of government officers involved in addressing exploitation have been undertaken. Training courses on prosecution, interrogation and trial skills for prosecutors and judges have been conducted on a continuous basis.²⁹⁵The Ministry of Justice is also involved in delivering trainings and dissemination of the Criminal Procedural Code, Criminal Code, Civil Procedural Code, Civil Code, Law on Suppression of Human Trafficking and Sexual Exploitation and other regulations in relation to women and children to judges, prosecutors, clerks and legal practitioners across the country.²⁹⁶In addition, the Ministry of Justice also printed and distributed the Law on Suppression of Human Trafficking and Sexual Exploitation and other laws to legal practitioners.²⁹⁷The Cambodian National Council for Women (CNCW) and the Cambodian National Council for Children (CNCC) also engage in capacity building activities by distributing informative materials and conducting trainings.²⁹⁸

To assist in coordination and data collection, in 2010, the Ministry of Justice assigned some judges, deputy prosecutors and clerks to work as gender focal person in the provincial and municipal courts of the first instance and prosecution offices within the country. At present, the Ministry of Justice produces standardized report

forms for courts to give information to the Ministry of Justice.²⁹⁹

Not all criminal cases, however, are processed by the criminal justice system. A 2006 study by the Ministry of Justice and UNDP estimated that, every year, more than 40,000 disputes are heard and resolved by the 1,621 Commune Councils in the country, as mandated by the sub-decree on Decentralization of Role, Functions and Power to Commune Councils 2002. This sub-decree allows the commune council to “conciliate disputes between citizens and encourage tolerance and compromise” and allows district governors to act as judicial police and record complaints and investigate criminal offences. Under Article 75 of Criminal Procedure Code, the judicial police must refer a criminal case to the prosecutor, even if there is an agreement to resolve through financial compensation or a withdrawal of the complaint. In practice, however, financial settlements are facilitated by the police between the families of victims and perpetrators in criminal cases.³⁰⁰

The reluctance of victims to report crimes has been attributed to lack of sensitivity³⁰¹ of persons in the justice

295 The Royal Government of Cambodia, *The 4th and 5th National CE-DAW Report 2010*, paragraph 98.

296 The National Council for Women (CNCW), *A Final Summary Report on Activities of the Cambodia National Council for Women in 2010 and Directive for 2011*.

297 *Ibid.*

298 *Ibid.*

299 *Ibid.*

300 CNCC, *Report Reply to the List of Issues*, 43.

301 “For instance, during a case monitored by the Cambodian Center for Human Rights (CCHR), a judge questioned a six year old child prostitution and trafficking victim as to the number of times she had sex with customers and whether she had gained a ‘thrill’ from the insertion of the accused’s hand into her vagina.” ADHOC, et al., *Joint Cambodian NGO Report on Torture*, paragraph 112, citing Cambodian Center for Human Rights (CCHR), ‘Human Trafficking Trials in Cambodia’, Phnom Penh, July 2010.

system and to fear of criminal prosecution for having engaged in illegal activity.³⁰² Since Cambodian law does not directly address the issue of victim immunity, the threat of prosecution may override a victim's right to seek justice. Victim confidentiality also appears to be an issue. The victims who testify against their traffickers are not given witness protection.³⁰³ Further, methods like courtroom visual screens and audio facilities that can be used to protect the identity of the victim are not used.³⁰⁴

c. Protection and Rehabilitation

The Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSAVY) has the following departments, to wit:³⁰⁵

- Social Welfare
- Child Welfare
- Welfare for Disabled Persons
- Welfare for the Elderly
- Youth Rehabilitation
- Veterans
- Anti-Human Trafficking and Victim Reintegration

The Anti-Human Trafficking and Victim Reintegration department has the mandate to coordinate social activities related to the reintegration of victims of trafficking, including labour and sexual exploitation.³⁰⁶ The department also coordinates reintegration efforts related to rape victims. The Ministry of Social Affairs-Veterans and Youth Rehabilitation has social workers in every district who coordinate with NGO and local structures. The department started to collect data with focus on reintegration in 2001; however, due to technical problems with the database, much of the information was lost.³⁰⁷ In 2010, the program and the database had to be re-established completely. The data did not seem to differentiate between cases of sexual exploitation and those of rape.³⁰⁸ The Ministry has also established minimum standards for shelters in cooperation with NGOs and most of these shelters are managed by NGOs.³⁰⁹ It likewise intends to monitor the services to ensure maintenance of minimum standards.³¹⁰

³⁰² *Ibid.*

³⁰³ *Ibid.*, paragraph 113.

³⁰⁴ *Ibid.*

³⁰⁵ Marion Bihler, *Data Collection and Monitoring of Violence against Women, 2010*, 46.

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

³¹⁰ *Ibid.*

The government operates two temporary shelters and collaborates with NGOs to assist in reintegration of victims. Law enforcement and immigration officials follow formal procedures to identify victims among vulnerable groups, such as girls in prostitution, and refer them to the provincial and municipal Department of Social Affairs. Victims are then interviewed and referred to short or long-term NGO shelters.³¹¹ Victims may file civil suits and pursue legal action against traffickers. In 2006, 252 Cambodians trafficked to Thailand were repatriated by the Thai government in coordination with the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSAVY) and Cambodian NGOs.³¹²

Type of Reintegrated Clients by Province from 2001-2009³¹³

Province	Victims of domestic violence	Victims of trafficking	Victims of sexual abuse / sexual exploitation	Child exposed to harm / labour exploitation
Battambang	5	7	1	9
Prey Veng	2	13	2	0
Siem Reap	44	9	15	4
Sihanouville	3	6	3	2
Total	54	35	21	15

The 4th and 5th National Report to CEDAW states that representatives from the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY) take the lead in the implementation of the Strategy on Protection and Rehabilitation concerning victims of trafficking.³¹⁴ This is done with participation from relevant NGOs, especially those that have rehabilitation centres for victims. Over the past several years, this strategy has achieved the following:

- Assisted 3,028 women, who were sexually exploited, by providing rehabilitation services including health care, psychological care, education and short vocational training courses;³¹⁵
- Assisted 4,723 victims who were exploited overseas with repatriation and reintegration.³¹⁶
- The inter-ministerial committee on the suppression

³¹¹ U.S. Department of State, *2007 US Department of State Trafficking in Persons Report*.

³¹² *Ibid.*

³¹³ Marion Bihler, *Data Collection and Monitoring of Violence against Women, 2010*, 47.

³¹⁴ The Royal Government of Cambodia, *The 4th and 5th National CE-DAW Report 2010*, paragraph 100.

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*

of movie- and video-related crimes has conducted 52 raids and confiscated 184 boxes of 283,854 VCDs and DVDs and 2,047 videotapes, including 1,682 pornographic VCDs, 163 CD copy machines, 45 CD case system copiers and a large amount of pirated material.³¹⁷

Nonetheless, rehabilitation measures appear to need improvement. The responsibility of the rehabilitation process for child victims of trafficking is placed on the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSAVY).³¹⁸ However, some of its responsibilities are being deferred and frequently passed on to a range of NGOs, sending victims to NGO shelters and mainly depending on their services. NGOs provide the vast majority of victim rehabilitation in Cambodia.³¹⁹ Due to these recurrent referrals, there is insufficient space in NGO shelters to accommodate all the trafficking victims.³²⁰

d. Prevention Strategy

The government, in order to prevent women from being taken abroad for exploitation through marriage, revised and defined the procedures for marriage between Cambodian women and foreign men by issuing a Sub-Decree on Marriages with Foreigners. The sub-decree states that, “In order to prevent human trafficking in the form of marriage, the Ministry of Commerce must cancel the licenses of private companies that arrange marriages for Cambodian women with foreigners, which is a form of human trafficking.”³²¹ Thus, the Ministry of Commerce cancelled the licenses of those companies on 19 February 2008. In addition, the Ministry of Interior strengthened the duties of commune/sangkat authorities to perform checks when issuing certificates of marriage between Cambodian women and foreigners.³²²

Additionally, the government adopted a Decree on the Provision of Passports stating that, “In order to reduce illegal practices in migration for employment, and to encourage the sending of workers legally, the Ministry of Labour and Vocational Training (MoLVT) must cooperate in reviewing the costs for labour recruitment services when sending workers abroad to ensure they are

as cheap and quick as possible. For example, passports will be provided free of charge to workers going to work abroad through legal companies (worth US\$ 100).” MoLVT then formulated the Decision on the Provision of Passports to give passports to workers free of charge, set appropriate conditions, *e.g.*, that the company must be legal, and gave guidelines on how workers should fill in the forms.³²³

The Strategy for Response to the Criminal Justice System has been implemented by the Inter-Ministerial Task Force.³²⁴ The programs implemented so far include training courses for anti-human trafficking police officers at the local level and at border checkpoints to develop their capacity and skills to investigate and collect evidence.³²⁵

4. Role of Non-State Actors

a. Assistance to victims

National and international NGOs and agencies are engaged in initiatives such as organizing training courses to strengthen the capacity of law enforcement officers, providing assistance for victims and enabling the rehabilitation and the reintegration of victims into communities.³²⁶ Some NGOs simultaneously engage in assistance to victims, prevention programs, and monitoring. Thus, inclusion in one category does not mean they do not form other kinds of services as well. Some of these NGOs are mentioned here.

Member organizations³²⁷ of the NGO Coalition to

³¹⁷ *Ibid.*

³¹⁸ ADHOC, et al., *Joint Cambodian NGO Report on Torture*, paragraph 113.

³¹⁹ *Ibid.*, citing US Department of State, *Trafficking in Persons Report 2010*, 102.

³²⁰ *Ibid.*

³²¹ *Ibid.*, paragraph 95.

³²² *Ibid.*

³²³ *Ibid.*, paragraph 96.

³²⁴ *Ibid.*, paragraph 97.

³²⁵ *Ibid.*

³²⁶ *Ibid.*, paragraph 88.

³²⁷ COSECAM's current member organizations are Anakot Kumar (AK), Cambodian Centre for the Protection of Children Rights (CCPCR), Cambodian Children Against Starvation and Violence Association (CCASVA), Cambodian Defenders Project (CDP), Cambodian Hope Organisation (CHO), Child Assistance for Mobilisation and Participation (CAMP), Child Rights Foundation (CRF), Cambodian Women's Crisis Centre (CWCC), Cambodian Women's Development Agency (CWDA), Damnok Toek/Goutted 'Eau Poipet, Damnok Toek/Goutted 'Eau Neak Loeung, Healthcare Centre for Children (HCC), Kokkyonaki Kodomotachi (KnK), Komar Rik Reay (KMR), Kumar Ney Kdey Sangkheum (KNKS), Legal Support for Children and Women (LSCW), Meahto Phum Ko'mah / HOMELAND (MPK), M'Lop Tapang, Protection of Juvenile Justice (PJJ), Seva Kapea Kumar (SKK), Street Family Centre/Ptea Teuk Dong (PTD), Vulnerable Children Assistance Organization (VCAO), Wathanakpheap (WP), and World Vision Cambodia (WVC). “MEMBERS and Member Directory,” COSECAM, <http://www.cosecam.org/members.html#org24>.

Address Sexual Exploitation of Children in Cambodia (COSECAM) identify and support the release or rescue of victims, provide legal services, shelter and social skills training, vocational skills training and support reintegration of the victims into society.³²⁸ There are also NGOs outside COSECAM who provide similar services, but the Coalition aims to link all service providers to consolidate efforts, to coordinate activities and to advocate jointly so as to achieve more even with limited resources. To achieve this, the COSECAM aims to improve the capacity of its member organizations, to regulate the NGO sector, to standardize childcare procedures and introduce measures to protect children in the care of NGO and government shelters. For example, COSECAM collaborated with the Asia Regional Cooperation to Prevent People Trafficking to introduce an Agreement between five government ministries and 24 Victim Support Agencies for regulating child-victim care. In order to assure compliance with this agreement, COSECAM commissioned a study sponsored by GTZ entitled “Study on the possible establishment of Independent Ombudsman of Child Protection Regulation.”³²⁹

b. Prevention Programs

There are many NGOs that assist women and children through advocacy and by providing direct services in healthcare, educational support, social and economic development, and technical support and skills training.³³⁰ As example, Rattanak International has a program (Wonderful Child Trafficking Prevention Program) at the community level in many rural villages from where kids are sold.³³¹ Its on-going program now operates in most border provinces. This program works to educate, enable, and strengthen children and their families regarding the dangers of trafficking.

The Asia Foundation (TAF) and the East-West Management Institute, with USAID funds, were in

³²⁸ John L. Vighen, *Situation Analysis of the Commercial Sexual Exploitation of Children*, 4.

³²⁹ *Ibid.*

³³⁰ Examples of such NGOs include the following: Cambodian Women’s Crisis Center (CWCC), Agir Pour Les Femmes En Situation Percaire (AFESIP), Cambodian Human Rights and Development Association (ADHOC), Cambodian League for Promotion and Defense of Human Rights (LICADHO), Cambodia National Project Against Trafficking in Women and Children, Cambodian Women’s Development Association (CWDA), Digital Divide Data (DDD), GoutteD’eau (DamnokToek), Hagar, HelpcareCenter for Children, Khmer Women’s Voice Center (KWVC), MithSamlanh/Friends, and SABORAS.

³³¹ Rattanak International, <http://www.ratanak.org/projects_children.cfm>.

the past among the major sponsors of child trafficking interventions.³³² TAF financed more than eighteen (18) local partner NGOs that implemented a wide range of prevention, recovery and protection programs, including shelter, vocational training, job placement and legal support to trafficking survivors. Other prominent programs have been sponsored and implemented by World Vision, Hagar and members of Chab Dai. Additionally, over 60 NGOs are involved in the Victims of Trafficking Scholarship Fund (VTF) project, sponsored by The Asia Foundation (TAF), which provided vocational training and assisted in finding jobs for hundreds of victims of trafficking during the three-year implementation period. Continuation of this effort is being considered.

A side from the above, the United Nation Inter-Agency Project on Human Trafficking in the GMS has a mandate to strengthen coordination in the fight against trafficking while simultaneously implementing programs in prevention, repatriation, rehabilitation, and law enforcement.³³³ Regionally, the UNIAP brought together six governments, 13 UN agencies and a range of local and international NGOs. It fulfils the secretariat function for the commitment under MoU COMMIT, which includes facilitating communication between countries, coordination with other interested parties, technical assistance, and financial support for COMMIT activities.

The International Organization for Migration and the International Labour Organization are intergovernmental bodies that carry out functions in assistance, counter-trafficking, migration health, organized transfer, mass information campaigns, and technical cooperation. In Cambodia, IOM works with a broad focus to address exploitation and trafficking. It expanded its projects to include protection, prevention and prosecution policy. At the time being, IOM is working with local NGOs, MOSAVY and Ministry of Women’s Affairs to provide victims with training for income generation.³³⁴

c. Monitoring and Cooperation

As indicated above, NGOs in Cambodia are engaged in strong collaboration among fellow NGOs and the government. Additionally, End Child Prostitution, Abuses and Trafficking (ECPAT) has been setting up a mechanism to effectively monitor the implementation of the National Plan of Action against Trafficking in Persons and Sexual Exploitation. As yet, it is waiting for the

³³² John L. Vighen, *Situation Analysis of the Commercial Sexual Exploitation of Children*, 25.

³³³ *Ibid.*, 19.

³³⁴ *Ibid.*, 20.

second National Plan to be adopted.³³⁵ With the initiatives of ECPAT Cambodia, UNIAP, Save the Children Norway and Children of Cambodia NGO, the project “Joint NGOs Statistics on Rape and Trafficking” was implemented in 2005. The aim of the project was to compile a report that provided a valid and reliable statistical analysis of rape and trafficking cases. Data on rape and trafficking of male and female children of all ages and nationalities for 2003 and 2004 was collected from 22 participating organizations working in different provinces.³³⁶

The Community Monitoring of Child Labour (CMCL), a component of the ILO-IPEC Project “Support to the Cambodian National Plan of Action on the Elimination of the Worst of Child Labour: A Time Bound Approach (TBP),” is involved in identifying children in the workplace and noting the hazards to which they are exposed, then verifying that they have been removed and are placed in school or given satisfactory alternative.³³⁷ Through this process, the Community Monitoring of Child Labour aims to ensure that the area, industry or sector under surveillance stays child labour free. The Community Monitoring of Child Labour covers the workplace, the school, and the community, which makes it a broader concept than labour inspection alone.³³⁸

5. Progress Indicators and Challenges

The government has indicated that it has adopted a number of measures to address the continuing problem of exploitation. These measures are as follows:³³⁹

- Introducing a National Plan of Action to Combat Human Trafficking and Sexual Exploitation (2009-2013);
- Eliminating the push factors for human trafficking, especially through the Poverty Eradication Program, and educating citizens, especially vulnerable groups and awareness raising;
- Strengthening the dissemination of the Law on Suppression of Human Trafficking and Sexual Exploitation and enforcing this law more strictly and effectively;
- Promoting the detection and investigation of human trafficking cases and related offenses more actively;

335 “Cambodia,” *humantrafficking.org*, <<http://www.humantrafficking.org/organizations/73>>

336 *Ibid.*

337 “Child Labor Monitoring,” *childlabor.org.kh*, http://www.english.childlabor.org.kh/index.php?option=com_content&view=article&id=57&Itemid=55.

338 *Ibid.*

339 The Royal Government of Cambodia, *The 4th and 5th National CEDAW Report 2010*, paragraph 101.

- Enhancing investigations and the arrest of offenders;
- Enabling courts to handle lawsuits related to human trafficking cases more robustly and effectively.³⁴⁰

However, several challenges were also pointed out in literature. NGOs indicated that “Cambodian women do not find an environment of psychological support, nor a community that empathizes with their situation.”³⁴¹ The following challenges were highlighted:

- Victim protection mechanisms are very limited; training is poor and resources are minimal.³⁴²
- Legal process costs are borne by the victim; as many women lack financial means, legal action is rarely pursued.³⁴³
- The lack of prosecutions for rape and sexual trafficking leads perpetrators to feel that it is permitted to commit such crimes. Some rape victims may feel that their perpetrators will not be punished, and this hopelessness may deter them from reporting rapes.³⁴⁴
- There is no infrastructure to investigate and prosecute trafficking and sexual exploitation cases, which makes it difficult to arrest perpetrators and present cases in court.³⁴⁵
- The sexual harassment problem remains below the radar, with virtually no organizations – except the ILO – addressing the issue.³⁴⁶

Aside from the above, it has also been indicated that prevention efforts and actions to reduce local demand for commercial sex workers is lacking.³⁴⁷ The Ministry of Tourism exerted efforts to reduce the demand for commercial sex acts and child sex tourism, but “these efforts were targeted at foreign sex tourists rather than the local population.”³⁴⁸ Further, the need to increase avenues for the rehabilitation of victims was likewise highlighted.

Lastly, the need to strengthen the justice system is apparent. “Endemic corruption at all levels continued to impede anti-trafficking endeavours and local observers believe it to be the cause of impunity afforded to firms engaging in illegal recruitment practices that contribute

340 *Ibid.*

341 NGO-CEDAW and CAMBOW, *Implementation of the CEDAW In Cambodia, 2010*, 63.

342 *Ibid.*, 73.

343 *Ibid.*

344 *Ibid.*

345 *Ibid.*

346 *Ibid.*

347 United States Department of State, *2011 Trafficking in Persons Report - Cambodia*, 27 June 2011.

348 United States Department of State, *2012 Trafficking in Persons Report - Cambodia*, 19 June 2012.

to trafficking.”³⁴⁹

6. Recommendations for Further Study

Further studies need to be undertaken to address the lack of comprehensive data on prevalence, root causes and impact of exploitation. Not only is there a need to gather raw data, but consideration has to be given to establishing mechanisms that systematically collect and analyse data relative to exploitation as well.

Assessments on the comprehensiveness of the policy framework and the effectiveness of current program on protection and rehabilitation of victims are also required. Not only does there appear to be difficulties in implementing or enforcing policies, but a review of the legislative framework appears to be required as well. For instance, Cambodia law reportedly does not provide adequate victim protection. Regulations from ministries to clarify the law and guide enforcement are reportedly not adequate.³⁵⁰

D. ABUSE AND DISCRIMINATION IN MIGRATION

1. Description of the Problem

The preferred destination country for regular female Cambodian migrant workers is Malaysia, followed by Thailand and Korea.³⁵¹ There is considerable difficulty in assessing the extent of abuse and discrimination that Cambodian women and their children migrating for work undergo as literature tended to focus mainly on trafficking. Research on international labour migration from Cambodia, especially concerning female migration, has been described as “extremely limited.”³⁵² The available resources from case studies cannot be considered representative of the migration process as a whole.³⁵³

Until recently, most of the research related to mobility issues in Cambodia was focused on human trafficking and, more precisely, on sexual exploitation. Labour migration has become a topic of investigation only since 2003, and even in this case, the great majority of investigation has been focused on internal migration dynamics, especially on rural-urban flows.³⁵⁴

The information available on Cambodian migrants abroad is sketchy and scarce and the samples used in the surveys are, usually, no more than case studies. Furthermore, there is almost no research made in situ in the receiving countries. An increase in research is indispensable for the development of effective policies aimed at improving the management of labour migration issues.³⁵⁵

A 2010 publication indicates that women accounted for 85% of total deployment to Malaysia between 1998 and 2008.³⁵⁶ In 2012, Human Rights Watch said that, since 2008, 40,000 to 50,000 Cambodian women and girls have migrated to Malaysia as domestic workers.³⁵⁷ In Malaysia, Cambodian women migrant workers are mostly employed as domestic helpers, but also work in factories, grocery shops, plantations, and construction.³⁵⁸

³⁴⁹ *Ibid.*

³⁵⁰ See e.g. Stephanie Huang, *Children's Rights & Cambodian Law*, 3, citing Brown, Sherrie, *Cambodian Law and the Convention on the Rights of the Child*. Phnom Penh: Legal Aid of Cambodia, 2008, 238.

³⁵¹ Bruno Maltoni, *Female Labor Migration in Cambodia*, 17.

³⁵² *Ibid.*, 12.

³⁵³ *Ibid.*

³⁵⁴ Bruno Maltoni, *Review of Labor Migration Dynamics in Cambodia*, Phnom Penh: International Organization for Migration (2006), 43.

³⁵⁵ *Ibid.*

³⁵⁶ IOM, *Analyzing the Impact of Remittances from Cambodian Migrant Workers in Thailand on Local Communities in Cambodia*, June 2010, 14.

³⁵⁷ Human Rights Watch, “World Report 2012: Cambodia,” <http://www.hrw.org/world-report-2012/world-report-2012-cambodia>.

³⁵⁸ Ministry of Labour and ILO, *Policy on Labour Migration for Cambodia*, 14.

In Thailand, they comprised 47% of the total number of deployment between 2006 and 2008. They largely work in aquatic product processing, seasonal farming, and domestic work, with a growing number being employed in the manufacturing sector.³⁵⁹ Cambodian workers in South Korea usually work in manufacturing, construction and agriculture.³⁶⁰

In countries of destination, problems “commonly faced” by Cambodian migrant workers include withholding of travel documents, delayed payment or underpayment of wages, harsh working conditions (long work hours, unhygienic working environment, extreme temperatures, both too hot and too cold), lack of freedom of movement and communication, confinement in factories or employers’ premises, limited access to health services, harassment by the security authorities, and sexual harassment.³⁶¹ Some have also complained of discrimination.³⁶²

Many migrants, “especially domestic workers en route to Malaysia,” are said to suffer deceptive and exploitative practices by poorly-monitored recruitment agencies in Cambodia.³⁶³ Recruitment agencies and the local brokers pay by commission, and often do not provide full information to prospective migrants about their training, recruitment debts, and employment abroad. Many women and girls must turn over the first six to seven months of salary to repay exorbitant recruitment fees to their labour agents in Cambodia. Once they agree to migrate, the recruitment agents reportedly require them to live in training centres in Cambodia for months until their departure. The recruiters require workers to pay the recruitment fees even if they change their minds about migrating and return home.³⁶⁴

The Cambodian Human Rights and Development Association (ADHOC) alone confirmed that, in the first 10 months of 2010, they received 28 complaints

from women who claimed to have been abused while working as domestic servants, most of whom were based in Malaysia.³⁶⁵ In October 2011, Cambodia announced a ban on sending domestic workers to Malaysia.³⁶⁶ Vuthy Hour of the Department of Employment and Man Power at MoLVT, however, has reportedly stated that less than 1% of Cambodian domestic workers have problems with their Malaysian employers.³⁶⁷ This information highlights the need to gather and analyse more comprehensive data so as to avoid erroneous assumptions and generalizations.

Cambodian workers comprise the second-largest group of foreign workers in Thailand; it is next only to migrants from Myanmar.³⁶⁸ The International Organization for Migration (IOM) estimates that the number of Cambodian migrants in Thailand alone was 248,000 in 2008.³⁶⁹ After the Thai regularization programme in 2004, 110,025 Cambodian migrant workers obtained work permits for temporary jobs in Thailand, with many undergoing nationality verification to convert their status from quasi-legal to legal migrants.³⁷⁰ With regard to information on migration to Thailand, lack of knowledge is said to be determined by the nature of migration from Cambodia to Thailand.³⁷¹ Majority of Cambodian migrants in Thailand are irregular and undocumented. The only data available is that supplied by the Thai Ministry of Labour, which, according to the Cambodian Ministry of Labour, is not completely reliable since many Lao and Burmese are identified as Cambodian by Thai authorities.³⁷² Moreover, there is no legal framework and

359 *Ibid.*

360 USAID and The Asia Foundation, *Cambodia's Labor Migration: Analysis of the Legal Framework*, April 2011, 8, available at <http://asiafoundation.org/resources/pdfs/LegalFrameworkLabourTrafficking.pdf>.

361 Ministry of Labour and ILO, *Policy on Labour Migration for Cambodia*, 14.

362 Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 9; and Bruno Maltoni, *Review of Labor Migration Dynamics in Cambodia*, Phnom Penh: International Organization for Migration (2006), 22.

363 Human Rights Watch, “Cambodia: New Regulation Short-Changes Domestic Workers.”

364 *Ibid.*

365 USAID and The Asia Foundation, *Cambodia's Labor Migration: Analysis of the Legal Framework*, 38, citing Brooke Lewis and Mon Kunthea, “Staff Rush for Malaysia,” *The Phnom Penh Post* (4 October 2010).

366 Human Rights Watch, “World Report 2012: Cambodia,” <http://www.hrw.org/world-report-2012/world-report-2012-cambodia>.

367 Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 10, citing Personal interview with Vuthy Hour, Deputy Director General of Department of Employment and Manpower at MoLVT, conducted on July 11, 2011.

368 Ministry of Labour and ILO, *Policy on Labour Migration for Cambodia*, June 2010, 3, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_145704.pdf.

369 Human Rights Watch, “Cambodia: New Regulation Short-Changes Domestic Workers: Revised Labor Migration Policy Weak on Recruitment Abuses,” 30 August 2011, <http://www.hrw.org/news/2011/08/30/cambodia-new-regulation-short-changes-domestic-workers>.

370 *Ibid.*

371 IOM, *Analyzing the Impact of Remittances from Cambodian Migrant Workers in Thailand on Local Communities in Cambodia*, June 2010, 23-34.

372 *Ibid.*, citing World Bank, 2006.

no government institution in Cambodia that effectively regulates the flow of migration. The long and porous border also makes it very difficult to stop irregular migration and to collect data.³⁷³

Independent migration of children appears to be very prevalent in certain areas in Cambodia. It has been pointed out that children are not just passive victims of circumstances and that motivation for migrating often involves the child's own desire to earn an income. Indeed, most poor rural families see it as desirable, or even a good investment, to send a child to the city or abroad to work.³⁷⁴ Falsification of documents is rampant and many of those who migrate are under the age of 18, notwithstanding that migrant workers are required by law to be at least 21 years of age.³⁷⁵ Some recruitment agents in Cambodia forged documents to recruit children, bribe potential migrant children with several incentives and leave them heavily indebted, deceive them about the true nature of their job abroad, and charge exorbitant recruitment fees.³⁷⁶

Literature also indicates concerns relative to the education of children of migrants. Usually, migrant parents leave their children in the home country, but take the children along when there is one to leave the children with. In the foreign country, migrants with illegal or irregular status have difficulties in sending their children to school.³⁷⁷

A big number of migrants to neighbouring countries Thailand and Vietnam are gradually sent back to Cambodia.³⁷⁸ In 2010, the total number of Cambodian migrants sent back from the bordering countries to provincial police headquarters in Banteay Mean Chey, Svay Rieng and Koh Kong provinces was 127,053; 38,572 of them were females. Compared to 2009, the total number of migrants increased by 24,736, accounting for a 21.47% increase. Among the total number of migrants, 14,552 migrants remained in custody for more than a month in Thailand before they were sent back to Cambodia.

373 *Ibid*, 23-34.

374 IOM, *International Migration*, 2008, 184.

375 Human Rights Watch, "Cambodia: New Regulation Short-Changes Domestic Workers."

376 Human Rights Watch, "*They Deceived Us at Every Step: Abuse of Cambodian Domestic Worker Migrating to Malaysia*," November 2011, 11.

377 HingVutha, LunPide and PhannDalis, *Irregular Migration from Cambodia: Characteristics, Challenges and Regulatory Approach: CDRI Working Paper Series No. 58*, August 2011, 18.

378 Cambodian National Council for Women (CNCW), *Final Summary Report on Activities of the Cambodian National Council for Women in 2010 and Directives for 2011*, unofficial translation available at: <http://cncw.gov.kh/userfiles/Final%20Summary%20report%20for%20CNCW%202010-2011.pdf>.

a. Root Causes of Abuse and Discrimination in Migration

There are important literature that explain the influences that make Cambodians, especially minors, decide to migrate and the root causes behind why they end up in situations of exploitation; however, there appears to be not much quantitative study on causes of abuse and discrimination that occur outside the context of exploitation.

The "push-pull factors" that motivate people to migrate include economic growth, poverty and lack of employment opportunities, struggles for livelihood, loss of real property, debts, and lack of industrialization in the country.³⁷⁹ Around 70% of arable land in Cambodia is not yet irrigated.³⁸⁰ The presence of landmines has reduced the usability of land for agriculture, further reducing economic opportunities in rural areas.³⁸¹ With above half the population below the age of 20 in 2008,³⁸² the Government is challenged with equipping the youth with marketable skills, facilitating their mobility, and providing them with job-matching services.³⁸³ Youth unemployment looms large in Cambodia. It is unlikely that the garment, construction, and tourism industries, the countries "main engines of growth," will be able to absorb the estimated 250,000 young job seekers entering the labour market annually over the next few years.³⁸⁴ These factors, especially when coupled with lack of awareness of rights and migrants' irregular status in the host country, make migrants vulnerable to abuse and accepting of unfavourable work conditions.

Finally, literature partly attributes problems relating to migration to lack of sound policies and implementing infrastructure. Labour migration is one of the government's avenues to promote employment and reduce poverty among its workforce. However, it has yet

379 LSCW, *Unsafe Migration and Trafficking*, 20.

380 HingVutha, et. al, *Irregular Migration from Cambodia*, 13, citing MOWRM 2009.

381 ILO, Mekong Sub-regional project to combat trafficking in Women and Children "Preventing Human Trafficking in the GMS," available at <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/wherewework-cambodiadetail.htm>.

382 International Labour Organization, "Preventing Human Trafficking in the GMS," last update: 29 October 2008, <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/wherewework-cambodiadetail.htm>.

383 Ministry of Labour and ILO, *Policy on Labour Migration for Cambodia*, 9.

384 *Ibid*.

to establish the necessary concrete enabling policy.³⁸⁵ There is a lack of a legal framework that would regulate, monitor, protect, and reintegrate migrant workers.

Widespread migration problems can be partly attributed to a lack of sound policy and regulation. Cambodia is a latecomer in management and administration of labour emigration, its regulatory and institutional frameworks being seen as weak and ineffective. Regulation has been sporadic, limited and lacking comprehensive coverage, especially in the management of the labour migration process, the protection of migrant workers and the reintegration of returned workers. Public institutions are characterised by a lack of clear responsibilities and coordination and a shortage of financial and human resources. Regulatory and institutional weakness is compounded by exclusivity of irregular migration in many national and international legal instruments.³⁸⁶

The weaknesses in the legal framework make migrants more vulnerable to being abused and put them in a situation where they are without avenues to adequate assistance in their host countries. “In Cambodia, most migration is irregular.”³⁸⁷ Restrictive immigration policies in labour-receiving countries and lengthy, complex and expensive legal recruitment contribute to prevalence of irregular migration.³⁸⁸ Most irregular migrant families have a lower economic status than regular migrants and live below the poverty line.³⁸⁹ A 2011 publication indicates that, while legal recruitment is expensive (USD700 to Thailand) and slow, informal recruitment takes only a few days and requires no or few documents.³⁹⁰ Further, “malpractice and unclear rules of legal recruitment agency diminishes people’s credibility on the formal channel.”³⁹¹ Geographical proximity, in the case of migrants to Thailand, and social networks facilitate the flow of irregular migration.³⁹²

b. Impact of Abuse and Discrimination in Migration

While there are migrants who indicated they were happy with their migration experience,³⁹³ some literature express

concerns about unreported work-injuries, fatalities, and disabilities incurred by both men and women migrant workers.³⁹⁴ Few migrant workers are covered by national security scheme or workmen compensation funds in the host countries; migrants tend to receive very limited compensation from employers for workplace fatalities and injuries.³⁹⁵ Further, the use of chemicals in the agricultural sector and in plantations causes long-term damage to the health of women migrant workers, with symptoms often becoming apparent only after returning home; thus, denying them the opportunity to claim compensation.³⁹⁶

There are migrants, especially “long-term” ones, who indicated that they would not migrate again. Among this group are persons who are now depressed and have social problems, such as drug addiction, and mental difficulties. Many other long-term migrants made no money at all from their experience.³⁹⁷

2. De Jure State Responsibility

a. Bases of State Responsibility

Cambodia ratified all eight core ILO Conventions³⁹⁸ and has signed, but not ratified, the UN Convention on the Protection of All Migrant Workers and Members of Their Families. It is also a signatory to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Additionally, Cambodia has also cooperated with other countries to protect international migrants.

Regular migration from Cambodia to Korea is said to be an excellent example of good practices in labor migration management.³⁹⁹ It exemplifies the key role played by receiving countries in implementing effective measures designed to protect migrant workers through a transparent and rigid legal framework. Countries sending

385 *Ibid.*, 12.

386 HingVutha, et. al, *Irregular Migration from Cambodia*, 5.

387 *Ibid.*

388 *Ibid.*, 14.

389 *Ibid.*, 1 & 12.

390 *Ibid.*, 14.

391 *Ibid.*, 15.

392 *Ibid.*, 15.

393 LSCW, *Unsafe Migration and Trafficking: Situation Analysis in Kampong Thom, PhreahVihear and Stung Treng Provinces*, July 2009, 40.

394 Ministry of Labour and ILO, *Policy on Labour Migration for Cambodia*, 15.

395 *Ibid.*

396 *Ibid.*

397 LSCW, *Unsafe Migration and Trafficking: Situation Analysis in Kampong Thom, PhreahVihear and Stung Treng Provinces*, July 2009, 40.

398 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); and Worst Forms of Child Labour Convention, 1999 (No. 182).

399 Bruno Maltoni, *Female Labor Migration in Cambodia*, October 2011, (no page number: Executive Summary).

migrant workers to Korea are responsible for the status of their migrants throughout the entire migration process. If, at the end of an employment contract, a migrant worker decides to remain in Korea and overstay his/her visa, the worker will automatically become an irregular migrant and this will affect the existing quota for workers from his/her country. For each migrant who becomes irregular while in Korea, the quota of migrant workers reserved for the sending country will be reduced.⁴⁰⁰

Cambodia and Thailand signed the “Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Cooperation in the Employment of Workers” in May 2003.⁴⁰¹ However, it was only in 2006 that recruitment agencies licensed with the Ministry of Labour and Vocational Training started sending Khmer migrants officially to Thailand. The Government of Thailand agreed to legalize the status of Cambodians who are working in Thailand. The Cambodian Inter-Ministerial Working Group issued 36,026 Certificates of Identity to Cambodian workers in Thailand during two separate missions from 31 March to 13 April 2005 and 14 November 2005 to 30 June 2006.⁴⁰² In August 2006, the Thai Government set a quota of 20,000 Cambodian migrant workers based on needs in various sectors. Thus, Cambodian licensed recruitment agencies began to recruit migrant workers to be sent to Thailand through legal channels for the first time.⁴⁰³

In relation to Malaysia, Cambodia has an official mutual labour cooperation agreement called “Recruitment Procedures for Cambodian Nationals for Employment in Malaysia”. This was first created in 1997 and then revised in 1999. Currently “there is no MoU or bilateral arrangement between Cambodia and Malaysia dealing with migrant workers or the protection and repatriation of victims of TIP.”⁴⁰⁴ An MoU is being negotiated, but this process has been ongoing for some years.⁴⁰⁵ As of July 2011, UNIAP stated that, “The terms of the Memorandum of Understanding between Cambodia and Malaysia regulating the recruitment and employment of Cambodian domestic migrant workers has yet to be made public. Consequently, it remains unclear the protections

offered to Cambodian migrant workers in Malaysia.”⁴⁰⁶

b. National Policies Against Abuse and Discrimination in Migration

In Cambodia, any policy or legislation related to migration comes under the direct jurisdiction of the Ministry of Labour and Vocational Training (MoLVT). Specifically, the Department of Employment and Manpower in the said Ministry oversees the registration and sending of Cambodian workers abroad. The national legal and regulatory framework governing labour migration in Cambodia is still evolving and has been described as “sporadic” and “limited.”⁴⁰⁷ Below are some of the laws applicable to migration:

- Labour Law, 1997⁴⁰⁸
- *Prakas* 108 (May 2006) on Education of HIV/AIDS, Safe Migration and Labour Rights for Cambodian Workers Abroad, aims to promote pre-departure training for migrant workers on health issues, safe migration, and labour rights to reduce their vulnerability to health problems.
- Sub-decree 70 (July 2006) on the Creation of the Manpower Training and Overseas Sending Board (MTOSB), is designed to regulate the sending of workers to the Republic of Korea. The Manpower Training and Overseas Sending Board oversees the recruitment, training, and sending of workers to South Korea.
- *Prakas* 012/2007 created a labour migration taskforce to formulate and implement policy and action plans, including the coordination of technical assistance in the area of labour migration.
- Sub-decree 68/2009 formalized reduction of cost of passports of migrant workers to US\$20 and expedited passport issuance to within 20 days.
- Sub-Decree 190 on The Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies.⁴⁰⁹

406 United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, July 2011, 50.

407 Ministry of Labour and ILO, *Policy on Labour Migration for Cambodia*, 17; and Hingvutha, LunPide and PhannDalis, *Irregular Migration from Cambodia: Characteristics, Challenges and Regulatory Approach: CDRI Working Paper Series No. 58*, August 2011, 1.

408 *Labour Law, 1997*, available at http://www.gocambodia.com/laws/labor_law.asp.

409 Sub-Decree 190 on The Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies, available at http://www.caramcambodia.org/uploads/subdecree190%20on%20management%20of%20sending%20workers%20abroad_eng.pdf.

400 *Ibid.*

401 *Ibid.*

402 Bruno Maltoni, *Review of Labor Migration Dynamics in Cambodia*, Phnom Penh: International Organization for Migration (2006), 33-34.

403 *Ibid.*

404 USAID and The Asia Foundation, *Cambodia's Labor Migration: Analysis of the Legal Framework*, 46.

405 *Ibid.*

Other documents related to the management of labour migration in Cambodia include the MoLVT Strategic Plan 2006-2010. It includes four strategic areas: (i) promotion of local and foreign employment; (ii) improvement in rights at work and better working conditions; (iii) creation of a national social security system; and (iv) development of technical and vocational skills for local and foreign labour markets.⁴¹⁰

Together with the Strategic Plan, the Rectangular Strategy also emphasizes that a well-managed labour migration policy and sound regulation framework can provide effective means for employment promotion, reduction of labour exploitation and prevention of trafficking in women and children.⁴¹¹ The Rectangular Strategy has the following components: (i) agricultural development; (ii) infrastructure rehabilitation and development; (iii) private sector development and employment creation; and (iv) capacity building and human resource development. The Rectangular Strategy was first launched in 2004, and was updated in 2008.⁴¹²

Considering that, in the context of Cambodia, only a very thin line divides exploitation, particularly through trafficking, from abuses in migration, the policies mentioned in the section on Exploitation are also applicable.

c. Assessment of State Policies

The 1997 Labour Law is the most detailed legislation governing the employment and treatment of workers in Cambodia. However, the law does not cover domestic workers and migrant workers.⁴¹³ As regards migrant workers, Sub-decree No. 190, which was issued in 2011 and nullified Sub-Decree 57 on Sending Khmer Migrants to Work Abroad (1995), is applicable.⁴¹⁴

This new regulation assigns the Ministry of Labour and Vocational Training with the responsibility to inspect recruitment agencies and requires these agencies to

provide migrants with legal counsels in case of legal proceeding abroad and contracts in the Khmer language between agencies and workers.⁴¹⁵ Penalties for violations by agencies begin with a written warning to revocation of an agency's operating license. Agencies may also lose all or part of a US\$100,000 surety deposited with the government upon registration. Article 40 further states that recruitment agencies or persons violating any provisions of this sub-decree or applicable laws or using their functions and competence to create inappropriate obstacles for the recruitment activities, and illegally sending workers abroad shall be punished under the applicable laws.⁴¹⁶

This Sub-decree, which was reportedly passed without consultation with NGOs and migrant workers, have been met with much criticisms.⁴¹⁷ Sub-decree 190 fails to address the use of debt bondage, forced confinement, debt bondage, and child recruitment.⁴¹⁸ Aside from these shortcomings, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) has criticised the following:

- The failure to outlaw the practice of unlicensed recruitment agencies "borrowing" the license of other agencies, which makes it more difficult to intervene in cases of abuses against workers and to identify serial abusers.
- The failure to mandate that contracts include paid holidays for workers (Article 10 of the old law required 1.5 days per year).
- The failure to specify a minimum wage or limit working hours.
- The failure to require that contracts contain specific information, including salary, the portion of the salary which shall be sent to the worker's family, provisions for the repatriation of workers prior to normal termination date, transport expenses and insurance premiums (all of this was required by Article 9 of the old law).
- The failure to require that workers themselves actually receive a copy of their labour contract.
- No provision ensuring that a worker's family members have access to information on the worker's whereabouts, or that family be notified if a worker disappears.
- Serious flaws in the penalty provisions. Although there are three penalty tiers, there are no automatic triggers for escalating sanctions. Thus an agency

410 Bruno Maltoni, *Female Labor Migration in Cambodia*, 47.

411 *Ibid.*

412 *Ibid.*

413 USAID and The Asia Foundation, *Cambodia's Labor Migration: Analysis of the Legal Framework*, April 2011, 6, available at <http://asiafoundation.org/resources/pdfs/LegalFrameworkLabourTrafficking.pdf>.

414 Sub-Decree 190 on The Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies, Article 42: "The sub-decree No. 57 dated July 20, 1995 on the sending of Cambodian workers abroad and any provisions contrary to this sub-decree shall be considered null and void."

415 Human Rights Watch, "Cambodia: New Regulation Short-Changes Domestic Workers."

416 *Ibid.*

417 *Ibid.*

418 Human Rights Watch, "World Report 2012: Cambodia."

could theoretically receive an infinite number of written warnings (the first tier of sanctions). The law sets no guidelines requiring that more serious punishments, such as suspension of an operating license, be imposed.⁴¹⁹

Further, reports point to the failure of Sub-decree 190 to comply with the guidelines set out by the ILO Convention on Decent Work for Domestic Workers relative to establishment of accessible complaint mechanisms.⁴²⁰ The chapter on “Dispute Resolution” of Sub-Decree 190 on The Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies provides two provisions, as follows:

Article 29

Any dispute arising between the recruitment agencies and the workers prior to the departure for overseas work shall be resolved in accordance with the Labour Law and other applicable regulations of the Kingdom of Cambodia.

Article 30

Regarding a dispute that arises between the foreign employers and the workers who are working abroad, the recruitment agencies and the embassy or representative mission of the Kingdom of Cambodia to the receiving country shall participate in the resolution process.

In necessary case which requires the participation of expert officials from the Ministry of Labour and Vocational Training or hiring of a lawyer, all costs shall be borne by the recruitment agencies.

This Study finds that, from the wording of the provisions above, the extent to which the recruitment agencies, embassy or representative mission of Cambodia will “participate in the resolution process” is unclear. Further, clarification needs to be made as to the proviso that “all costs shall be borne by the recruitment agencies,” since literature indicates that some recruitment agents are engaged in the commission of acts that place Cambodian migrants at peril in the first place. Although Cambodia has not ratified (but has signed) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,⁴²¹ nor

has it signed the Domestic Workers Convention (ILO C189), it is observed that the Sub-decree, on its own, does not adequately ensure access to effective remedies, as stipulated in the said Conventions.⁴²² Thus, CARAM Cambodia, in its analysis of the Sub-decree provides the following recommendation anent Article 30: “Complaint reception and dispute resolution mechanisms shall be clearly stipulated in the proclamation of the Minister of Labour and Vocational Training on procedure and modality for complaint reception and dispute resolution for workers.”⁴²³

Literature states that, as of October 2011, the manner in which the new Sub-decree will be implemented remains unclear. It is not known whether or not additional legislation will be adopted to support and strengthen this legislation.⁴²⁴

Families on 27 Sep 2004. See “Chapter IV: Human Rights,” *United Nations Treaty Collection*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en.

422 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Article 83: “Each State Party to the present Convention undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted;” and Domestic Workers Convention (ILO C189), Article 15: (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers; (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses.”

423 CARAM Cambodia, “Analysis: Sub-Decree No. 190 on ‘Management of the sending of Cambodian workers to work abroad through private recruitment agencies,’” 31 August 2011, 5, available at http://www.caramcambodia.org/uploads/CARAM%20Analysis%20of%20Sub%20decree%20190-1_english.pdf.

424 Bruno Maltoni, *Female Labor Migration in Cambodia*, October 2011, 47.

419 Cambodian League for the Promotion and Defense of Human Rights (LICADHO), “New Sub-Decree on Migrant Labor Fails Dismally on Workers Rights,” <http://www.licadho-cambodia.org/press-release.php?perm=257>, 15 May 2012.

420 See e.g. Human Rights Watch, “Cambodia: New Regulation Short-Changes Domestic Workers.”

421 Cambodia signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their

3. Implementation, Monitoring and Prevention

a. Implementing and Monitoring Mechanisms

Regular labour migration in Cambodia is implemented through a system of recruitment agencies, licensed by the Ministry of Labour and Vocational Training (MoLVT).⁴²⁵ As enumerated by MoLVT and ILO, below are the entities that constitute Cambodia's institutional framework relative to migration:

- The Ministry of Labour and Vocational Training's Department of Employment and Manpower is tasked with overseeing the administration of overseas employment. The Department is structured with six Bureaus responsible for (i) public relations, (ii) placement (domestic and foreign employment), (iii) alien control, (iv) alien management, (v) Khmer employee control, and (vi) employment and manpower statistics.⁴²⁶
- The Manpower Training and Overseas Sending Board (MTOSB) is a public employment agency tasked with recruiting, training, and sending workers to South Korea and other countries. It also comprises a special unit within the Ministry of Labour and Vocational Training that facilitates government-to-government labour migration agreements.⁴²⁷
- There are also inter-ministerial committees involved in labour migration issues. The Inter-Ministerial Working Group for the Implementation of the MOU with Thailand is a body formed to oversee the implementation of the MOU. The Inter-Ministerial Taskforce for Migration (IMTM) addresses migration issues and provides recommendations to the government.⁴²⁸
- The Migration NGO Network (MNN), established by the NGO community, is comprised of 30 member organizations working on migration and human trafficking issues.⁴²⁹
- The Association of Cambodian Recruitment Agencies (ACRA), set up in 2008, promotes the orderly and safe migration of Cambodian migrant workers.⁴³⁰

Aside from the above, in early 2006, the government decided to integrate the promotion and support of a gender-responsive migration policy into its yearly work plan. In October 2006, the Ministry of Women's Affairs

425 *Ibid.*, 17.

426 Ministry of Labour and ILO, *Policy on Labour Migration for Cambodia*, 18.

427 *Ibid.*

428 *Ibid.*

429 *Ibid.*

430 *Ibid.*

collaborated with the Ministry of Labour and Vocational Training to create what would be considered the first Inter-ministerial Task Force on Migration (IMTM) in Cambodia, an initiative supported by the UNIFEM, Empowerment of Women Migrant Workers Project. It has a mandate to advocate for the protection of migrant workers, with a special focus on female migrant workers.⁴³¹

b. Complaints Process

Disputes that arise between foreign employers and Cambodians working abroad are to be dealt with by the recruitment agencies, the Cambodian embassy or representative mission of Cambodia to the receiving country.⁴³² Literature, however, points to the lack of adequate complaints mechanism where migrants may file complaints against erring employers in their destination countries.

Reports indicate that "there are currently no formal complaint or dispute resolution mechanisms in place for workers who wish to lodge grievances against the recruitment agency in either Cambodia or Malaysia or against their employer in Malaysia."⁴³³ Under both Cambodian and Malaysian laws, mechanisms for complaint, dispute settlement and/or legal recourse are said to be limited, with procedures that are "onerous" on the migrant worker.⁴³⁴ The Malaysian Employment Act defines "domestic servants" and there are articles that apply to them relating to lawful and unlawful deductions,⁴³⁵ permitted deduction amounts, and prescribed time period within which wages are to be

431 IOM, *International Dialogue on Migration 2008: Return Migration: Challenges and Opportunities*, April 2008, 27.

432 Sub-Decree 190 on The Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies, Article 30.

433 United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, July 2011, 51; see also Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 9.

434 *Ibid.*, ix.

435 Under Article 24(4)(e), deductions for accommodation, services, food or meals provided by the employer to the employee unless it is for the benefit of the employee; under Article 24(5), the Director General is not to permit any deductions for such items unless he is satisfied that the deductions are for the benefit of the employee; and under Article 24(5), the total amount of deductions is not permitted to exceed fifty percent of the wages earned by that employee in that month, cited in United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, July 2011, 50.

paid.⁴³⁶ It was indicated, however, that the Employment Act excludes domestic workers from key protections such as fair termination of contract, minimum number of working days per month, rest days and hours of work.⁴³⁷

In a study where 60 (78%) of 77 workers responded, UNIAP found that, on a scale of 1-5, with 1 being very bad and 5 being very good, workers in Malaysia overall rated the complaints mechanism as above average (with a mean of 3.48). Only 8 (13.3%) rated the complaint mechanism bad or very bad. Even those who felt exploited rated the complaints mechanism above average (3.27). Despite this, only 1 out of 21 workers actually experienced a positive outcome by complaining to their recruitment agency.⁴³⁸ The study indicated that recruitment agencies may not have provided sufficient information to workers about complaint mechanisms in the pre-departure training. The second most common problem faced by migrant domestic workers when they sought to lodge a complaint was that they could not remember the phone number of the recruitment agency. ACRA has shown an interest in establishing a complaint hotline.⁴³⁹ However, according to UNIAP, it is unclear how a complaint hotline by ACRA would ensure neutrality considering that the members of ACRA are the recruitment agencies themselves. UNIAP stated that mistreated migrant domestic workers currently rely on NGO assistance to report and manage complaints against the recruitment agency in Cambodia.⁴⁴⁰ NGOs have reported that negotiations are generally conducted between themselves and the recruitment agency on behalf of the worker; this process is said to be long and tedious.⁴⁴¹

Although there is an MoU between Thailand and Cambodia on Cooperation in the Employment of Workers (2003), it does not specify the minimum

conditions of employment for workers. Workers in Thailand are covered by Thai employment laws; however, most workers are unable to access information about their employment rights and are unaware of the basic conditions that their employers are obliged to provide.⁴⁴²

c. Protection and Rehabilitation

The employment contract, according to Article 15 of Sub-decree 190, shall clearly specify, *inter alia*, working conditions, job status, and types of work, benefits and key addresses that can be contacted. The employment contract shall be written in Khmer, English and in the language of the receiving country and shall be forwarded to the Cambodian embassy or representative mission to the receiving country through the Ministry of Foreign Affairs and International Cooperation.⁴⁴³ The Ministry of Labour and Vocational Training shall determine samples of such work contracts in a *Prakas*.⁴⁴⁴

Sub-decree 190 requires recruiting agencies to obtain authorizations from the Ministry of Labour and Vocational Training. Among the requisites to obtain such authorization includes deposit of guaranty money in Riel currency in the amount equivalent to 100,000 US dollars.⁴⁴⁵ Such guaranty deposit may be used by the Ministry as a means of protection and repatriation of migrants in the following circumstances:

Sub-decree 190, Article 10

- a) In the events of force majeure, wars, unrest, epidemics in the receiving country or at the places where workers work, which require the movement of workers to safe places or repatriation of workers to ensure safety, the guaranty deposit withdrawn for use shall be replenished by the state budget or any relief fund.
- b) In the event that the recruitment agencies do not fulfil any conditions stipulated in the contract between the recruitment agencies and workers or between the recruitment agencies and the Ministry of Labour and Vocational Training, and fail to resolve the issue according to the conciliatory principle, thus harming the interests of the workers, the guaranty deposit withdrawn and used shall be replenished by the recruitment agencies within 15 (fifteen) days at the latest.

436 United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, July 2011, 50.

437 "The act excludes domestic workers from protection under key articles of the law, including Article 12 and 14 relating to fair termination of contract, Article 16 relating to minimum number of working days per month, and Parts IX on maternity provisions, XII on rest days, hours of work, holidays and other conditions of service (including annual leave and sick leave) and XIII on termination, lay off and retirement," *ibid*, 17; see also Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 14.

438 *Ibid*, 51.

439 *Ibid*.

440 *Ibid*.

441 United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, July 2011, 51.

442 USAID and The Asia Foundation, *Cambodia's Labor Migration: Analysis of the Legal Framework*, April 2011, 42.

443 Sub-Decree 190 on The Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies, Article 17.

444 *Ibid*, Article 18.

445 *Ibid*, Article 8.

Literature observes, however, that the guaranty deposits have not yet been used to pay out worker claims.⁴⁴⁶

Further, embassies appear to be ill equipped and not sensitive enough to the needs of migrants. For instance, Human Rights Watch observed that the Cambodian embassy in Malaysia lacks adequate staff, skills, and resources to deal with domestic workers coming forward with complaints of abuse.⁴⁴⁷ In 2010, the embassy received 80 such complaints and had only one part-time staff member to handle them; plans for an onsite shelter began only in September 2011.⁴⁴⁸ There are reportedly no labour attachés who specialize in employment issues.⁴⁴⁹ Another concern is the embassy's practice of sending abused workers back to their agents instead of handling the case themselves. It was alleged that some agents make women work for a second or third employer against their will.⁴⁵⁰ Similarly, there is little systematic monitoring of the working conditions of Cambodian migrant workers in Thailand, either from the Thai or Cambodian government.⁴⁵¹ The cost of such monitoring leads both governments to rely on the recruitment agencies to monitor standards.

d. Prevention Strategy

Sub-decree 190 imposes upon the recruitment agencies the following obligations, which are relevant in preventing abuses in migration:

- Provide workers with information on communication means, address and telephone numbers for contacting the Cambodian embassy or representative mission to the receiving country and the Ministry of Labour and Vocational Training during the pre-departure

446 Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 7, citing TAF Report, 10-11. As of September 2010.

447 Human Rights Watch, "They Deceived Us at Every Step: Abuse of Cambodian Domestic Workers Migrating to Malaysia," November 2011, 12.

448 *Ibid.*

449 Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 8, citing personal interview with ACRA Chairman An Bunhak conducted on July 11, 2011.

450 Human Rights Watch, "They Deceived Us at Every Step: Abuse of Cambodian Domestic Workers Migrating to Malaysia," November 2011, 12.

451 USAID and The Asia Foundation, *Cambodia's Labor Migration: Analysis of the Legal Framework*, April 2011, 42, citing Chan Sophal, "Review of Labor Migration Management, Policies and Legal Framework in Cambodia," ILO Asia-Pacific Working Paper Series (May 2009, ILO Japan).

orientation training;⁴⁵²

- Responsible for the working conditions and living conditions before recruiting workers for overseas work such as types of work, workplace, working hours, skills, salary, benefits, health insurance, accommodation, transport, security and safety within the working and accommodation areas;⁴⁵³
- Responsible for sending the workers to the workplace in the receiving country according to the contract;⁴⁵⁴
- Prepare and submit a clear report to the embassy or representative mission of the Kingdom of Cambodia to the receiving country and to the Ministry of Labour and Vocational Training.⁴⁵⁵

In conducting all pre-departure training and orientation courses, the recruitment agencies are to cooperate with the Ministry of Labour and Vocational Training and other relevant institutions.⁴⁵⁶ Aside from the foregoing, the Ministry of Social Affairs, Veteran and Youth Rehabilitation aims to reduce trafficking, develops vocational training programs, helps people in difficult circumstances to acquire skills and employment, and provides programs to reduce juvenile delinquency. The social affairs section implements programs and projects in the fields of prevention, protection, recovery and reintegration. The labour section, on the other hand, oversees sections of the Labour Code and the formulation of employment policies relevant to migration and trafficking.⁴⁵⁷

The Association of Cambodian Recruitment Agencies (ACRA) coordinates with the police and partner NGOs to provide pre-departure orientation seminars (PDOS) to inform workers of their basic rights, what to do if problems arise in the destination country, and which organizations to contact for help.⁴⁵⁸ Unfortunately, employment agencies in Malaysia, for instance, are not staffed with Cambodians or anyone who speaks Khmer. These employment agencies are said to serve the interests of Malaysians seeking domestic helpers; thus, there is an "inherent conflict of interest when problems

452 Sub-Decree 190 on The Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies, Article 20.

453 *Ibid.*, Article 21.

454 *Ibid.*, Article 24.

455 *Ibid.*

456 *Ibid.*, Article 23.

457 See "Cambodia: Ministry of Social Affairs, Veteran and Youth Rehabilitation," *humantrafficking.org*, <http://www.humantrafficking.org/organizations/42>.

458 Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 9.

between worker and employer arise.⁴⁵⁹ Some Cambodian recruitment agencies reportedly visit Malaysian employers to check working conditions, however, resources are lacking and very few employers are actually scrutinized.⁴⁶⁰

4. Role of Non-State Actors

Non-governmental organizations work actively in promoting and protecting the rights of migrants. It is said that mistreated migrant domestic workers currently rely on NGO assistance to report and manage complaints against the recruitment agency in Cambodia.⁴⁶¹ Because migration relates closely to exploitation, reference should be made to NGOs listed in the Exploitation section. Most NGOs render services that include assistance to victims, prevention and rehabilitation, and monitoring and cooperation. CARAM Cambodia, for example, conducts participatory action research to identify problems faced by migrant workers; cooperates with Task Force on ASEAN Migrant Workers, CARAM Asia, Mekong Migration Network and other regional networks to host consultations, campaigns, and workshops to develop frameworks on promotion and protection of migrant workers. CARAM also holds advocacy activities such as face to face meeting, radio talk show and roundtable discussion and provides legal support to migrant workers who were exploited or trafficked to ensure they have access to justice.⁴⁶²

An example of an organisation that actively works on prevention of migration-related abuses is the ILO-Trafficking in Women and Children (ILO-TICW).⁴⁶³ Its framework for prevention includes the following components: building the knowledge base by conducting assessments on attitudes toward migration and the experiences of migrants; advocating and awareness-raising through its partnership with the government and national and provincial-based NGOs; capacity-building to improve bilateral cooperation between the cross-border provinces; providing targeted assistance and support for

alternative income generation.⁴⁶⁴ The ILO-TICW carries out its programs in collaboration and consultation with the Ministry of Labour and Vocational Training (MOLVT), National Sub Committee on Child Labour (NSC) and Cambodian National Council for Children (CNCC). In addition, ILO-TICW coordinates its in-country efforts with the United Nations Inter-agency Project on Human Trafficking in the GMS (UNIAP).⁴⁶⁵

5. Progress Indicators and Challenges

Cambodia faces several challenges when it comes to securing the rights of its migrant workers. As literature has indicated, one main obstacle that has to be addressed is the inadequacy of the legal framework. NGOs have proposed amendments or issuances of laws and regulations to cover gaps in legislation. For instance, the need to strengthen laws that regulate and monitor recruitment agencies has been highlighted in several reports; the need for provisions on minimum conditions for employment, such as minimum wage, working hours, and holiday pay was also pointed out. Standardizing employment contracts have been suggested.⁴⁶⁶

Strengthening mechanisms that implement migration-related laws and protect migrants from the beginning of the migration process until their repatriation, both within Cambodia and countries of destination, is also essential. As was observed, complaints mechanisms in countries of destination are inadequate. Additionally, corruption not only impedes implementation of laws, but even fosters conditions that allow abuses and exploitation in migration to occur.⁴⁶⁷

The need to improve data collection method was also pinpointed.⁴⁶⁸ MoLVT is said to already have a limited database that tracks Cambodian workers employed in foreign countries.⁴⁶⁹ Enhancing this existing database would provide a resource for keeping track of workers throughout the migration process and in identifying abusive employers.⁴⁷⁰

459 *Ibid.*

460 *Ibid.*, 9, citing personal interview with ACRA Chairman An Bunhak conducted on July 11, 2011.

461 United Nations Inter-Agency Project on Human Trafficking (UNIAP), *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, July 2011, 51.

462 CARAM Cambodia, "Programme," <http://www.caramcambodia.org/?page=programe&tid=64>.

463 "Preventing Human Trafficking in the GMS: Where we work," *International Labour Organization*, <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/wherewework-cambodia-detail.htm#link02>.

464 *Ibid.*

465 *Ibid.*

466 Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 30.

467 U. S. Department of State, *2011 Trafficking in Person Report – Cambodia*.

468 Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 30.

469 *Ibid.*

470 *Ibid.*

While migration in itself is not a problem, there is a need for more effort to reduce “push factors” so citizens do not feel inclined to migrate even under conditions that are unfavourable or dangerous. The need to adequately prepare migrants was also indicated. Cambodian migrant workers do not receive enough skills training, cultural training or information on their rights, expectations or complaint procedures.⁴⁷¹

Reports lament the environment of impunity within which recruitment agencies are allowed to abuse or exploit migrants.⁴⁷² Despite many claims of abuses against agencies, ACRA has only suspended one member agency for unspecified claims.⁴⁷³ ACRA does not have an effective mechanism for monitoring the practices of recruitment agency and identifying possible violations.⁴⁷⁴ ACRA’s review process only starts when it receives a police report or hears about a possible violation through the news or NGOs.⁴⁷⁵ ACRA works with the monitoring arm of MoLVT in investigating claims against recruitment agencies and “relies on MoLVT support to suspend a member agency in violation.”⁴⁷⁶

Lastly, Cambodia’s reported lack of leverage in negotiating with receiving countries is an obstacle that is significantly difficult to overcome.⁴⁷⁷ It has been said that the Cambodian government usually just submits to a receiving country’s requirements and interests because “legal migration is better than illegal migration.”⁴⁷⁸

These challenges stress the importance of continued collaboration with international government organizations and NGOs that provide experience and expertise in, for example, standardization of training curricula and employment contracts, drafting of labour legislation, establishment of redress mechanisms and

social services for domestic migrant workers in general.⁴⁷⁹ Thus, literature notes with regret the new draft law on NGOs and associations that threatens to curtail these activities by, for example, requiring founding members of domestic NGOs and associations to be Cambodian nationals, prohibitions against defamation, and restrictions on freedoms of association.⁴⁸⁰

6. Recommendations for Further Studies

Reports indicate the need to establish data collection methods as available information is “limited” and “patchy”.⁴⁸¹ The following areas for further research are among those recommended in literature:

- Information on living and working conditions of female Cambodian migrant workers abroad, including prevalence of labour and sexual exploitation.⁴⁸²
- Motivations for migration and the socio-economic background of migrant workers, with a specific focus on the role of female migrant workers in the household. This includes research on gender-related issues in Cambodian labour migration, such as the concept of being a dutiful daughter.⁴⁸³
- Trans-border migration networks and the role of social networks in the migration process.⁴⁸⁴
- The impact of migration in terms of empowerment for female migrant workers.⁴⁸⁵

Additionally, considering that reports indicate the inadequacy of the migration policy framework, a systematic study should be conducted for the purpose of identifying the gaps in legislation and proposing appropriate actions to address them.

471 *Ibid.*

472 See e.g. Human Rights Watch, “*They Deceived Us at Every Step: Abuse of Cambodian Domestic Workers Migrating to Malaysia*,” November 2011, 6.

473 Elizabeth A. Léone, *Cambodian Domestic Workers in Malaysia: Challenges in Labor Migration Policy and Potential Mechanisms for Protection*, 15 January 2012, 8, citing personal interview with ACRA Chairman An Bunhak conducted on July 11, 2011.

474 *Ibid.*

475 *Ibid.*, 8, citing personal interview with ACRA Chairman An Bunhak conducted on July 11, 2011.

476 *Ibid.*, 8, citing personal interview with ACRA Chairman An Bunhak conducted on July 11, 2011.

477 *Ibid.*, 29.

478 *Ibid.*, citing Personal interview with Vuthy Hour, Deputy Director General of Department of Employment and Man Power at MoLVT, conducted on July 11, 2011.

479 *Ibid.*, 34.

480 *Ibid.*

481 Bruno Maltoni, *Female Labor Migration in Cambodia*, 54.

482 *Ibid.*

483 *Ibid.*

484 *Ibid.*

485 *Ibid.*

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