

Cross Border Safeguards for Children in Conflict with the Law and UNICEF

Ma. Victoria Juat
Chief, Child Protection
UNICEF Thailand Country
Office

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Juvenile Justice context in Thailand

- **Legal System**

- Civil Law System
- Decentralized; each Juvenile and family Court has the autonomy to make decisions
- Thailand has child-specific legislation
 - (Act on Juvenile and Family Court and Juvenile and Family Procedure pf 2010) - includes diversion, alternatives to pre-trial detention , alternatives to post-trial detention and restorative juvenile justice
 - Child Protection Act of 2003
- General Legislation relevant to juvenile justice
 - Criminal and Civil code (amended)
 - Criminal Procedure Code (amended)
- Minimum Age of Criminal Responsibility is 10 years
- Mandatory legal assistance
- Special groups of children in child- specific legislation

Juvenile Justice context in Thailand

- Specialized juvenile justice institutes
 - Child Police Units
 - Child Prosecution Offices
 - Child courts
 - Department of Juvenile Observation and Protection (DJOP)
 - *However, with limited specialized juvenile justice professionals (police, prosecutors, judges)*

- **Status Offenses not clearly defined in child-specific legislation**
- There are implementation guidelines and SOPs
- Coordination mechanisms are available
 - Inter-agency protocols at the national levels but may be available at the local levels
- Limited community-based organizations /services for children in conflict with the law
- Diversion from the formal judicial proceedings
- Alternatives to pre-trial/ trails detention
 - **Lack of alternative services**
- **Measures to minimize time in pre-trial/ trail detention**
- Alternatives to post-trial detention
 - Lack of capacity for monitoring
 - Lack of support social services
- **Measures to minimize time in post-trial detention**

Juvenile Justice context in Thailand

After going through the juvenile justice procedure, the Immigration Law will be applied to non-Thai children

- Detention as a last resort
- Deprivation of liberty

• *Thailand's lauded practice : Nationality Law and Civil Registration Law (2008)*

- Thailand has continuously developed significant modifications to the law to guarantee the basic right to everyone including stateless people, women and children.
- Thai law recognized the universality of human rights and the principle of non-discrimination. Realizing that the main obstruction is lack of nationality documentation
- The law further guarantees and that everyone has the right to have record and identification of individuals as well as the birth registration
 - Article 23 – Nationality by place of birth: “Child born in Thai soil before 1992 and their whose birth is before 2008 shall be registered as Thai citizen”; All children born in Thailand, regardless of nationality shall have birth registration
 - Change the condition to allow child who were born in Thailand to access citizenship

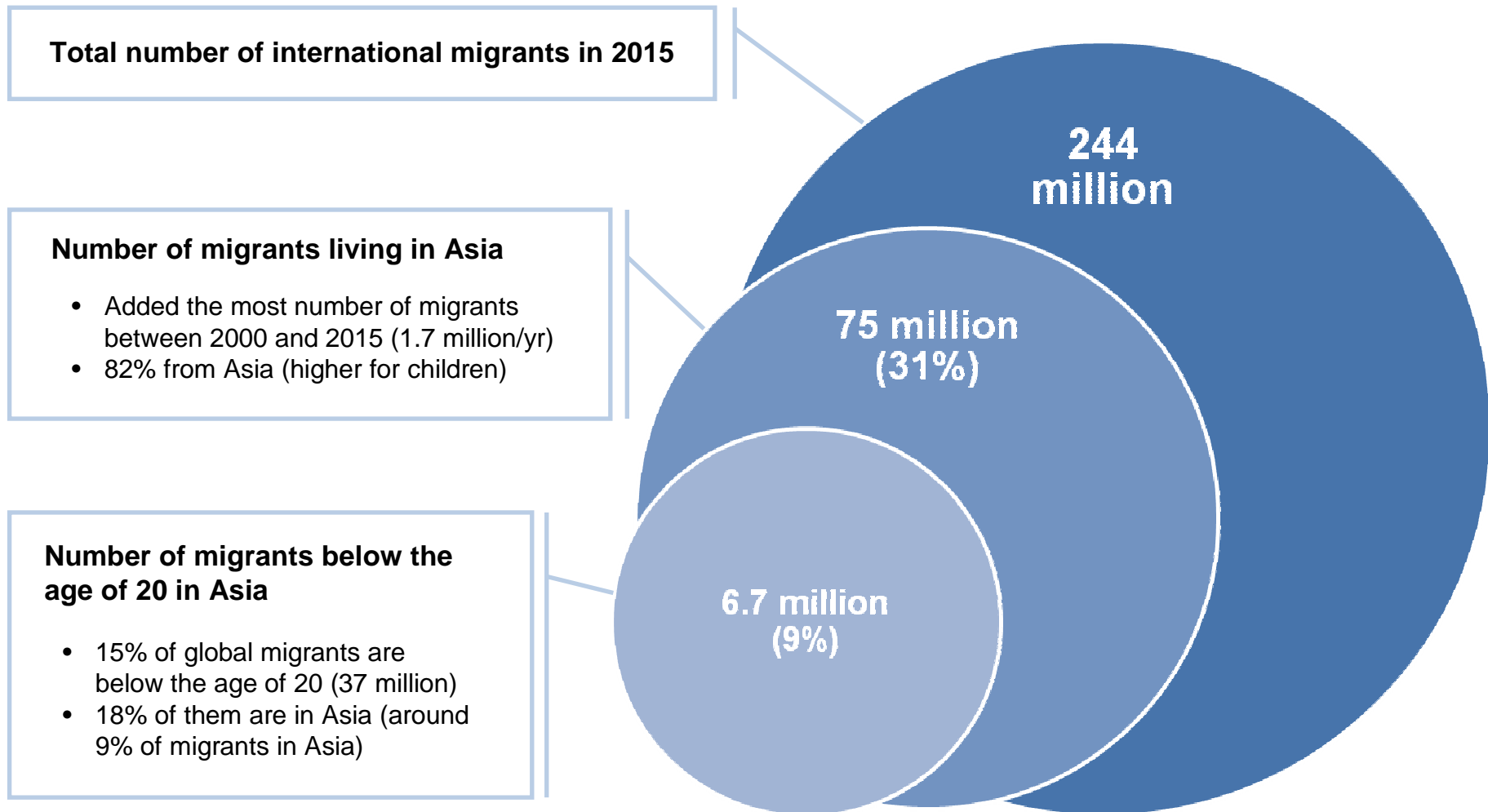
Relevant International Observations and Recommendations

- CRC Concluding Observations and Recommendations (2012)
 - Observation 79: “*The Committee welcomes the Juvenile Family Court and Juvenile and Family Procedure Act of 2010, establishing juvenile and family courts throughout the country and enabling restorative justice. However, the Committee remains concerned that **the minimum age of criminal responsibility which has been raised from 7 years to 10 years still remains below internationally acceptable standards.** It is also concerned that training of judges and judicial personnel in child rights may not be adequate and that in some cases children may be detained with adults”*
 - Recommendation 80: “*The Committee reiterated that the State Party:.... B) Ensure that children deprived of liberty are held in detention only as a last resort and for a short a time as possible; d) Promote alternative measures to detention such as diversion, probation, counselling, community service or suspended sentence, wherever possible;... f) **Develop social reintegration programmes for children in conflict with the law.**”*

Relevant International Observations and Recommendations

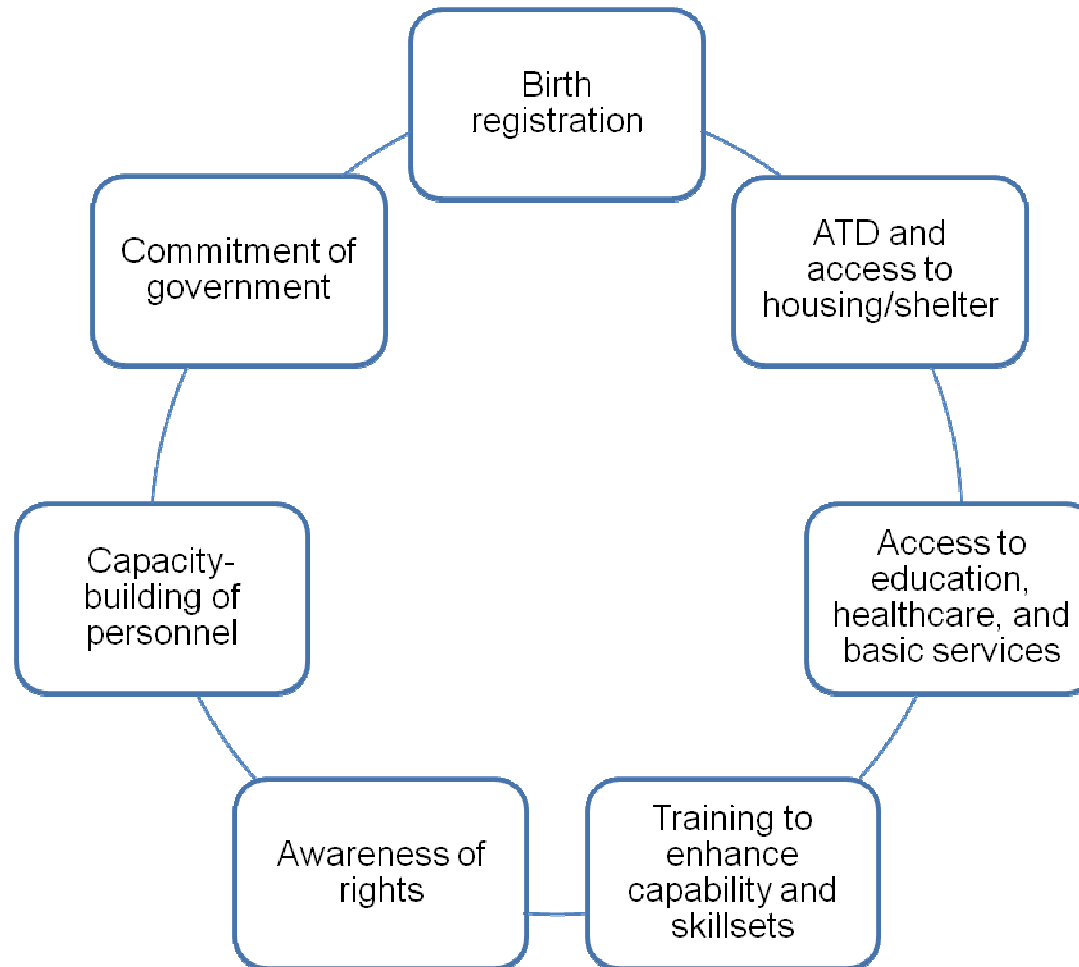
- **Universal Periodic Review Recommendations (2016)**
 - *Accelerate the reform of the judicial system in order to **ensure good governance and equality of treatment** of people from different social classes*
 - *Further accelerate the **reform of the justice system to ensure equal treatment for all citizens while continuing to pay specific attention to women and children***
 - *Consider developing a **system of alternative sentencing to effectively reduce the number of women and children held in prison***
 - *Review its penitentiary policy to become **more gender-sensitive and child-friendly**, taking on board the interests of mother-prisoners and their minor children*
 - *Consider raising (from 7 years old) the minimum age of criminal responsibility*

Current Situation



Minimum Safeguards for Children

All children must be provided with child protection, regardless of their residency status.



UNICEF's Involvement

Partnership with the Department of Juvenile Observation and Protection (DJOP), MOJ

Initiative	Intended Results	Challenges
<ul style="list-style-type: none">• Collaboration of community and network agencies to provide rehabilitation and reintegration services for children diverted from the formal justice system	<ul style="list-style-type: none">• Closer monitoring• Provision of much-needed support services• Advocacy for good practices• Alternatives to government-led services	<ul style="list-style-type: none">• Limited capacity among NGOs• Public pressure to take the children out of the communities because of the social stigma against these children

UNICEF's Involvement

Partnership with the Attorney-General's Office and Courts

Initiative	Intended Results	Challenges
<ul style="list-style-type: none">• Capacity development of professionals on child-sensitive procedures	<ul style="list-style-type: none">• Application and practice of adequate and appropriate procedures on children in the justice system	<ul style="list-style-type: none">• Increased demand to accelerate the development of capacity

UNICEF's Involvement

Advocacy and Evidence Building

Initiatives

- Increasing the Minimum Age of Criminal Responsibility
- Mapping and Research on Situation of Social Workers in Thailand
- Together with other UN agencies, continuing advocacy on alternatives to detention

Intended Results

- Increase of the minimum age of criminal responsibility from 10 years to 12 years or higher
- Advocacy to increase number of social workers in the country to provide for the much-needed social services support
- Removing children from immigration detention centers

Challenges

- Presence of existing services for children in conflict with the law
- Very limited number of social workers
- There are still some children in the detention centers, for various reasons

UNICEF's Recommendations

- **Children and their rights:**
 - Guarantee the rights enshrined in CRC to all children and address all violations
 - Address children in migration as a holistic group from comprehensive human rights-based approach
 - Take best interests of child as priority over policy considerations and ensure access to civil, economic, social, and cultural rights
 - Treat children as individual rights-holders and grant the right to be heard
- **Children and social protection:**
 - Strengthen capacity of social protection systems to address vulnerabilities
 - Never criminalize children for migration status and never detain
 - Reform violence-prevention legal frameworks to include children in migration
 - Strengthen efforts to combat discrimination and to promote integration
 - Create regular migration channels

UNICEF's Recommendations

- **Children in relation to their family:**
 - Take into account that policies and practices that affect adults will also impact their children
 - Never separate families, whether by action or inaction, and ensure respect for children's right to private and family life
- **Children and evidence:**
 - Enhance and expand data collection, analysis, and dissemination on impacts of migration on children

Thank You

UNICEF Thailand Country Office
19 Phra Atit Road, Bangkok 10200
Bangkok, Thailand

www.unicef.org

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