

# A Fine Line between Migration and Displacement

Children on the Move in and from Myanmar

The Myanmar context epitomises the complex interplay of migration with displacement, juxtaposed with weak institutional and legal frameworks which fail to protect people on the move. Conflict and natural disaster in Myanmar have caused significant flight out of country over the past 50 years. Children and families have sought immediate refuge in neighbouring countries – namely Thailand, China, and Bangladesh – as well as further afield to Malaysia and Australia, and have had to navigate a wide array of policies and practices that these host nations apply to them, in order to meet their basic needs.

This Briefing Paper explores the protection risks that children face when moving to, from, and within Myanmar, where the Norwegian Refugee Council is currently responding to humanitarian needs. The paper is based on a series of workshops and consultations held in Yangon and Hpa-An with local community based organisations, international NGOs, UN agencies and government representatives.

## WHO ARE THE CHILDREN ON THE MOVE IN MYANMAR?

The displacement profile varies widely across Myanmar, but is largely defined in three

distinct blocs. In Rakhine State, the Rohingya are not recognized as Myanmar citizens, and their freedom of movement is severely restricted.<sup>1</sup> Moreover, their access to humanitarian assistance is limited or non-existent, as humanitarian organisations struggle to overcome administrative restrictions preventing them from reaching those in need. Those who flee face a cold reception from other states, are subject to the threat of detention and are given minimal access to healthcare, livelihoods and education. In Kachin and Shan States, forced displacement is now primarily internal, frequently over short distances, and recently, often for short periods of time. However, repeated displacement is frequent, with nearly 100,000 people currently estimated to be displaced in Kachin and Northern Shan States. Finally, in southeast Myanmar, recent political developments – most notably the signing of a ceasefire agreement between the government and eight ethnic armed groups in October 2015 and the ongoing peace process – have opened the door for refugee returns to the region. Still, underlying inequalities in the Southeast, particularly of ethnic and religious minorities, as well as limited access to quality education and livelihoods continue to push Myanmar children in the region to seek refuge and opportunity outside the country.

<sup>1</sup> Approximately 120,000 Rohingya are living in 'closed' displacement camps, while those not in camps are restricted to their communities in Northern Rakhine State, with limited ability to move.

According to IOM, Myanmar is the largest source country for international migration in the Greater Mekong Sub region, with over 10% of Myanmar's population estimated to have migrated out of the country.<sup>2</sup> While regular migration is available for many Myanmar citizens, large proportions of the total migrant population are believed to be irregular, and particularly subject to abuses including trafficking and smuggling, extortion, debt bondage, and conscription. Children frequently migrate for educational or work opportunities, and often move without their families. These children are particularly vulnerable to trafficking and smuggling, as well as forced recruitment in to armed groups and forced labour.



NRC: Japeen, 2016.

## OPERATIONALISING CHILDREN'S RIGHTS

### The Right to Legal Identity

According to the official census, there are more than 11 million persons without documents in Myanmar, many of whom are persons belonging to vulnerable groups and/or conflict-affected communities. Citizenship in Myanmar is currently governed by the Myanmar Citizenship Law. After the law came into force in 1982, the Government released a list of 135 recognized "national ethnic groups," whose members, according to

the law, automatically acquire citizenship at birth. To date, the majority of Myanmar citizens have automatically acquired "citizenship" under this provision. However, there are a number of notable exceptions. More generally, the 1982 Citizenship Law contains gaps vis-à-vis international standards with regard to a number of key provisions, particularly related to the prohibition of racial discrimination and of arbitrary deprivation of nationality, and the right of children to acquire nationality.

Myanmar signalled its commitment to universal birth registration<sup>3</sup> in November 2014, when it signed a Ministerial Declaration with the goal of achieving universal Civil Registration and Vital Statistics systems by 2024.<sup>4</sup> Notably, the failure to obtain a birth certificate has serious negative consequences for a child, not only with regard to difficulties in obtaining appropriate civil documentation but also in the restrictions imposed on accessing basic services. Children over 10 years old cannot attend school in Myanmar without official identification, and those without documentation cannot legally move between towns in the country. Individuals, and particularly youth, without Citizenship Scrutiny Cards (CSC) are likely to be paid less for work because of the lack of documentation. Once the child is an adult and has their own family, any children they have will be further limited in their ability to obtain birth registration or civil documentation due to the parent's status.

Under current laws certain groups of children are particularly vulnerable to violations of their right to legal identity. Children of mixed parentage (half Myanmar, half foreign) are not considered citizens, and have difficulty

<sup>2</sup> See IOM Country Profile Myanmar: Overview <https://www.iom.int/countries/myanmar>

<sup>3</sup> Para. 2(a) stated as a goal "universal civil registration of births, deaths and other vital events".

<sup>4</sup> See ECOSOC, Economic and Social Commission for Asia and the Pacific, Ministerial Declaration to "Get everyone in the picture" in Asia and the Pacific, E/ESCAP/MCCRVSL.3, 25 November 2014.

obtaining identity documents. Notably, children born to two Myanmar parents abroad also face barriers in acquiring documents, due largely to stringent requirements to prove parentage. Residents who are not members of the 135 recognized ethnic groups have extremely limited options to obtain legal identity in Myanmar. Finally, the cost of obtaining a Citizenship Scrutiny Card – the primary form of legal documentation of citizenship – can be prohibitive, both in terms of time and effort needed to obtain the card and in terms of the financial burden. The minimum time needed to obtain the card, assuming eligibility, is two months with a minimum of six visits to the office. The cost of transport and other fees frequently limits a family's ability to ensure that all members obtain a CSC. In most circumstances, male family members will be prioritized, leaving female members more vulnerable to the variety of risks that accompany a lack of legal identity.



NRC: Japeen, 2016.

## The Right to Education

The interplay of education and children on the move in Myanmar is particularly acute. Obstacles to accessing education in Myanmar push children to move, and prevent them from returning when it would otherwise be possible. The widely-held perception that educational opportunities are often better in other provinces or in neighbouring countries encourages families to send their children to

boarding houses/schools and undertake significant risks in order to travel to get to them. While boarding houses are frequently seen as a positive resource, both for creating a strong sense of community and for providing education, the standard of care across boarding houses is not uniform. In the most extreme situations, cases of sexual abuse and other forms of exploitation have been identified in boarding houses. More typically, concerns about lack of appropriately selected care-givers, low ratios of caregivers to children, and loss of family contact are identified.

On the other end of the spectrum are children who drop out of school because of their parents' dependence on seasonal work. Parents engaged in this type of work tend to 'swing' back and forth between their places of origin and the locations where they are able to work. Systems are not currently in place, which allow children to remain with parents who are migrating seasonally while also remaining in school. Notably these children do not typically come in and out of school as they periodically return to their place of origin. Most often, children who drop out because their parents migrate for work do not return to school.

Finally, incompatible education systems – either between 'ethnic education systems' and the national education system, or between education systems in refugee hosting States and the national education system of Myanmar – leave many 'children on the move' unable to continue their education when they move and penalized when seeking work that requires education certification. Lack of quality education, particularly in rural areas, may further discourage return. Inclusion of children with disabilities within the education system is in its infancy in Myanmar. While there have been legislative advances, lack of capacity to effectively integrate these students has proven to be a significant obstacle. A recently published



study by UNICEF found that 2 of 3 children with disabilities do not attend school, only 36% of children with disabilities know how to read and/or write, and most schools do not have accessible facilities for students with disabilities.<sup>5</sup> While the ability to enrol a child with a disability in school may not be reason enough for a family to leave Myanmar, families with children who have been able to access education adapted to their child's needs outside of the country may be less likely to return to Myanmar, once that option is available.

Notably, the Government of Myanmar has taken steps to improve access to education, including supporting non-formal education equivalency programs, to ensure that students who have gone through ethnic education programs can be integrated into the national education system.

### **The Right to Liberty and Freedom of Movement**

Freedom of movement is restricted in Myanmar in a number of important ways. As discussed above, possession of a Citizenship Scrutiny Card is essential for movement throughout the country. However, even with these cards there are key threats to liberty that children on the move in particular face. There are a number of zones in which military operations are currently ongoing, that are officially no-go areas, and movement is severely restricted. Children who move without national identification are subject to fines and detention, particularly in these areas. Children who are deemed ineligible for humanitarian protection and deported back to Myanmar from neighbouring countries may also be subject to detention – particularly in cases where they do not have identity documents.

Recruitment and use of children by armed groups is also a significant problem in Myanmar, and children on the move are at particular risk. In 2016, eight groups were listed by the Secretary General in his annual report on Children and Armed Conflict for committing this grave violation of children's rights. Children in Myanmar are particularly vulnerable to being trafficked into these armed groups by so-called 'brokers' at border-crossings – most notably when they are being deported from a neighbouring country. While the government has taken steps to end recruitment and use of children by its armed forces (including training on age assessment in recruitment centres, increased access to military battalions and units for monitoring missions and monthly case review meetings with the United Nations for the verification of suspected child recruits), the Secretary General has noted that important gaps still remain.



NRC: Japeen, 2016.

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<sup>5</sup> UNICEF 2016. Situation Analysis of Children with Disabilities in the Republic of the Union of Myanmar. Yangon, UNICEF Myanmar, pg. 33

Finally, children on the move within and out of Myanmar face a substantial threat of being trafficked. Children are predominately targeted for forced labour, domestic servitude and sex trafficking. Notably, a number of non-governmental organizations working in Myanmar include 'safe migration' components in programming targeting children and youth. These programmatic interventions primarily involve information provision to participants and related community leadership, largely focused on discouraging migration and providing tips on how someone may find help if necessary.

### **Securing Solutions for Children on the Move**

Myanmar's complex displacement landscape has given rise to a number of factors which simultaneously create risks as well as opportunities for children on the move. In seeking to support solutions to their displacement, humanitarians must consider how children calculate these risks and opportunities in making decisions about flight and return. To support those children seeking asylum outside of Myanmar, the international community must better facilitate safe movement. Stronger cooperation across the region is needed not only to identify and punish criminals, who exploit vulnerable children, but also to better support the victims of that exploitation and protect them from future threats. For children who are moving back to Myanmar, greater efforts are required to map service provision, and ensure referral pathways are in place and being actively used in order to allow for children to be meaningfully integrated in their new communities. Finally, adapted responses must be considered in light of any expectation placed on a child to earn money for his/her family or to seek out alternative options for education.

### **Regional Approaches – Frameworks for Protecting Children in South East Asia**

Key international frameworks have limited applicability in the region, and the regional frameworks that are in place are generally considered weaker than those of other regions of the world, in the extent to which they protect people on the move. Neither Myanmar, Thailand, Malaysia, nor Bangladesh are parties to the 1951 Refugee Convention. These countries state that they provide protection and assistance to those seeking refuge on a humanitarian basis only. The non-binding "Principles of Bangkok on the Status and Treatment of Refugees" was adopted by the region in 2001, but these principles have failed to gain substantial legal value due to the fact that they have not been incorporated into national law, and are rarely referenced by concerned countries. Finally, the Protocol to Prevent, Suppress and Punish Trafficking in Persons and the Protocol against the Smuggling of Migrants by Land, Sea, and Air to the Convention against Transnational Organized Crime, offer some protection to refugees who are also victims of trafficking or smuggling. However, it should be noted that the focus of these Protocols is not the protection of victims but rather on the (1) criminalization of trafficking and smuggling, on (2) information exchange, and on (3) border control. In the worst case, full application of the Protocols may actually undermine the right of refugees to seek asylum – particularly where policies enacted under the Protocols prevent the arrival of refugees in the territory in which they may request international protection.

Most recently, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime ("the Bali Process") has been an important initiative in the region, focused on combatting smuggling and trafficking in the Asia-Pacific Region. The main priorities of this process are the development of more effective information

and intelligence sharing; the cooperation among regional law enforcement agencies to deter and combat people smuggling and trafficking networks; the cooperation on border and visa systems to detect and prevent illegal movements; the rise of public awareness in order to discourage trafficking and smuggling activities; the increasing effectiveness of return as a strategy to deter people smuggling and trafficking; the cooperation in verifying the identity and nationality of “illegal migrants” and trafficking victims; and the enactment of national legislation to criminalize people smuggling and trafficking in persons.<sup>6</sup> Like the Protocols to the Convention against Transnational Organized Crime, the Bali Process has largely focused on securitization of borders and deterrence of migration, rather than on protection of persons who are at risk of, or have been trafficked or smuggled across the region.

Generally, regional frameworks have been unevenly applied in practice. While a number of these frameworks have some potential to enhance the protection of children on the move from Myanmar, that potential has, thus far, been neither fully explored nor exploited.

### Adapted response

The Norwegian Refugee Council has been working in Myanmar since 2008, and is present in the South-East region, Kachin and Rakhine states. Our projects in South-East Myanmar target people who are vulnerable due to long-term conflict and instability. We also work with children and adolescents who have returned back to Myanmar after previously having fled across the border to Thai refugee camps. NRC runs a vocational and life skills education programme in order to equip displaced youth with knowledge and skills to make safe life choices and give them stable ways to earn a living. These courses also contain a module on human smuggling and trafficking which raises awareness around risks and who to contact in an emergency. Our Information, Counselling and Legal Assistance teams help people access their civil documents. They also work with refugees over the Thai border, to inform them of their rights.

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<sup>6</sup> See Bali Process, *About the Bali Process*, available at: <http://www.baliprocess.net/>

## RECOMMENDATIONS

- Safe and unhindered humanitarian access should be ensured for international and national humanitarian organisations, and UN Agencies to all affected populations and detention facilities in all areas of the country.
  - Existing social welfare mechanisms should be strengthened and expanded, including both formal and community based mechanisms to protect children and their families. Attention should be paid specifically to social policy measures, broader social welfare issues and early childhood care strategies and this priority should be reflected in financial resources and budgeting processes.
  - The government should urgently consider amendment to the 1982 Citizenship Act to eliminate provisions that are discriminatory or have a discriminatory impact on determining citizenship for reasons of ethnicity, race, religion or other protected status.
  - Unnecessary restrictions on freedom of movement of the Rohingya population should be immediately lifted and the government should facilitate the provision of humanitarian protection and assistance to this population as needed.
  - Proper child protection mechanisms, including robust referral pathways must be established as a priority, in order to better support children with protection needs. Such mechanisms should take regional movement of children into account, and ensure appropriate linkages across countries.
- Programming on safe migration and trafficking prevention should ensure mechanisms for follow up in cases of suspected trafficking.
  - Support for youth employment opportunities should be increased to ensure that labour migration is a voluntary choice rather than motivated by economic necessity.
  - Efforts which support the returns of displaced persons and refugees take place in accordance with international standards, on a voluntary basis with attention to the safety and dignity of the returning population should be prioritized.
  - Efforts should be made to improve the availability of safe migration information directly to children. To facilitate safer migration practices, awareness raising activities should be carried out on the benefits and requirements for regular migration, particularly focusing on documentation needed to work legally as opposed to just admission and stay.
  - Improving bilateral cooperation on the management of labour migration should be further prioritized.
  - The high and unstandardized costs of migrating through regular channels in the region should be reviewed with the aim of these costs being reduced. Specific attention should be paid to excessive recruitment fees, rent-seeking by authorities and unfair interest rates due to inadequate regulation of the actors involved.

