

## **Independent child migration: a demonstration of children's agency or a form of child trafficking?**

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### ***Abstract***

*As with other regions of the world, the literature on migration within Southeast Asia has been dominated by concerns over adult movement, smuggling or human trafficking rather than child migration. As these children generally lack the necessary legal documentation for their journeys, they are especially vulnerable to deception, coercion, abuse and exploitation. However, as the acceptance of children's agency and proactive engagement with migration has received minimal attention, this paper goes beyond the assumptions of child trafficking to expose how adolescent migration can be a positive expression of young people's aspirations for a better life and the full realization of their rights.*

*Through doctoral research carried out from 2013 to 2015, independent child migrants (76), were found to have had a range of reasons and benefits for moving such as improved economic or learning opportunities, a desire for new experiences, or the formation of new social relationships. This paper gives insight to some of the independent child migrants who have been seeking improved lives through migration in Thailand and re-examines the usual adult formulations and judgements related to children's agency and migration. It concludes by suggesting a theoretical construct that can re-formulate how stakeholders respond to independent child migration. Whilst not trying to minimise the vulnerabilities and dangers that children face in labour migration, this paper illustrates that by not automatically labelling all migrant children as trafficked victims, it is possible to shine a beneficial light on an oft forgotten perspective of the child's resilience and agency.*

*Key words: child migration, agency, vulnerability, trafficking.*

### **Introduction: re-thinking independent child migration in Thailand**

The literature on migration within Southeast Asia, as with other regions of the world, has generally focused on adult movement, smuggling or human trafficking rather than child migration. However, children and youth make up an unusually high proportion of the total number of migrants and they generally lack the necessary legal documentation for their journeys.<sup>1</sup> This makes them especially vulnerable to deception, coercion, abuse and exploitation. In contrast, the acceptance of children's agency and proactive engagement with migration has received minimal attention, and in fact, tends to be perceived as being in conflict with idealised constructions of childhood. As such, little interest has been given to the aspirations, benefits and rights of those children who are themselves choosing to migrate for work.<sup>2</sup>

The governments of Southeast Asian states have primarily focused on the criminal aspects related to these independent child migrants such as being undocumented 'illegal workers' or as child trafficked victims. Other actors, such as civil society or the UN, have prioritised their efforts on anti-child trafficking programmes due to concerns over children's vulnerability to abuse and exploitation. This generalisation though has overlooked the fact that independent child migration can be a positive expression of young people's aspirations for a better life and the full realization of their rights. As is well documented, many children who migrate are leaving impoverished or dysfunctional families or are fleeing authoritative regimes, whilst less documented are the children's own motives and aspirations for wishing to migrate. For many children the outcome can in fact improve their well-being by distancing them from the original problems and constraints that they were experiencing at home. Indeed, some see the positive development benefits of adolescent migration as part of the transition into adulthood.<sup>3</sup> Far from being forced, many independent child migrants choose to migrate for a range of reasons and

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<sup>1</sup> Ofreneo, R 2008, *Strengthening Migrant Protection in an Integrated ASEAN*, paper presented for the 7<sup>th</sup> Workshop on Human Rights in ASEAN organized by the SIIA, Singapore, 12-13 June 2008

<sup>2</sup> This paper uses the term 'independent child migration' to refer to children who leave home and travel without their parents or a close family member and either travel alone or with strangers or peers.

<sup>3</sup> Ennew, J, Meyers, W & Plateau, D 2005, 'Defining Child Labour as if Human Rights Really Matter', in B. H. Weston, (Ed.), *Child Labour and Human Rights: Making Children Matter*, pp. 27-54, Lynne Rienner Publishers, Colorado.

benefits such as improved economic or learning opportunities, a desire for new experiences, or the formation of new social relationships.<sup>4</sup>

The distinction between the fight against child trafficking and the ambitions of independent child migrants and their subsequent experiences needs to be explored. Despite international conventions, there is still some philosophical ambiguity as to how bad a child's migratory experience needs to be in order to deserve the label of trafficking as there are no definitive indicators of vulnerability and exploitation that can be clearly used.

To help in understanding the myriad of experiences surrounding child migration, it is necessary to look further than the dominance of the child trafficking discourse to better analyse the concepts of childhood, agency, vulnerability and exploitation. This paper gives insight to some of the independent child migrants who have been seeking improved lives through migration in Thailand. Drawing from a child-centred study carried out in 2013, this paper re-examines the usual adult formulations and judgements related to children's agency and migration.<sup>5</sup> The article concludes by suggesting a theoretical construct that can re-formulate how stakeholders respond to independent child migration. Further research needs are identified and recommendations for better policy and programming are proposed to improve the safety and well-being of migrant children and to respect the full range of their rights.

### **The dangers or otherwise of independent child migration**

Thailand is viewed by most independent child migrants as a country of economic wealth and stability. However, whilst these children may voluntarily choose to migrate, the resulting conditions they face in transit or at their destinations can vary widely. Undoubtedly, children are particularly at risk to human rights violations in all parts of the world and this danger is ever present when children make a decision to migrate. In Thailand, children are found working in most sectors where they can be exploited and trafficked (e.g. domestic work, fishing, agriculture,

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<sup>4</sup> O'Connell Davidson, J & Farrow, C 2007, *Child Migration and the Construction of Vulnerability*, Save the Children Sweden, Stockholm

<sup>5</sup> This study was carried out as part of a PhD programme with the Institute of Human Rights and Peace Studies at Mahidol University. The field research was funded by Terre des Hommes Netherlands. For more detail see: Capaldi, M 2014, *The Child's Journey in Search of Rights: Determining and addressing points of vulnerability in independent child migration in Thailand*, Terre des Hommes Netherlands.

manufacturing and the entertainment or service sectors).<sup>6</sup> Whilst the scale of children victimised through child labour is difficult to estimate in most countries around the world, the scope of abuses have been consistently documented in UN or NGO reports in what is sometimes referred to as ‘modern day slavery’. Migrant workers can be paid below the minimum wage, work long hours and have little time for rest. Work and living conditions can easily fall below basic safety and sanitary standards. Furthermore, an underlying distrust of foreign migrant workers can easily manifest into discrimination, exploitation and xenophobic discrimination resulting in harassment and greater vulnerability to abuse and exploitation. Irregular migration adds a further layer of vulnerability leaving migrants (including children) disempowered, lacking legal protection and at risk of being criminalised, detained and deported. Within this context, the vulnerability and assumed weakness of children is expected to automatically translate into a susceptibility to harm within the context of migration (although there is limited disaggregated data that differentiates the impact of being a child versus an adult to trafficking or exploitative work).<sup>7</sup>

The pattern and scale of the migratory flow in Southeast Asia (which also resembles the main trafficking routes) begs the question why so many children take these risks if Thailand is such a dangerous and exploitative work environment. The answer is not hard to find if we ask the children themselves. Many children and their parents are indeed aware of the risks of irregular migration (most have links to social networks of family members or friends who have left home) yet they still view the risks and vulnerabilities of migration as far more preferable to the situations they face back home. As with adults, children predominantly migrate for economic reasons, to help support their families, an aspect of familial obligation which is an important cultural aspect of the transition from childhood to adulthood in the region. But the children give many other motivations for wanting to migrate – for example, the desire to see new places, have a better life, live independently, ‘career advancement’ or to have an opportunity to learn and grow to name but a few. These children who migrate do not necessarily see themselves as exploited or victimised but positively exercising their agency and right to self-determination as

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<sup>6</sup> UNIAP, 2014, *Human Trafficking Sentinel Surveillance, Poipet, Cambodia 2009, 2010 and 2012*, United Nations Inter-Agency Project on Human Trafficking, Bangkok.

<sup>7</sup> Huijsmans, R & Baker, S 2012, ‘Child Trafficking: ‘Worst Form’ of Child Labour, or Worst Approach to Young Migrants?’ *Development and Change*, vol. 43, no. 4, pp. 919-946

adolescents challenging the assumption that these children are being forced or coerced to migrate.

This disconnect translates into policy and practice in responding to child migration and child trafficking which rarely sees children as ‘agents of change’ but more as ‘victims of change’.<sup>8</sup> Where child migration is not seen by policy makers as a voluntary choice and where human trafficking dominates the debate, international and national law does not recognise the consent of the child. For example, under international law, an adolescent voluntarily working in poorly paid employment or a young child sold into prostitution are both legally identified and treated as ‘trafficked victims’.

These tensions and concerns are certainly apparent in Thailand where in the last decade the country has made progress in strengthening its legal framework in relation to human and child trafficking. However, the focus on criminality and law enforcement of undocumented migrants in Thailand means that the children avoid the authorities forcing them into more risky and hidden alternatives with little legal protection.

Where independent child migrants have not fallen into the category of trafficked and exploited children needing rescue and reintegration, then the positive outcomes of independent migration are rarely noticed or explored.<sup>9</sup> This over-emphasis of the vulnerability of childhood and the risky context of irregular migration can easily foster a deficit model of adolescent children’s competence and capacity and miss opportunities to make child migration safer.

### **Children’s agency and capacity: the missing link**

The traditional ‘push and pull’ theories surrounding independent child migration are just one aspect of the decision making process that leads a child to migrate. The recognition of children’s agency is bringing a shift in the way rights-based conceptualisations of childhood (and their vulnerability and propensity to victimhood), to giving attention to the respect and opinion of the child in the matters that affect them.<sup>10</sup> Counteracting the predominant focus on protection

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<sup>8</sup> Huijsmans, R 2010, *Migrating Children, Households, and the Post-Socialist State, An ethnographic study of migration and non-migration by children and youth in an ethnic Lao villages*, Durham theses, Durham University.

<sup>9</sup> Whitehead, A and Hashim, I 2005, *Children and Migration*, Background Paper for DFID Migration Team,

<sup>10</sup> Bluebond-Langner, M, & Korbin, J 2007, ‘Challenges and Opportunities in the Anthropology of Childhoods: An Introduction to Children, Childhoods, and Children Studies’, *American Anthropologist*, vol. 109, no. 2, pp. 241-246.

and welfare, the theory and understanding of the impact of children's agency and resilience is emerging.<sup>11</sup>

The starting point is a re-conceptualisation of the normative notion of childhood. An idealised and predominantly Western view of childhood feeds into the perception of children as being innocent and vulnerable. The biological 'age-based' marker of 18 years in the UN CRC (and its related protection and welfare articles) is often interpreted as seeing children solely as an 'at-risk class'.<sup>12</sup> Yet people do not automatically become 'responsible and accountable citizens' upon turning 18 years of age and in certain contexts children have acquired a breadth of skills and experiences that surpass purely legal benchmarks of age. In most of the majority world, childhoods and child work are intimately linked. Children report working alongside parents from an early age and the predominant reason for dropping out of school is to contribute towards the family livelihood. For example, in the Thailand study, the majority of the children were found to have dropped out of school at least one or two years prior to migrating, illustrating that migration was not the actual reason for them leaving school and that they'd already acquired some level of work experience before embarking on their journey.<sup>13</sup>

In fairness, Article 5 of the CRC does recognise the principle of the 'evolving capacities of the child'. A further relevant provision is Article 12 of the Convention which recognises 'the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child'. However, the indicators of what those competencies, capabilities or maturity may be are missing which is problematic as this is what forms the basis for the appropriate respect for children's agency. Domestic legislation and policy in all regions of the world has similarly struggled to define this transition of evolving capacities - as can be seen by the diversity of ages where children are given rights and responsibilities (e.g. the differing minimum ages for sexual consent marriage, criminal responsibility and employment).

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<sup>11</sup> Ungar, M 2004, 'A constructionist discourse on resilience: Multiple contexts, multiple realities among at-risk children and youth', *Youth and Society*, vol. 35, no. 3, pp 341-365.

<sup>12</sup> Rehfeld, A 2011, 'The Child as Democratic Citizen', *The ANNALS of the American Academy of Political and Social Science*, vol. 633, no. 1, pp. 141-166.

<sup>13</sup> Capaldi, M 2014, *The Child's Journey in Search of Rights: Determining and addressing points of vulnerability in independent child migration in Thailand*, Terre des Hommes Netherlands.

In the case of independent child migrants the obstacles, risks and challenges experienced are interlinked between choices, initiative and capacity to act. When consulted, children can articulate fairly convincingly the positive outcomes of their migratory experiences and related growing competencies. For example, in the Thailand study, children listed the ability to save and send money home; the opportunities to change jobs freely and find new work; the reported level of job satisfaction and ‘reasons for happiness’; and the opportunity to learn new skills and to support themselves.<sup>14</sup> Such experiences, motivations and agency illustrates competency that lowers the child’s vulnerability and gives the potential to positively influence the migratory pathways and outcomes.

Clearly then, there are tensions and ‘grey areas’ between children’s agency and capacity in the context of the inherent dangers around irregular migration.<sup>15</sup> How those ambiguities are currently dealt with is inevitably through adult interpretations of institutional responses to policies around immigration, migration and human trafficking as discussed in the next section.

### **A critical review of the child migration and trafficking discourse and policies**

All countries rightly aspire to protect its’ children from forced labour, exploitation and trafficking. Thailand, for example, has ratified most of the relevant international conventions around the illegal movement and exploitation of workers (albeit not those dealing directly with migrants rights) and its domestic legislation is generally in line with the international standards. Despite this relatively comprehensive legal framework, challenges with law enforcement in relation to cross-border migration and labour rights are many, pushing children to situations of even greater harm and danger. Thai law enforcement and labour offices are under resourced, understaffed and affected by systemic corruption. Taking mainly a crime prevention approach to migration is resulting in the assumption that addressing irregular migration is akin to an anti-trafficking approach. Such a binary approach to dealing with the concepts of trafficking, smuggling and migration is exacerbated when there is a lack of a definition or clarity as to how unhealthy and poorly paid child work/labour needs to be to classify it as child trafficking. To try to address the realities of ‘graduations’ of exploitation (legal and otherwise), the International

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<sup>14</sup> Capaldi, M 2014, *The Child’s Journey in Search of Rights: Determining and addressing points of vulnerability in independent child migration in Thailand*, Terre des Hommes Netherlands.

<sup>15</sup> Article 3 of the CRC: another article not especially well defined.

Labour Organisation (ILO) has introduced different terminology such as ‘children in employment’, ‘child labourers’ and ‘children in hazardous work’ and as mentioned above, with certain types of child labour being legally referred to as a ‘worst form of child labour’.<sup>16</sup> This confirms then that child work is not necessarily the same as child exploitation as the distinguishing determinants are whether the children are doing work that is harmful or whether they are being treated unfairly. Distinctions of forms of child labour often thus focus upon the child’s age, the type of work, hours and conditions under which they toil. Whilst this can help, implicitly missing is how to define harm in relation to a child’s health or well-being.

Different *perceptions* of how harmful exploitation also abound. Whilst it is generally accepted as being wrong to take advantage at another’s expense, debates can arise as to when it is actually damaging, what unfair means and who exactly is the guilty party.<sup>17</sup> Forced labour, coercion and deception aside the dilemma is at what level of fairness or otherwise should work be above for it not to be viewed as exploitation? Many migrants seem to experience a form of ‘consensual exploitation’ whereby they utilise ‘exchange power’ in a form of ‘you do this for me and I’ll do that for you’ relationship.<sup>18</sup> The fluid nature of irregular migration can also mean that these very mobile youth are constantly on the look-out for better work options and can avoid the more exploitative and demanding work. Others argue that children migrating for work may be doing so under conditions of ‘economic coercion’ as they have limited livelihood alternatives. Whilst at an initial assessment this may not seem to be true self-determination, the other motivating factors for children to migrate as previously described (e.g. independence, desire for new adventures and learning experiences) make it harder to ignore the voluntary nature of their agency. Exploitation may be fundamentally wrong, but the blurred lines of ‘fairness’ and free choice may be better addressed through labour law reform and strengthening child migrants’ rights.

None of this is to deny that there are not alarming accounts of child trafficking and harmful forms of exploitation occurring in Thailand. Clearly, irregular child migrants are at particular risk of being trafficked and exploited. Yet there may well be many more cases of

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<sup>16</sup> ILO, 2010, *Facts on Child Labour*, International Labour Organisation, Geneva.

<sup>17</sup> Mayer, R 2007, ‘What’s Wrong with Exploitation?’ *Journal of Applied Philosophy*, vol. 24, no. 2, pp. 137-150.

<sup>18</sup> Wertheimer, A & Zwolinski, M 2013, ‘Exploitation’, *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), Edward N. Zalta (ed.)



adolescent migrants who are not experiencing the disturbing accounts of trafficking and exploitation and this is being swept aside by the moral outrage over human trafficking. Indeed, the study in Thailand reported that most of the independent child migrants were satisfied with their work, happy with their decision to migrate and did not feel they were being exploited.<sup>19</sup> Where they felt their working conditions to be unduly unreasonable, they basically sort employment elsewhere. This suggests it may therefore be more helpful if we think of the different forms of irregular migration and trafficking as a continuum with fluidity and considerable variations between the two ends. The migration experience of the child is likely to consist of a range of loosely interconnected and influential factors that are continuously evolving and he or she could oscillate up and down the spectrum. At the one end are the satisfactory and acceptable working conditions that many children experience and at the other end is child trafficking and the worst forms of child labour which possibly affect a smaller number. Whilst it is understandable that the imperative should be on tackling the most serious crimes committed against these children, a better appreciation of the needs of the child migrants at different stages on the continuum could lead to more targeted and effective responses (e.g. rescue and recovery responses may be needed for children trapped in forced or harmful labour whilst improved labour registration and employment policies could benefit a different, possibly larger group of child migrants).

### **Conclusion: the trafficking – migration continuum**

The lack of research from the perspective of the independent child migrant has seemingly led to over simplistic assumptions of the vulnerabilities and exploitative nature of children on the move for work. The usual rationale is that child trafficking can best be prevented by keeping children out of migration and the adult work environment. While efforts to stop trafficking and exploitation are paramount, it is legitimate for children of a certain age to seek work. The over simplification of the child trafficking discourse can increase child migrants' risk of abuse and exploitation by ignoring children's agency and their rights and pushing them into more illicit

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<sup>19</sup> Capaldi, M 2014, *The Child's Journey in Search of Rights: Determining and addressing points of vulnerability in independent child migration in Thailand*, Terre des Hommes Netherlands.

options. Criminalising adolescent migrant workers makes them less visible and more vulnerable to trafficking and exploitation.

Undoubtedly, efforts to eliminate child trafficking and all forms of worst child labour should remain the biggest priority in order to meet the needs and rights of those child victims in need of special care and protection. However, the dominant discourse on child trafficking is laden with contradictions and it presumes an inaccurate depiction of the realities of childhood outside of the Western ideal. In Southeast Asian culture – as in many cultures of the world – nothing is more important than supporting family and it is this motivation and aspiration to achieve their migratory goals which drives so many children to migrate time and time again. Whilst the need to supplement family income is the main priority of these children, it is not the sole motivator as status, pride and a taste of adventure are also factors.

This all suggests the need for an alternative to the trafficking discourse so that these children, who are determined to migrate, do not fall on the wrong side of the legal and policy frameworks or the wrong side of the trafficking – migration continuum. Appropriate responses could include the promotion of safer migration avenues (e.g. strengthening the legal status of migrants and building support mechanisms such as safer recruitment channels or help-lines that minimise the risks, hazards and vulnerabilities). Children's competencies can also be strengthened by supporting personal capacity and life skills (e.g. language training, peer to peer support networks and raising awareness of labour rights).

This paper has not tried to minimise the vulnerabilities and dangers that children face in the inherently hazardous journey of labour migration nor down play the number of children that end up in hugely exploitative work and as trafficked victims. There are no easy solutions to the quandary of child migration and trafficking but we need to be bold enough to look outside of the child protection box and the 'comfort zone' of idealised constructs of childhood. As such, by not automatically labelling all migrant children as trafficked victims, it is possible to shine a beneficial light on an oft forgotten perspective of the child's competencies and agency.

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**Mark Capaldi** has worked directly with child-led organizations on issues such as street children and working children, and has also implemented projects on children in conflict with the law, on

violence and abuse against children and addressing the vulnerability of children of internally displaced persons and as child migrants. Much of this work has been in South and East Asia, where Mark has lived for over 20 years where he worked with Concern Worldwide, PACT Inc., Save the Children UK and ECPAT International. Since June 2011, Mark Capaldi has taken on the role of ECPAT's Head of Research and Policy. He has a doctorate degree with the Institute of Human Rights and Peace Studies at Mahidol University, Bangkok. The research topic of his dissertation was children's agency within independent child migration in Thailand.

### **Notes**

The author would like to thank Terre des Hommes Netherlands for its financial support to this PhD field research carried out throughout 2013 and to Dr Sriprapha Petcharamesree of the Institute of Human Rights and Peace Studies, Mahidol University, Thailand, for her support and guidance.