ENHANCING THE HUMAN RIGHT TO FAMILY LIFE FOR MIGRANTS AND THEIR FAMILIES IN THE ASIA-PACIFIC REGION

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1 Introduction

Thai and Burmese families swimming and playing in the Thailand - Myanmar Moei river border near Mae Sot, Thailand. (Julio Etchart/Majority World)

Millions of migrants in and from the Asia-Pacific region experience interference with their family life in the context of restrictive migration-related policies. They are separated from immediate family members for lengthy periods of time by systemic features like the denial of family accompaniment in temporary labour migration programmes (TLMPs), restrictions on the freedom of movement of migrant workers, and the widespread criminalisation of irregular migration leading to prolonged immigration detention and other penalties that negatively impact family life. Some States in the region prohibit migrant workers from starting families, restricting their right to marry and criminalising pregnancy. This is despite migrant workers typically being of marrying, childbearing and child-rearing age at the time of recruitment and migration. Restrictions on marriage and maternity disproportionately affect women and force migrant workers who may marry unlawfully into an irregular status, compounding their vulnerability and having flow on effects for the legal status of their children. Such practices undermine the protection afforded to the family in international human rights law, infringing State obligations to protect and respect people's rights to family life and to found a family without discrimination.

This report explores how migration-related policies and practices hinder the enjoyment of the right to family life and the right to found a family (hereafter the right to family life) in the Asia-Pacific region. It focuses on low-waged migrant workers and their families, undocumented migrants and others in situations of vulnerability.[1] High-waged migrants who are entitled to family accompaniment are beyond the scope of the report, recognising that TLMPs are part of migration processes that create a tiered system in which only high-waged workers can move freely without restrictions on their rights and those of their families.[2] Similarly, the report does not focus on internal migration, although it is recognised that internal migration across the Asia-Pacific region is often greater in volume than international migration and can have equally significant implications for family rights,[3] especially for families separated for prolonged periods within a country.

Importantly, the universal right to family life is held by *all* migrants *throughout* the migration cycle and across countries of origin, transit and destination. The report seeks to inform policy measures that can enhance access to the right to family life, particularly for migrant workers and their families, recognising the heightened risks and vulnerabilities faced by children, women at risk, LGBTQI+ persons and undocumented migrants. Its findings respond to the call in Human Rights Council resolution A/HRC/RES/54/17 "to focus on megatrends, such as… migration…and their impact on the functioning and well-being of the family". The Human Rights Council

recognised the pressing need to mainstream 'family-oriented policies that protect the rights of all family members' and to recognise the critical 'role of families in promoting human rights and sustainable development'.[4]

1.1 Methodology

The foundation for this report lies inter alia in OHCHR's 2022 publication titled *"We wanted workers, but human beings came": Human Rights and Temporary Labour Migration Programmes in and from Asia and the Pacific*, which highlights systemic challenges to the enjoyment of human rights faced by migrant workers and their families beyond the workplace. The report identifies human rights deficits in TLMPs that warrant further attention, including the impact of migration-related policies on the right to family life. Given the centrality of temporary labour migration in and from the region, the report will focus on family life issues in this context.[5] However, mention will be made of other migration governance measures which impact family life, including criminalisation of irregular migration.

The report draws on a desk review of academic literature and documentation from human rights mechanisms as well as United Nations entities working in the region, together with a non-exhaustive analysis of relevant international and regional legal and policy documents. The research was complemented by an online expert consultation on 18 November 2024, with 16 key informants from United Nations entities, human rights mechanisms, academia and civil society, who reviewed and provided input on the initial draft. Additionally, an in-person listening session with migrants and human rights defenders was held in Bangkok on 29 November 2024. OHCHR sincerely thanks all participants who so generously shared their invaluable insights and perspectives to inform the final report. The report was transmitted to the relevant States for factual comments prior to publication.

1.2 Limitations with defining 'family'

International human rights law does not provide a standard definition of 'family', acknowledging the complexity and variability of the term across cultures and countries.[6] Defining 'family' remains highly contested, largely because of the practical implications that follow and because our understanding of human rights norms related to the family is influenced by evolving societal norms that affect how family rights are framed (including in relation to women's rights and LGBTQI+ rights).[7] It has been recognised that family formations will continue to change and that families today include unmarried couples, single parents, step-parents, adoptive parents and foster parents.[8] The Committee on the Rights of the Child (CRC Committee) has affirmed

that under the *Convention on the Rights of the Child (1989)* (CRC) that the family environment comprises different family structures based on cultural practices and changing familial relationships,[9] and that efforts to preserve the family environment must be based on a broad interpretation of family in accordance with article 5 of the CRC 'to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom'.[10]

Similarly, the Human Rights Committee (CCPR) has urged that the term 'family' be broadly interpreted to include all those comprising the family as understood in the society of the State party concerned.[11] Importantly, a standardised approach to 'the family' risks discriminating against and stigmatising various forms of family,[12] especially when a particular family formation is marginalised. Hence, it is critical that in adopting a broad definition of 'family', same-sex and unmarried couples and their children are recognised as a family unit and afforded the full protection of the family to which they are entitled, recognising that human rights norms 'can be integrated into a pluralistic concept of family.'[13]

The *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)* (ICRMW) also recognises family members as including both married spouses and persons in a relationship equivalent to marriage, dependent children and other dependent family members recognised by the State concerned.[14] This reflects that those familial relationships to be protected irrespective of family formation include, at a minimum, relationships between parents and dependent children, between married spouses, and between de facto couples, with the CCPR also reaffirming that the term 'family' necessarily includes relations between parents and their children.[15]

The rights of older persons to receive care and support from their children who have migrated abroad, their rights as caregivers within families in the context of migration, as well as the rights of older migrants themselves are also inherent in the right to family life.[16]

Mridula Amin Reeta Arulruban, a Tamil refugee and sexual assault survivor packs pre-packaged goods into a bag to bring her son Dixtan who has spent over over 5 years in a detention centre in Melbourne. (Mridula Amin/The Washington Post)

The right to family life is enshrined in general and specialized international human rights instruments that cast 'the family' as the fundamental group unit in society entitled to protection and assistance from the State.[17] This includes the right of all adults to marry and to found a family as established in article 16(2) of the *Universal Declaration on Human Rights* (1948) (UDHR) and article 23 of the *International Covenant on Civil and Political Rights* (1966) (ICCPR). Inherent in this is the right to family unity, with the CCPR articulating that,

> 'The right to found a family implies, in principle, the possibility to procreate and live together. When States parties adopt family planning policies, they should … not be discriminatory or compulsory. Similarly, the possibility to live together implies the adoption of appropriate measures to ensure the unity or reunification of families…'[18]

Article 12 of the UDHR and article 17 of the ICCPR protect against arbitrary interference with a person's family. Similarly, article 16 of the CRC protects children against arbitrary interference with their family life. Moreover, article 10 of the *International Covenant on Economic, Social and Cultural Rights* (1966) (ICESCR) affords the family the 'widest possible protection and assistance', and article 44 of the ICRMW requires States to 'ensure the protection of the unity of the families of migrant workers'. The CRC Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW Committee) have together highlighted that,

> 'Protection of the right to a family environment frequently requires that States not only refrain from actions which could result in family separation or other arbitrary interference in the right to family life, but also take positive measures to maintain the family unit, including the reunion of separated family members.'[19]

These instruments and guidance underscore the fact that *prevention* of separation is fundamental to protecting the right to family life in migration contexts, as is a State's duty to 'take positive action to protect family unity, including by addressing the factors that trigger migration.'[20] The CRC and CMW Committees have highlighted that family separation due to deportation or removal, or not allowing a family member to enter or remain in the territory, 'may amount to arbitrary or unlawful interference with family life'.[21] They have noted that rupturing the family unit by expelling a parent is disproportionate, 'as the sacrifice inherent in the restriction on family life and the impact … on the child are not outweighed by the advantages obtained by forcing the parent to leave the territory because of an immigration-related

offence.'[22] This reinforces the CCPR's guidance that arbitrary interference can include separating family members (both adults such as spouses and parents from children) by means of expulsion or refusal of entry.[23] It also includes separating family members in an irregular situation who are living with family members with a regular migration status.[24]

The CRC goes further to recognise families as the natural environment for children's growth and well-being that are entitled to protection and assistance to fulfil their responsibilities towards children.[25] It protects a child's right 'to know and be cared for by his or her parents'; recognises family relations as central to a child's identity rights; protects children from being separated from their parents unless proven to be in their best interests; and entitles children and parents to family reunification and to maintain direct and regular contact if they are separated.[26]

While there is no universal legal instrument dedicated to the rights of older persons, it is clear that all universal human rights standards – including the right to family life - apply equally to older migrants and older persons who are family members of migrants. The ICRMW is the only core international human rights instrument to explicitly recognise "age" as a prohibited ground of discrimination.[27]

The ICCPR, ICESCR, CRC and ICRMW are legally-binding on States parties, reflecting a consensus and legal obligation in international human rights law that States must protect and assist the family, preserving the right to marry and live together and refraining from arbitrary interference with the family unit.[28]

2.1 Non-discrimination

The principle of non-discrimination enshrined in international human rights law guarantees that all people have equal access to civil, political, economic, social and cultural rights – which includes the right to family life – regardless of, inter alia, their migration status, nationality, ethnicity, age, marital status and gender and sexual orientation.[29] Moreover, the right of all people of full age to marry and found a family is afforded to everyone without discrimination.[30] Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965) (ICERD) guarantees everyone 'the right to marriage and choice of spouse', and the *Convention on the Elimination of All Forms of Discrimination against Women* (1979) (CEDAW) requires States to 'take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations', including the right to enter into marriage, and to prohibit dismissal from employment on the grounds of pregnancy.[31]

While differential treatment may be permitted under international human rights law in certain circumstances, it must accord with the law *and* be in pursuit of a legitimate aim using measures that are necessary, reasonable and proportionate to that aim.[32] Proportionality requires a rational connection between measures being used and the aim being pursued,[33] and use of the *least restrictive* means reasonably available.[34] States in the Asia-Pacific – and globally – have not provided an explicit justification for harmful measures that unnecessarily restrict the rights of low-waged migrants to found families and, together with their children and partners, enjoy their right to family life.[35] There also exists a lack of guidance on how the non-discrimination prohibition under international human rights law should be applied in the context of TLMPs and other precarious migration pathways.

2.2 The best interests of the child

Under the CRC, children's best interests must be a primary consideration in all decisions and actions that directly and indirectly impact children.[36] Assessing children's best interests requires States to, inter alia, explicitly explain *how* children's rights and best interests have been considered in policy-making processes; and how they have been weighed against other policy considerations. The CRC and CMW Committees and the Special Rapporteur on the human rights of migrants have stressed that the best interests principle – together with the CRC's other overarching principles of non-discrimination, children's right to life, survival and development, and children's right to be heard in all matters affecting them[37] – must guide all State actions concerning children in the context of migration.[38] While children's best interests can conflict with other interests and rights (such as those of other children, the public and their parents), the CRC Committee has stated that potential conflicts should be resolved on a case-by-case basis, recognising that 'primary consideration' means that 'a larger weight must be attached to what serves the child best'.[39]

It has been recognised that family separation has a serious detrimental impact on younger dependent children, with the CRC Committee highlighting that, 'Young children are especially vulnerable to adverse consequences of separations because of their physical dependence on and emotional attachment to their parents/primary caregivers. They are also less able to comprehend the circumstances of any separation.'[40]

The Human Rights Council has reiterated the importance of the principle of family unity in assessing the best interests of children whose relations with their parents have been disrupted by migration policies and processes, given the important protective function of the family unit for children.[41] It is foreseeable that the systemic separation of parents and children under TLMPs will disrupt the family life of the children of migrant workers, mandating States to conduct child best interests procedures in the design and implementation of these programmes, a duty routinely ignored by States. Moreover, the interdependence of children's rights with those of their parents means that restricting the family rights of migrant workers inevitably limits the capacity of their children, as individual rights-bearers, to realise their right to family life.[42] In this vein, the CRC Committee has emphasised that children's rights 'will be especially meaningful in the context of the rights of parents and other members of the family'.[43]

There must be comprehensive best interests procedures when separating children and parents in all migration contexts that consider children's development needs holistically, as well as the intersecting vulnerabilities that children and families may face. These include, inter alia, factors relating to age, migration status, disability, religion, sexual orientation, gender identity, and lack of legal identity documents. As stated by the Special Rapporteur on the human rights of migrants,

'(T)o protect children's survival and development rights and right to family unity, the focus must be on preventing family separation by permitting families to move together, and ensuring fast reunification if families are separated.'

2.3 Family reunification

Family reunification is a significant driver of migration, including for children migrating alone, spouses, de facto partners, siblings (children and adults), elderly parents and other family members. Families – including unaccompanied and separated children – often lack clear pathways and appropriate support for seeking family reunification, as well as access to remedy or redress for human rights violations arising from family separation.[44] Where family reunification pathways exist in the region, their scope is usually limited to spouses and dependent children. Spouses of temporary labour migrants are routinely prevented from migrating with their partners, and while migrant spouses of a citizen or permanent resident of a destination country can often apply for a visa or permit, the associated costs and requirements can limit accessibility.[45]

In the context of children, States have a duty under the CRC to ensure that applications for family reunification between children and parents are dealt with positively, humanely and expeditiously.[46] The CRC and CMW Committees have urged that measures be put in place 'for parents to reunify

with their children and/or regularize their status on the basis of their children's best interests'.[47] The Committees have warned that,

> 'Children that remain in their countries of origin may end up migrating irregularly and unsafely, seeking to be reunited with their parents and/or older siblings in destination countries. States should develop effective and accessible family reunification procedures that allow children to migrate in a regular manner…'[48]

The Human Rights Council has expressed deep concern about the effects of family separation on an array of child rights in migration contexts, including their right to know and be cared for by their parents as far as possible.[49] The Council has urged States to take 'a preventive approach to family separation in the context of migration', protecting children in law against arbitrary interferences with their family life so that they 'can fully enjoy their right to preserve family relations and grow up in a family environment'.[50] This includes ensuring that a child's right to preserve family relations is duly considered when assessing the child's best interests in relation to migration laws and policies, including family reunification, and that any restrictions 'are legitimate, necessary and proportionate'.[51]

The CEDAW Committee has highlighted that women migrant workers are frequently prevented from accessing family reunification schemes because of their sector of employment, including domestic work and entertainment, and has urged States 'to ensure that family reunification schemes for migrant workers are not directly or indirectly discriminatory on the basis of sex.'[52] Similarly, the Special Rapporteur on the human rights of migrants has called on States to ensure that pathways for family reunion are available to migrant workers at all levels, including domestic workers, to enable spouses and children to join them in destination countries.[53]

2.4 Relevant border governance standards

International human rights law clarifies that immigration detention should be only used as a measure of last resort, after satisfying the tests of legitimacy, legality, necessity, and proportionality in each individual case. Legal and procedural safeguards against arbitrary and unlawful detention of migrants must be put in place such as the prohibition of mandatory or indefinite detention, the access to consular assistance and to judicial remedies. Non-custodial and community-based alternatives to detention must be prioritised to protect the human rights of migrants, including the right to family life. Importantly, children should never

be detained for immigration purposes regardless of their migration status or the status of their parents, and an alternative to detention should be provided for the whole family to ensure children's best interests and rights. If children are unaccompanied or separated, they should be placed in safe and protective alternative care in a community-based (and preferably family-based) setting. Similarly, immigration detention must be avoided for people in specific situations of vulnerability or those who are at particular risk of exploitation, abuse, sexual or gender-based violence or other forms of violence, including pregnant and nursing women, older persons, and LGBTQI+ individuals.[54]

International human rights law further provides guidance that a migrant should not be returned when they would be at risk of irreparable harm upon return (prohibition of refoulement) which concerns a broad range of human rights, when the return would violate their right to family or private life, or it would not be in the best interests of the child. Human rights treaty bodies have developed jurisprudence guiding that the return of migrants may be prevented when it would amount to an arbitrary interference with the right to family life of migrants, including those in an irregular situation, who have developed a family life or enduring emotional, personal, economic or social ties amounting to private life in the country of migration.[55] Moreover, regardless of their migration status, the return of children to their country of origin should only take place when it has been determined, through an individual procedures and with proper safeguards, that the return is in their best interests.[56] Such best interest considerations include the protection of migrant children and their families from expulsions that would constitute arbitrary interference with the right to family and private life.[57] Pathways for regularisation should be made available for migrant children and their families in an irregular situation, especially when a child is born or has spent a significant amount of time in the country of destination, or when returning to the parent's country of origin would not be in the child's best interests.[58]

2.5 Global Compact for Migration

The Global Compact for Safe, Orderly and Regular Migration (GCM), adopted in 2018, builds on the normative framework outlined above and the 2030 Agenda for Sustainable Development (2030 Agenda), with States committing to adapt regular migration pathways in ways that uphold the right to family life and respond to the needs of migrants in situations of vulnerability.[59] The GCM recognises the barriers that migrant workers face to enjoying family life and identifies measures to reduce these barriers. These include putting in place human

rights-based, child-sensitive and gender-responsive bilateral labour migration agreements (BLMAs), increasing the availability and flexibility of safe and regular migration pathways, and greater access to family reunification for migrants at all skills levels.[60]

The United Nations Network on Migration's (UNNM) guidance on BLMAs recognises that these agreements should facilitate the admission of a migrant worker's family members, giving consideration to the best interests of dependent children and the preservation of the family unit in their family reunification policies.[61] The Network's guidance on Pathways similarly highlights the role of well-designed and well-governed family reunification pathways in enhancing regular migration and reducing vulnerabilities for migrants.[62] The GCM stresses the importance of States understanding 'possible unintended negative consequences' of migration policies and not creating, exacerbating or unintentionally increasing vulnerabilities.[63]

Most States in the Asia-Pacific have endorsed the GCM. While States have taken positive steps towards its implementation,[64] progress in the region has been limited by factors including, inter alia, 'restrictive national immigration laws of member States'.[65] However, going forward, as noted by the Regional United Nations Network on Migration for Asia and the Pacific,

> 'The Global Compact for Migration offers a unique opportunity for the Asia-Pacific region to change this situation and align migration with truly sustainable development and respect for human rights.'[66]

2.6 Sustainable Development Goals

The 2030 Agenda highlights the critical role of families as development actors, committing States to provide children and youth with the nurturing environments needed to realise their rights and capabilities, including through promoting 'cohesive families and communities'.[67] This commitment derives from the understanding that, as the fundamental unit in society, the family is involved in social, legal, reproductive and economic aspects of development, is a primary mechanism for coping with adversity, and is the basis for care-giving relations.[68] At the same time, it is widely recognised that care and support systems are facing multilayered challenges, with migrants disproportionately vulnerable in this context.[69]

A review of family-oriented policies and programmes related to the 2030 Agenda found that almost 90 percent of countries made specific reference to families in their efforts to implement the Sustainable Development Goals (SDGs).[70] However, as raised by the United Nations Secretary-General, family-oriented policies are consistently 'not considered an integral part of overall development efforts'.[71] This is despite findings that parents' availability affects the preventative care that children receive, directly supporting SDG 3 of 'ensuring healthy lives and promoting well-being'.[72] A United Nations Expert Group on Family Policies and the Sustainable Development Agenda has emphasized that policies promoting children's physical and mental health must involve families as primary caregivers responsible for their development, promote safe and stable family environments, and support family-oriented policies that boost parental capacity to deliver positive outcomes for children's well-being.[73]

Importantly, SDGs that promote labour migration as a development strategy (SDGs 9 and 10) sit alongside SDGs that promote family strengthening and active and equal parental involvement in child-rearing such as in ensuring access to food, health care, education, and protection.

Moreover, the 2030 Agenda recognises that policies that strengthen the functioning of families reduce risks arising from poverty. The Human Rights Council has urged States, in the context of poverty reduction and sustainable development, to address causes and mitigate consequences of family disintegration; preserve family unity including by providing access to sustainable livelihoods; and facilitate compatibility between labour force participation and parental responsibilities.[74]

3 Asia-Pacific Context

Ajit Roy, 41, holds up a picture of his parents on his cellphone, as he lives in a cramped one-room apartment that his former company, Ansung Industrial, uses as a migrant worker dormitory, in Anseong, South Korea, Wednesday, Sept. 13, 2023. (Marcus Yam/ Los Angeles Times)

The Asia-Pacific region is the origin for one third of the world's migrants,[75] with different migration patterns across its sub-regions: East Asia predominantly features destination countries, South Asia and the Pacific mainly feature countries of origin (albeit India is both a major origin and destination country), and Southeast Asia is comprised of both, including countries like Malaysia and Thailand that are major countries of origin and destination. Most international migration in Southeast Asia is intraregional, particularly between neighbouring countries.[76]

Millions of the estimated 169 million migrant workers worldwide come from the Asia-Pacific region,[77] mostly aged between 25 and 64 years (86.5 percent).[78] As a result, many will have children, spouses or de facto partners as well as elderly parents with care needs at the time of their migration. Denial of family accompaniment means that the care responsibilities that migrant workers would have undertaken within their families are often shifted to other family members, frequently grandmothers who have unmet care needs of their own.[79] It also means that millions of children of migrant workers remain in countries of origin across the region in the physical absence of one or both parents, which is even more likely for children under 10 years of age.[80]

Regional migration patterns for low-waged migrant workers involve movements from South Asia to Southeast Asia (particularly to Malaysia, Singapore and Thailand); within the Greater Mekong Subregion in Southeast Asia; from Southeast Asia to East Asia; and from the Pacific to Australia and New Zealand.[81] Millions of migrant workers from South and Southeast Asia also migrate to the Gulf States, making it the largest destination for low-waged labour migration from Asia.[82] These patterns often (but not always) also reflect irregular migration routes, particularly given the close connection between temporary labour migration and irregular migration in the region.[83] For example, as noted in the 2024 World Migration Report,

> 'The demand for migrant workers in destination countries, unemployment and underemployment in countries of origin and well-organized migrant smuggling networks have resulted in significant levels of irregular migration across South-East Asia.'[84]

At the end of 2023, the Asia-Pacific region hosted 2.5 million stateless persons (57 per cent of the world's recorded stateless population). The denial of equal nationality rights in some countries in the region continues to prevent women from conferring their nationality to their children and spouses, which can cause family separation and have flow-on effects for access to other rights.[85]

Migrant workers and their family members in the region often fall into irregular situations, with 'high costs of regular migration and restrictive and complex migration policies'[86] being among the factors driving irregular migration in the region. The region is also host to 7.7 million refugees many of whom are unable to access legal protection and live in undocumented and often very precarious situations.

An irregular status compounds situations of vulnerability and risks of destitution which, among other things, limits the capacity of adults to provide for children and other dependent family members, directly impacting family life. There is also a heightened risk of family separation when family members (including children) with an irregular status are deported or held in immigration detention.

Moreover, across the region widespread policies of criminalisation of irregular migration and limited refugee and human rights-based pathways affect the ability of people on the move to enjoy their right to family life in countries of transit and destination. Risks include family separation during migration due to immigration detention, deportation, pushbacks and border closures.[87]

Highlighting in particular the context of temporary/low-wage and similarly precarious forms of migration, participants in the listening session described the 'dehumanisation' of migrants as an unfortunate feature of migration governance in the region.

Sub-regional frameworks

Sub-regionally, the *ASEAN Declaration on the Rights of Children in the Context of Migration* (2019) commits ASEAN countries to ensuring that 'where possible, children are kept together with their families in a non-custodial, and clean and safe environment'.[88] The specific objective of the Regional Plan of Action (RPA) for the implementation of the Declaration is to encourage Member States 'to ensure the protection of the best interests of the child as a primary consideration in all relevant policies and practices as they relate to children in the context of migration'.[89] This should be considered in light of the earlier *Declaration on the Commitments for Children in ASEAN* (2001), which recommended that ASEAN States should '(c)reate employment opportunities for adult family members in ASEAN countries, as stable families are the key to the social, physical and emotional development of children.'[90] Over two decades on, TLMPs based on parental migration continue to grow in the Asia-Pacific region.

Additionally, the *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers* (2007), the *ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers* (2017) and the *ASEAN Declaration and Guidelines on the Protection of Migrant Workers and Family Members in Crisis Situations* (2023) establish a framework for cooperation on issues related to the rights of migrant workers and their families. This includes facilitation of family visits[91] and considering the needs of 'family members left behind'.[92] Moreover, South Asian Association for Regional Cooperation (SAARC) countries have also agreed to 'collaborate and cooperate on safe, orderly and responsible management of labour migration from South Asia' in the Kathmandu Declaration adopted in 2014.[93]

4 Harmful Practices and Impacts

Family members crying during Tamang's Cremation, a 28 year old father of 2 kids, worked in a garment factory where he died of a heart attack according to the death certificate. Along with 19 dead bodies of migrant workers, Surya Bahadur Tamang of Sindhuli was bought back from Malaysia. (Prabin Ranabhat/SOPA Images)

Migration policies and practices that undermine family life are prevalent across the Asia-Pacific region. This includes the systemic denial of family accompaniment to low-waged migrant workers, differing vastly from high-waged migrants who can generally migrate with spouses and dependent children. As expressed by participants in the listening session to inform this research, 'the reason that people migrate is for their families, yet they don't feel they have the right to family life' and they 'face discrimination based on their nationality and wages'. Moreover, key informants highlighted that the distinction between skill levels is often arbitrary, with countries shifting skills categories depending on their needs, and qualified workers (such as teachers, nurses and healthcare workers) migrating through low-waged TLMPs in contexts like the Pacific and the Philippines. As Yeoh et al observe,

> 'For the overwhelming majority of migrants – especially the low-skilled, low- waged workers – admission into destination nation-states are premised on short-term, time-bound contracts, with limited possibility of family reunification or permanent settlement given the principles of enforced transience undergirding prevailing neoliberal labour migration regimes.'[94]

It should be recalled that the right to family life is a universal protection and not premised on occupational skill level, income or sector of employment.

4.1 Key barriers

Key barriers restricting family life for migrants and their families in the region include:

- A lack of safe and regular pathways allowing low-waged workers to migrate with their children, spouses/de facto partners and elderly or dependent parents, forcing separation or family members to use unsafe and irregular migration pathways.

- Denial of family reunification and family unity in law and policy for migrant workers on temporary labour migration pathways, even when periods of separation become protracted over years.

- De facto barriers to family accompaniment, including low wages, precarious employment, poor living conditions, and lack of access to basic education, healthcare and social protection. Additionally, a lack of accessible childcare in destination countries forces workers to leave young children in countries of origin with family, or family members to migrate irregularly to help care for children.

- Restrictions on migrants' agency, including to determine the length of stay and time of return, which impacts their capacity to make decisions related to family life;[95] and through bans on women's migration related to gender and the age of their dependent children.

- Outsourcing responsibility to uphold the rights of migrant workers to employers, businesses and private contractors, which limits enforcement measures and public accountability,[96] particularly as businesses want migrant labour unencumbered by children and private contractors providing services on behalf of States do not necessarily have the capacity or expertise to respect human rights and provide effective remedy.

- The employer-sponsorship model, which entrenches imbalanced power relations and confers employers with excessive control over workers' lives, including restrictions on privacy, work hours (including rest time) and mobility that impair opportunities to create and maintain family relationships.

- A lack of adequate housing that prevents the enjoyment of family life and relationships in practice, with migrant workers frequently required to live in overcrowded dormitory-style housing, being prohibited from renting accommodation (by law or due to cost), and being required to live with their employers in the context of migrant domestic workers.[97]

- Restrictions on the capacity of migrants to communicate with their families, including when employers confiscate mobile phones and when authorities prevent migrants in immigration detention from contacting family members; as well as a lack of communication about family members from authorities when migrants are reported dead, go missing or become victims of disappearance.

- Restrictions on the formation of families for low-waged migrant workers through imposing restrictions on consensual sexual relations and the criminalisation of pregnancy, which leads in turn to forced deportations and rupture of familial relationships, unsafe abortions and delayed antenatal care.[98]

- Separation of migrant families living together in destination countries when family members with an irregular status are deported while those with a regular status remain.

- Immigration detention contexts that separate families and have additional detrimental impacts on the ability of migrants and other people on the move to maintain family life.

- Lack of legal recognition of diverse sexual orientation and gender identity (SOGI), including the failure to recognise LGBTQI+ parents, which increases risks of separation through migration policies (including at borders) for non-heterosexual couples and their families [99] despite the principle of family unity applying to children of same-sex parents without discrimination.[100]

The impact on family life of migration governance measures in the region is influenced by a range of variables, including a family's pre-migration circumstances (such as socio-economic status and household structure), family preparedness for periods of separation, the age and gender of children, and the quality and suitability of alternate caregivers.[101] Importantly, families are able to function transnationally if they have opportunities and means for regular contact and frequent, high-quality communication.[102] However, as Yeoh et al explain,

> '(T)ransnational communication is neither seamless nor even, but embedded in unequal power-geometries (contingent on factors such as the migrant's occupation, destination country, employment conditions and structural unevenness in rural–urban development) that render some families more able than others to develop family intimacy through transnational communication.'[103]

Hence, when migrant workers and their families sustain transnational family life, it is currently with limited assistance from States and is dependent on factors beyond the migrants' control. Without freedom to change employers and choose between sites of employment and residence, some migrants face greater barriers to communication (such as infrastructure and time difference) and return travel (such as logistics and cost). Moreover, the capacity of young children to maintain family life at a distance is limited, making it critical that measures to support transnational family relationships are appropriate to children's developmental stages.[104] Importantly, the CRC Committee has held that contact through social media 'does not ensure that children can maintain adequate and meaningful personal relations and direct contact' with a parent.[105]

4.2 Potential harms

While the ideal is that migration is 'a choice based on each person or family's aspirations, not forced or made in distress',[106] regional research shows that many people migrate because of a lack of viable livelihoods, lack of access to human rights including rights to health, education and housing and financial pressures to meet their family's basic needs.[107] Prior to migration, migrants often do not foresee how long they will be separated from their families, with factors beyond their control frequently prolonging the duration of familial separation. In the context of temporary labour migration for instance these include, inter alia, restrictions on freedom of movement; limited financial resources to enable frequent reunification; development of familial dependence on remittances; deliberate encouragement of remigration by employers to avoid retraining; and indebtedness to recruiters. Such structural features unnecessarily and unreasonably prolong familial separation, since *prolonged* separation is not a necessary feature of temporary labour migration.[108]

In the particular context of children, it has been recognised that when migrant workers 'choose' to leave children, particularly young children, 'they are making a 'conflicted' choice in the belief that leaving their child for employment is in their child's best interests'.[109] For many, it is a strategy of 'migrating out of poverty' that requires families in countries of origin 'to absorb the constant flux, uncertainty and provisionality of parental leaving and returning.'[110]

However, when weighed against potential positive gains from remittances, many migrant workers find the social costs of migration on relationships with family, friends and communities to be too great, expressing views such as, 'you cannot replace physical connection'[111] and 'migration is a sad decision made out of [a] lack of decent life opportunities in [our] home country.'[112]

The repeat or prolonged migration of parents can have significant impacts on children given that 'a few years in the life of a child are more formative than in that of an adult'.[113] Existing studies show mixed findings on the impact of remittances on material, educational and health outcomes for children and families of migrant workers and whether financial remittances generate equitable development outcomes.[114] Moreover, children's best interests include factors that encompass but also go beyond the potential financial and material gains that their parents' employment overseas may provide. Recent studies from the region reiterate concerns that children 'potentially experience emotional harm as a result of separation from one or both parents, often for considerable periods of time, during their formative years', with children expressing 'feeling deeply sad and longing for the physical presence of their parents'.[115] This echoes findings over decades that 'children in labour-sending countries frequently experience a deep sense of loss in the absence of their parent(s) even when they are well cared for by alternative caregivers.'[116] Similarly, mothers and fathers frequently speak of 'the emotional toll of separation'[117] and the costs of family disruption

outweighing economic benefits.[118] This reflects global findings that family members often suffer emotionally from separation due to migration for reasons including not being able to share the responsibility of nurturing children.[119]

In the Pacific context, Vanuatu's Deputy Prime Minister has noted that despite the financial benefits of labour mobility schemes, there is a 'strong emotional impact on children' from being separated from their parents or primary caregivers,[120] with another official observing that 'the anecdotal evidence is very clear: our children suffer.'[121] A Rapid Analysis of the Pacific Australia Labour Migration (PALM) scheme found that it disrupts 'care practices and personal relationships that sustain family life for migrant households', with key issues identified including widespread concern for children separated from one or both parents; the frequency of extramarital affairs; and misunderstandings between workers and families (including concerning finances) contributing to distrust and relationship breakdowns, which can precipitate the cessation of remittances causing acute welfare issues for remaining partners and children.[122] Research in Fiji, Samoa, Solomon Islands and Vanuatu also highlighted family breakdown and extramarital affairs due to prolonged familial separation, as well as the need for mandated child maintenance payments.[123] Behavioural issues, including risk-taking behaviour and drug use among older children, have also increased, with older children ignoring the discipline of family members taking over caregiving roles, many of whom are grandmothers.[124]

Furthermore, without support and means to maintain relationships while separated and on return, familial breakdown is not uncommon post-reunification. This is particularly so if spousal relationships have broken down, or when women are returning to potentially abusive relationships without reintegration support, for whom remigration may be the only coping strategy. Relationship breakdowns post-reunification are also common when children and parents have missed out on 'profound transformations that take place during prolonged separation', often across multiple stages of a child's development, which can result in family members being unable to re-establish intimate bonds when reunited.[125] Participants in the listening session spoke of the gap between parents and children who no longer know each other, the immense sense of loss for parents when they miss out on their children growing up, and a questioning of what the sacrifice was for in the face of family breakdown. Recent studies show similar findings in the Pacific where relationships may have become distant and returning parents may not understand changes in their children that

occurred during periods of absence, with young participants expressing views such as,

> 'Three years. He was gone and did not return until just now … I am independent. I am not close to him anymore.'[126]

Even in the context of seasonal labour migration which involves yearly returns home, official policies of encouraging remigration on an annual basis means that familial separation can span decades, including across entire childhoods of migrant workers' children.

4.3 Gender dimensions

Restrictions on the right to family life have significantly gendered ramifications. This includes the different impacts on children when their primary caregiver migrates – typically the mother given that primary caregivers remain predominantly women across the region and globally[127] – as migration of the primary caregiver leads to a significant reorganisation in the child's care arrangements.[128] Moreover, while women are pushed to migrate to support their families, they are simultaneously blamed for 'leaving' their children if their children suffer any abuse or behavioural issues in their absence.[129] Men are often unable to seek mental health support for issues caused by family separation and isolation, female spouses in countries of origin can face violence and harassment in the absence of their husband, and non-heterosexual relationships are completely ignored in TLMPs across the region.[130] LGBTQI+ migrant workers are frequently unable to start a family in destination countries, or return to countries of origin with their partners if they form a relationship while working overseas, due to discriminatory policies that force them to hide their sexuality. Hence, little has changed since the International Labour Organization's (ILO) observation 20 years ago that,

> 'The social costs of labour migration in terms of fractured families and communities are without a doubt at least as significant as those related to the more measurable economic costs. The effects are almost never gender-neutral.'[131]

There are also gendered child protection implications in the absence of parents if adequate care structures are not in place. Girls are at particular risk of sexual exploitation, being taken out of school to undertake domestic work and caregiving responsibilities, and early marriage.[132] Children are exposed to child labour, with boys often forced to undertake physical labour that would have been performed by their fathers and to provide income for families.[133] Key informants also raised emerging

concerns about boys growing up without role models, supervision and mentors in communities in the Pacific where significant proportions of men are absent due to migration.

Regional research has highlighted the issue of children's inability to attend school due to financial constraints and the assumption of adult responsibilities in households when parents migrate, including caring for other children,[134] which undermines children's rights to education and to play.[135] Child protection risks are heightened if children of migrant workers are placed in non-family care, including orphanages or residential care institutions, which can occur especially when grandparents cannot care for them. Such social cost of migration on children has long been documented. In one study, a child of parents who migrated from Bangladesh, who was physically and emotionally abused, shared, 'I wish my father was here, he would listen to me and would have protected me from this.'[136]

4.4 Restrictions on marriage and pregnancy

Prohibiting migrant workers from becoming pregnant and marrying during the period of employment is discriminatory and an interference with the right to private life as well as with sexual and reproductive rights. Such policies may force migrants into an irregular status if they do become pregnant or marry, creating further risks of statelessness for children born of marriages not legally recognised by the State in which they reside.[137] Pregnancy restrictions – including mandatory medical testing, denial of job opportunities, and termination of contracts – occur across the migration cycle and highlight systemic and gendered impacts. Even when pregnancy is legally permissible, migrants may be dismissed for being pregnant because employers do not wish to provide adequate medical coverage or due to employer bias.

For example, in Singapore, low-wage migrant workers are banned from marrying a Singapore citizen or permanent resident without the government's permission during their employment and even after expiry or cancellation of a work permit.[138] They are also prohibited from becoming pregnant or having a child during the period of their work permit (unless married to a Singapore citizen or permanent resident with the government's permission), with women migrant workers subject to mandatory and regular pregnancy testing and deportation if found to be pregnant.[139] In some Gulf States, women migrant workers from the Asia-Pacific can face imprisonment if they become pregnant due to laws that criminalise consensual sexual relations outside of marriage.[140] Moreover, Malaysia prohibits migrant workers from marrying during their contract period, making unregistered marriages common particularly among Indonesian migrant workers in Malaysia.[141] These workers often do not obtain birth certificates for their children for fear of being deported, hindering their children's access to education and health services.[142]

Marriage migration is also a key driver of migration in the region and differences in culture, identity, nationality and residency rights introduce power dynamics into international couples that can have a disproportionately negative impact on the rights and well-being of the partner with less power, most often women.[143] Power imbalances are particularly prevalent when women have not yet achieved permanent residence status and can easily lose access to their children in cases of divorce or return, which leaves them vulnerable to exploitation and risks of abuse, including by their husbands and in-laws.[144] Moreover, discriminatory laws and complex administrative processes can hinder the registration of marriages and births, creating risks of statelessness for children and preventing access to basic services.[145] Importantly, marriage migration can be both voluntary and involuntary. However, concerns have been raised that this pathway can sometimes lead to trafficking in persons, particularly when facilitated by brokers or matchmakers.[146] Additionally, women marriage migrants are often engaged in informal and unpaid labour, facing similar challenges to low-waged migrants workers, including risks of exploitation and abuse, trafficking, lack of documentation, inadequate legal and social protections, and social isolation.[147]

4.5 Longer-term impacts on the region

Entrenched models of precarious migration across the region have shifted the responsibility of care from parents to grandparents, siblings and other family members, with many grandmothers struggling to care for multiple grandchildren with little support.[148] Young girls and older women are disproportionately relied on to fill care deficits, providing care rather than receiving it, with the breakdown of familial care systems in contexts where public care systems are insufficient, and private options are limited, representing a broader threat to sustainable development.[149] This underscores the urgent need to factor care into 'migration-for-development' discourse, understanding the nexus between migration, care and development in a way that recognises 'unsustainable disruptions to care economies' caused by TLMPs across the Asia-Pacific region.[150]

The impacts of prolonged family separation over generations are reflected in a study of children of Indonesian migrant workers who have transitioned into adulthood and have had 'enough'

of migration.[151] It reiterates the importance of understanding how young people perceive the costs and benefits of parental migration, with some participants viewing 'migration-as-development' as an 'incoherent strategy that works against rather than for the family'.[152]

Such studies counter the normalisation of parents across the region having to 'commodify' their love[153] by expressing it through remittances rather than physical presence. As raised by participants in the listening session, 'family separation is normalised, passed on to children and so it repeats in the next generation'; and they live with a 'permanently incomplete family with constant remigration, which only ends when there is a pathway to permanence in a destination country'.

Additionally, policies and practices that force migrants and their families into irregular situations to be with their spouse and/or dependent children, marry or have children severely undermine efforts across the region to counter irregular migration. Similarly, attempts by South and Southeast Asian labour-sending countries to ban the migration of women domestic workers at different points in time also impede efforts to reduce irregular migration and reinforce gender inequalities, heightening vulnerability by pushing women into irregular pathways and discouraging the registration of children prior to migration.[154]

5 Promising Practices to Support the Enjoyment of Family Life

Burmese people walk in a parade to kick off Bangkok Pride 2023. (Stephen J. Boitano/LightRocket)

5.1 Regular pathways

Actions identified in the GCM to support State commitments to enhance safe and regular migration pathways include procedures and rights-based solutions for family reunification for migrants at all skills levels,[155] recognising that family reunification should include entry into and regularisation on the territory, and providing family members with the same residency status as the primary applicant.[156] As stated by the United Nations Network on Migration,

> 'Well-designed and well-governed family reunification pathways support governments in their efforts to enhance regular migration pathways while upholding the right to family life and family unity, as well as the rights of the child, and reducing vulnerabilities throughout the migration process.'[157]

While some practices in the region offer pathways to regular status for migrants in vulnerable situations, few of these relate specifically to grounds concerning family unity and family reunification.[158] A promising practice from Thailand involves the regularisation of millions of undocumented migrants since the 1990s,[159] which has flow-on positive effects for families by reducing vulnerabilities, enhancing access to services, facilitating freedom of movement and sometimes permitting the registration of dependent family members. In 2021, the Republic of Korea announced a measure to grant legal residency status to undocumented children who were long-term residents born in the country and attending or having graduated from middle/high school there. Intended to ensure children's right to education, the policy also grants a legal residency status to migrant parents until their child graduates from high school, suspending their deportation with the condition that the parents commit to voluntary removal in the future. In 2022, coverage was extended (until 2025), which was further extended to 2028 in March 2025, to those born in the Republic of Korea or who came under the age of six and resided for at least six years, and those who came as a minor but over the age of six and resided for at least seven years. However, the policy only covers children enrolled in primary, middle or high school, or who have graduated from high school in the Republic of Korea.[160]

Other promising practices include Hong Kong SAR's Dependent Visa, which 'permits a migrant's immediate family members to relocate to the country, including through same-sex civil partnership, union or marriage.'[161] Indonesia has offered a service of validating unregistered marriages of Indonesian migrants, and issuing birth certificates to couples who have children, but the policy is not uniform and is ambiguous in the context of those Malaysian entities with a different status (Peninsular Malaysia, Sabah and Sarawak).[162] The PALM scheme is piloting a family accompaniment programme, in which 200 workers can have immediate dependents join them in Australia (at their expense), with government support including education fee waivers for primary/secondary school and Medicare coverage (unlike other PALM workers). However, access to the programme rests upon employer approval, granting more power to employer-sponsors. The outcome of the pilot remains to be seen, with the costs to workers being extremely high in comparison to their incomes, undermining their ability to save and send remittances home.

Bilateral labour migration agreements (BLMAs)

BLMAs should provide for circulation-friendly visas (combined with subsidised travel) to facilitate the movement of workers between their country of employment and families, and consider encouraging initiatives that increase proximity between workers and their families (combined with the right to move freely and protection of employment rights during return visits).[163] Global guidance on BLMAs reiterates that States should facilitate the admission of a migrant worker's family members, and consider the best interests of dependent children together with preservation of the family unit in family reunification policies.[164] The CRC and CMW Committees have urged that child welfare agencies and children themselves be included in the development of bilateral, regional and international agreements that impact children's rights,[165] which necessarily includes BLMAs and policies ensuring access to basic services for migrant workers and their families. The Committees' guidance states that,

> 'States parties should adopt measures directed at facilitating the participation of all children in the context of international migration in the design, implementation, monitoring and evaluation of policies that could directly or indirectly affect them…'[166]

BLMAs across the Asia-Pacific region should incorporate comprehensive child best interests procedures to identify risks to children and measures to mitigate potential harms. This extends across laws and policies governing different forms of migration with, for example, the primary immigration laws of most ASEAN Member States not explicitly requiring best interests procedures in immigration processes and decision-making.[167]

5.2 Learnings from other fields

As transnationalism among families grows, migration governance needs to respond to how 'intimate relations are conducted and maintained between family members kept apart by borders'.[168]

To this end, States can draw on learnings from other professions that regularly manage familial separation, such as military deployment and family law, which offer guidance on appropriate periods of separation and how families can be supported to prepare for and manage separation. Moreover, governments and employers frequently subsidise regular return travel for other groups of workers in return for their willingness to engage in cross-border work or employment in remote locations.

Importantly, research from the military context shows that including children in familial discussions about parental deployment, and investing in family preparedness for separation, greatly assists children and families to manage each phase of deployment. It also supports children's right to be heard in matters affecting them in a manner appropriate to their age and maturity.[169] This reflects findings from recent Pacific studies in which families have repeatedly expressed the need to be included in pre-departure orientation and training.[170] One such small-scale family preparation programme is *Famili i Redi* in Vanuatu, which focuses on skills and strategies to maintain family relationships during separation, with initial evaluations indicating improvements in participants' awareness of potential relationship issues and strategies to manage communication, transnational parenting and emotional impacts.[171] While not a 'solution' to the deeper social and legal challenges of embedding family separation in TLMPs, if family accompaniment is denied then investment in family preparation and support must be scaled up to better prepare families for the challenges of separation.[172]

Studies have also recommended the expansion of family welfare support services during migration. [173] This includes economic and social policies that ensure caregivers are not over-burdened,[174] and strengthened and inclusive child protection systems that ensure care arrangements that are tailored to the needs of children and families and provide support at all stages of migration (pre-migration, during parental absence, and upon reunification). For example, in the military context, the Australian Defence Force provides additional support to children at times of transition, including through programmes in school settings to assist children to manage the different phases of parental deployment.[175]

There is an array of measures reasonably available to States that would bring migration governance measures such as TLMPs in line with other fields that routinely manage familial separation.

However, countries of origin often lack capacity and resources to implement many of these measures,[176] the resourcing for which should be a shared responsibility with countries of destination in accordance with the principle of international cooperation in international human rights law. [177] This shared responsibility is reflected at a sub-regional level in the Preamble of the *ASEAN Consensus on the Rights of Migrant Workers*, which recognises 'the shared and balanced responsibilities of the Receiving and Sending ASEAN Member States to protect and promote the rights of migrant workers and members of their families in the entire migration process.'

5.3 Private sector responsibilities

The UN Guiding Principles on Business and Human Rights applies to the context of migration, including labour migration, and businesses are required to prevent and mitigate the impact of their activities, products or services on the human rights of migrants and their families, along with their obligations towards the access to an effective remedy for victims when business operations adversely impact their human rights. Furthermore, the Human Rights Council has urged States 'to prevent businesses from causing or contributing to abuses of children's rights in the context of migration', which includes addressing adverse impacts on children's rights arising from their operations.[178] To assist migrant workers and their families to maintain family life across borders, employers can facilitate regular and quality communication between family members and fund more frequent opportunities for return home travel. Moreover, the private sector can invest in and subsidise communication infrastructure in high migration areas, and help resource government initiatives in labour-sending countries to support the families of migrant workers.

The ILO has encouraged a sharing of responsibility between States and employers to enable work-family reconciliation in the context of migration, adopting the notion of social 'co-responsibility', which includes:

- the creation of viable local employment opportunities so that families do not have to separate to meet financial needs;

- facilitating the return and reintegration of migrant workers to prevent returning migrants from needing to remigrate under precarious conditions;

- reducing regulatory barriers to opportunities for families to reunite.[179]

6 Conclusions and Key Messages

Nancy Rimoni (right) hugs her niece Nirvana Puna (left) after arriving from the Cook Islands on January 21, 2021 in Auckland, New Zealand. (Phil Walter/Getty Images)

Ensuring rights-based pathways: It is critical that migration policies and pathways protect, respect and fulfil all human rights, including the right to family life. This would necessitate a fundamental redesign of labour migration pathways in and from the region to uphold human rights in and away from the workplace, facilitating access to family accompaniment and reunification for all migrants, refraining from criminalising irregular migration and ending immigration detention, incorporating child best interests procedures into the design of all migration policies, and including the right to family life in legislation as grounds for regularisation and non-return. Such a human rights-based approach to migration should also be guided by the UN Guiding Principles on Business and Human Rights, placing clear responsibilities on businesses to prevent, mitigate and address human rights abuses, including in the context of the right to family life, against migrants and their families. A preventative approach can curb the family separation occurring across the region and its subsequent harms, helping to ensure that migration policies are consistent with the right to family life.[180]

Reducing and mitigating periods of separation: Periods of familial separation for migrants are often protracted over years, amounting to an arbitrary interference with family life. While working towards ensuring family accompaniment for migrants in all sectors and implementing rights-based regularisation measures, migration policies should resource and support transnational family life, providing circulation-friendly visas for migrants and their families and subsidised, regular return home travel.

Eliminating discriminatory and harmful practices: Normalising prolonged familial separation for low-waged migrant workers based on their income and employment is discriminatory. To facilitate family life, it is essential that migrants are not required to reside with their employers and are provided with choices in relation to employer-provided housing, can freely communicate with their families. Regardless of migration status, migrants and their family members in destination countries should have access to basic services. Barriers in migration laws and policies that are not proportionate or legitimate in light of the right to family life, such as related to marriage between a national and non-national, need to be removed, with a particular attention to their gendered impacts. It is also vital that discriminatory restrictions related to marriage and pregnancy are prohibited, including eliminating discriminatory pregnancy testing at all migration stages and ensuring that all migrants have access to adequate medical care including sexual and reproductive healthcare.

Addressing systemic deficits in care and support: Financial remittances have disproportionately been seen as the primary measure of the success of migration, often to the exclusion of the inherent social costs including to care and support systems in countries of origin. A broader, more holistic, approach would incorporate measures to support transnational family life into migration policies including adopting comprehensive family preparedness and reintegration programmes and developing portable social protection, family and childcare benefits and pension systems.[181] Such an approach would also ensure comprehensive migration pathways that protect the human rights of migrant care and support workers and their families in countries of origin as well as in destination.[182] Key informants also stressed the need to invest in strengthening informal systems and safety nets that protect workers and their families.

Developing authoritative legal and policy guidance: There is an urgent need for guidance, including from the human rights treaty bodies and through strategic litigation, to ensure that migrant families, regardless of status, are not separated.[183] Guidance based on international human rights standards could also usefully address the scope of family reunification pathways to include same-sex partners as well as parents of migrant workers.

Researching and evaluating the social impacts of family separation: There is a pressing need for comprehensive monitoring, evaluation and research on the social impacts of inattention to family life within migration governance in the region, including the long-term psychosocial impacts on children and other family members, as well as on the mental health of migrant workers. Future research should also examine how to strengthen social support systems to ensure that alternative caregivers, families and communities can provide nurturing, stable environments for children in the absence of their parents and consider the impact of family separation on communities in countries of origin.[184] Research methodologies could transfer learnings from other contexts to craft practical recommendations that can be translated into the management of family separation in the context of temporary labour migration.[185]

Giving voice to migrants and their families: Key informants stressed the need for migrant workers and their families and communities to have local, national and regional platforms to voice the challenges they face, which can inform rights-based policy responses and support the right to family life as well as children's right to be heard. This would also help ensure that countries 'have a collective voice at the regional level' to address the impacts of all forms of migration on migrants and their families.[186]

Endnotes

1   'Situations of vulnerability' refers to migrants in need of specific protection due to structural factors that create precarity. See OHCHR, *Pathways to migrant protection* (2022), p.10.

2   Stephen Castles, 'The forces driving global migration', *Journal of Intercultural Studies* (2013) 34(2), p.131.

3   Ibid, p.123.

4   Resolution on the International Year of the Family, A/HRC/RES/54/17 (13 October 2023), paras. 4, 6.

5   The scale of low-waged temporary labour migration across the Asia-Pacific has given rise to long-standing concerns for children, families and communities since the 1970s. See Maruja M. B. Asis and Alan Feranil, 'Not for adults only: Toward a child lens in migration policies in Asia' (2020) *Journal on Migration and Human Security* 8(1), p.74.

6   CCPR, General comment No.19 on Article 23, HRI/GEN/1/Rev.1 (27 July 1990), para. 2.

7   M. Joel Voss, 'Contesting "family" at the United Nations Human Rights Council', *Religion and Human Rights* (2019) 14, p.96.

8   CCPR, HRI/GEN/1/Rev.1, para. 2.

9   *Report on the Fifth Session*, CRC/C/24 (8 March 1994), annex V, para. 2.1.

10   General comment No.14, CRC/C/GC/14, para. 59.

11   General comment No.16 on Article 17, 8 April 1988, para. 5.

12   Association for Women's Rights in Development, 'Protection of the family': A human rights response (24 March 2015).

13   Savitri Goonesekere, 'Human rights as a foundation for family law reform', *The International Journal of Children's Rights* (2000) 8, p.89.

14   Art 4.

15   *J.T. v Canada*, A/62/40 (20 March 2007), para. 8.2.

16   General Assembly Resolution A/RES/79/147 (17 December 2024) on Follow-up to the Second World Assembly on Ageing has affirmed "the crucial and evolving role played by families in contributing to the well-being of their members and communities at large, and encourages Member States to implement family-oriented and family-friendly policies that support them", para. 36.

17   UDHR, art 16(3); ICCPR, art 23(1); ICESCR, art 10(1); CRC, Preamble; ICRMW, art 44(1); *Convention on the Rights of Persons with Disabilities* (2006), Preamble.

18   General comment No.19, HRI/GEN/1/Rev.1, para. 5.

19   CMW and CRC Committees, Joint general comment No.3 (2017) and No.22 (2017) on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3-CRC/C/GC/22 (16 November 2017), para. 27.

20   OHCHR, *Rights of the child and family reunification*, A/HRC/49/31 (2 March 2022), para. 87(b).

21   CMW and CRC Committees, Joint general comment No.4 (2017) and No.23 (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23 (16 November 2017), para. 28. See also, CRC, *A.M. v. Switzerland*, CRC/C/88/D/95/2019 (22 September 2021), para. 10(12); CRC, *O.M. v. Denmark*, CRC/C/94/D/145/2021 (19 September 2023), para. 8(7).

22   CMW/C/GC/4-CRC/C/GC/23, para. 29.

23   See, for example, CCPR, *Maalem et al. v. Republic of Uzbekistan*, CCPR/C/123/D/2371/2014 (17 July 2018), para. 11(7); CCPR, *Winata and Li v. Australia*, CCPR/C/72/D/930/2000 (26 July 2001), para. 7(3); CCPR, *Madafferi v. Australia*, CCPR/C/81/D/1011/2001 (26 July 2004), para. 9(8); CCPR, *D.T. v. Canada*, CCPR/C/117/D/2081/2011 (29 September 2016), para 7(10).

24   Ibid.

25   Preamble; arts 18, 27.

26   Arts 7, 8, 9, 10.

27   ICRMW, Article 7. See also OHCHR, Update to the 2012 Analytical Outcome Study on the normative standards in international human rights law in relation to older persons: Working paper prepared by the Office of the High Commissioner for Human Rights (March 2021).

28   K. Jastram and K. Newland, 'Family unity and refugee protection' in Feller et al (eds), *Refugee protection in international law* (CUP, 2003), p.566.

29   UDHR, art 2; ICCPR, art 2; ICESCR, art 2; CRC, art 2; ICRMW, art 7.

30   UDHR, art 16(2); ICCPR, art 23.

31   Arts 16, 11.

32 CCPR, General comment No.27 on Article 12, CCPR/C/21/Rev.1/Add.9 (1 November 1999), para. 14.

33 John Eekelaar and John Tobin, 'Article 3' in J Tobin (ed), *The UN Convention on the Rights of the Child: A commentary* (OUP, 2019), p.97.

34 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, E/CN.4/ 1985/4 (28 September 1984), annex pt I A, para. 11.

35 Rasika Ramburuth Jayasuriya, *Children, human rights and temporary labour migration* (Routledge, 2021), pp.4-5.

36 Art 3.

37 Arts 2, 6, 12.

38 CMW/C/GC/3-CRC/C/GC/22, para. 19; *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/11/7 (14 May 2009), para. 32.

39 CMW/C/GC/3-CRC/C/GC/22, para. 28; CRC/C/GC/14, para. 39.

40 General comment No. 7, CRC/C/GC/7/Rev.1 (20 September 2006), para. 18.

41 A/HRC/15/29 (5 July 2010), paras. 60, 66.

42 Jayasuriya, *Children, human rights and temporary labour migration*, pp.41, 195.

43 *Report on the Seventh Session*, CRC/C/34 (8 November 1994), para. 198.

44 A/HRC/49/31, para. 7.

45 Regional UN Network on Migration (UNNM) for Asia and the Pacific, *Asia-Pacific Migration Report 2024: Assessing Implementation of the Global Compact for Migration* (UN, 2024), p.23.

46 Art 10; See CRC, *Y.B. and N.S. v Belgium*, CRC/C/79/D/12/2017 (5 November 2018), para. 8.12.

47 CMW/C/GC/4-CRC/C/GC/23, para. 35.

48 Ibid, para. 37.

49 Resolution on the Rights of the child: realizing the rights of the child and family reunification, A/HRC/RES/49/20 (8 April 2022), para. 3.

50 Ibid, para. 21.

51 Ibid.

52 General recommendation No.26 on women migrant workers, CEDAW /C/2009/WP.1/R (5 December 2008), para. 26(e).

53 *Report on protection of the labour and human rights of migrant workers*, A/78/180 (14 July 2023), para. 68(j).

54 OHCHR, *Principles and guidelines on the human rights protection of migrants in vulnerable situations* (2018), p.37.

55 OHCHR, *Human rights in the context of return: Key legal standards and policy recommendations* (2025), p.4.

56 Ibid.

57 CMW/C/GC/4-CRC/C/GC/23, para. 29.

58 Ibid.

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In a lively backyard in Sydney, a Tongan family enjoys quality time together, laughing and sharing stories. The atmosphere reflects strong cultural traditions and family bonds. (South_agency)

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