



Graduate School of Development Studies

**The Right to Education for Migrant Children in
Thailand:**

**Liminal legality and the educational experience of
migrant children in Samut Sakhon**

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Kamonwan Petchot

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Members of the examining committee:

Dr ThanhDam Troung [Supervisor]

Dr Jeff Handmaker [Reader]

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Inquiries:

Postal address: Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

Location: Kortenaerkade 12
2518 AX The Hague
The Netherlands

Telephone: +31 70 426 0460

Fax: +31 70 426 0799

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Dedication

To all migrant children and their educational dream

And

To those who work to make the dream come true

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List of Acronyms

CRC - Convention on the Rights of the Child

FRY - Foundation for Rural Youth

GDP - Gross Domestic Product

GPP - Gross Provincial Product

ICESCR - International Covenant on Economic Social and Cultural Rights

ILO - International Labour Organization

ILO-IPEC - International Labour Organization/International Programme on the Elimination of Child Labour

IOM - International Organization for Migration

LPN - Labour Rights Promotion Network

MOE - Ministry of Education

MOI - Ministry of Interior

MOL - Ministry of Labour

MOU - Memorandum of Understanding

NSC - National Security Council

RBA - Rights-Based Approach

UDHR - Universal Declaration of Human Rights

UNESCO - United National Educational, Scientific and Cultural Organization

UNICEF - UN Children's Fund

Abstract

In the past decades, Thailand has experienced a large number of migrants from Myanmar who came to Thailand in search for better economic opportunities, creating a magnitude of migrant population residing in Thailand. Among these migrants, children make significant percentage in migration to Thailand since some children accompany their parents while some are migrant themselves who came to Thailand in search for jobs. In addition, migrant children include those who were born to migrant parents in Thailand. Due to the large number of migrant children, providing education for them became state concern both in response to international obligation that Thailand is a state party and for the attainment of national security. As a result, the government of Thailand has adopted a policy providing free and compulsory education for every child within its territory. However despite the effort of the government in providing education for migrant children, many of them are still unable to access the right they are entitled to.

This qualitative research examines the situation of right to education for migrant children in Samut Sakhon with emphasis on the role of schools as institutional duty bearers in fulfilling their legal obligation as stated in the government policy as well as in the Convention on the Right of the Child of which Thailand is a state party. Rights-based approach and the 4As scheme are used as a tool for analyzing the situation of education provision for migrant children. In addition, this research analyses the precarious status and its impact on migrant children's right to education. The concept of 'liminal legality' is used to conceptualize the in-between status of migrant children and families and how this liminal status shape the opportunity structure of migrant children in education by influencing household decision making. Liminal legality plays its role in not only migrant children's educational opportunity but also their incorporation.

Keywords

Migrant children, education, right-based approach, liminal legality

Chapter 1 Introduction

1.1 Introduction

In the last decade the migration flows from neighboring countries such as Myanmar, Laos, Cambodia and Vietnam to Thailand have formed a migrant community of a significant magnitude in Thailand who fuel the country's economic growth. According to a report by ILO, out of 36 million Thai labor forces in 2007, 5 percent or 1.8 million are migrants whose estimated contribution to Thai gross domestic product (GDP) is around 1.25 percent or \$2 billion. The number of migrants and range of occupation employed has been increasing (Martin 2007: xi-xii). Migrants are especially concentrated in cities such as Bangkok where there are employment opportunities, and in provincial towns such as Samut Sakhon which is an industrial cluster area. Children make significant percentage among those migrants who come to Thailand. According to the statistic provided by Ministry of Interior (MOI), there were 93,082 children younger than 15 out of 1.28 million migrant workers who were legally registered (Huguet and Punpuing 2005: 124). However this number is not complete since it excluded migrant children who did not have legal document and did not come to register with the ministry as well as exclude children born to migrants who have no legal document.

A recent report by the International Organization for Migration (IOM) had estimated that in 2008 there were 200,000 migrant children who were under 17 years of age in Thailand (IOM 2008: 184).

Migrant children can be divided into those who are migrant themselves who came to Thailand without their parents in search for work, those who accompany their family and children who were born to migrant parents in Thailand (Huguet and Punpuing 2005: 124, Tu 2006: 14). They are a heterogeneous group, differentiated by age, ethnicity, as well as the legal status and the patterns of mobility of their parents.

From the perspective of the Thai government, providing education for migrant children is both a response to international pressure to fulfill its obligations as well as a measure to ensure national security in the long term. Given the large number of the migrant population, there is a public concern that the lack of access to education can further marginalize migrant children and prevent assimilation. Cultural marginalization, in turn, can lead to economic marginalization and foster livelihood activities in sectors that pose a threat to national security such as drug trafficking or human trafficking for labour or sexual exploitation in the sex industry.

As a state party to the Convention on the Rights of the Child (CRC 1990), Thailand is obliged to respect, protect and fulfill the right to education for all children including migrant children. Article 28 ensures that all children are entitled to have rights to education. As a result of international obligation, Thai government has adopted various policies ensuring universal education for every child within its territory. The Education for All campaign, which was supported by the United National Educational, Scientific and Cultural Organization (UNESCO), has been adopted by Thailand since 1990. In 2004, the Education Provision for Disadvantaged Children was created by the Education Council. In addition, the School for All Cabinet Resolution of 2005 has provided universal access to education for all children in Thailand regardless of their nationality or legal status.

The gap between law and implementation can be seen through the number of migrant children who actually enroll to school, which is still very low. According to the Foundation for Rural Youth (FRY), a NGO which is working to promote migrant children's access to Thai public schools, Thailand has accepted less than 16% of registered migrant children into its education system. In some area such as Bangkok, the situation is particularly critical with less than 4% of migrant children enroll to schools (Hoyne 2011).

Studies around the issue of migrant children education pointed to three problematic levels that are interconnected, i.e. policy, school, and household level (Tu 2006:18). At the level of policy, although the 2005 Resolution has entitled migrant children with equal rights enjoyed by Thai students including the fund from government, in reality schools cannot receive budget from government for children who are without document; therefore the school will have to bear the extra burden of taking on migrant children who have no documents. This goes in contradiction with the obligation to provide education for all children, including migrant children. Many schools that have accepted migrant student cannot accept more due to lack of budget. Funds for Thai students have to be shared to cover this group, something which contributes to a negative attitude toward migrant students among some teachers and principals since they feel that the priority should be given to Thai student (Tu 2006: 61).

At the level of the school system, the legal consciousness among school administrators (as the way they perceive and interpret their obligation as stated by law) appears to be also a major issue. Amanda Bissex, chief of the child protection section with the UN Children's Fund (UNICEF) Thailand had pointed out "access to education for migrant children is impeded by understanding of the cabinet decision at the local level" (Irinnews 2009)". Tu's study (2006) found that there were misuse of the government budget by schools such as using the per head budget to spend for school expenditure while the budget was directly aimed for students to use in their educational cost (e.g. uniforms, books and shoes. Another study by International Labour Organization (ILO 2008) has also revealed the frequent misunderstanding of the 2005 Resolution which leads to different practices at provincial and local level and many times ended up in mismanagement of the budget. Nevertheless many schools might not receive the supporting budget per head of student as the Resolution had entitled to. The ILO (2008) also further suggested that clarity of national policy can contribute to concrete operation while at the same time provincial authorities must be aware of issues of discrimination, maltreatment and special vulnerabilities facing by migrant children regardless of their legal status in Thailand. Other impeding factors at school level are attitude of administrators and Thai parents towards migrant children, distance from school, and discrimination at school which can also lead to the variation on ability of schools as well as local government in providing education accessible for migrant children.

At household level, factors that affect migrant children's educational opportunity include attitude and practice of migrant parents toward education and Thai educational system, direct and indirect cost to schooling (expenses for fee, books, clothes are example of direct cost while opportunity cost of child labour is indirect cost), uncertainty future in Thailand, lack of information about Thai education, gender, duration of stay in Thailand and Thai language proficiency.

This study will explore the challenges faced by the RBA approach to migrants' children education when addressing the complexity of migrant children's lives. Rights are tied to state obligation and legal status is important for rights protection. Migrant children have different legal status as they are not yet fully citizen, some are even illegal migrants or undocumented while at the same time they are legally entitled to the rights to education. Their in-between legal status poses challenges for the state as duty bearer in providing education. Specifically, the framing of children's education as an issue of human security (reduced to the idea of cost and benefit of providing education) which is then tied to the issue of national security (viewing migrants as a potential threat) may generate fear and mutual suspicion between members of a community and further undermine attitudes towards the education migrant children. Legal statuses essentially affect the lives of migrant children in many ways including their community, sense of belonging, citizenship and access to social services especially education. Being in the grey area of the law shapes migrant children's experiences in a different ways from experiences of other groups of children.

1.2 Objectives

- To explore the challenges that migrant children face in the accessing education in Samut Sakhon, and their prospects for overcoming those challenges
- To explore how schools as institutional duty bearers are acting in accordance with their legal obligation as stated in the Education for All Cabinet Resolution as well as stated in the CRC

1.3 Research question

- **Main question: “What are the impacts of liminal legality on migrant children’s rights to education? And how schools as institutional duty bearer respond to Right-based approach to education for migrant children in accordance with the 2005 cabinet resolution?”**
- **Sub-questions:**
 1. What is the context of reception for migrants in Samut Sakhon?
 2. How is the situation of educational system for migrant children in regards to the RBA?
 3. What is the role of the schools as a duty bearer that must be supported by the government?
 4. In what way rights-based approach can be useful for migrant children?
 5. How the conditions of liminal legality affect migrant children and their families?

1.4 Methodology

This research adopted qualitative methodology. The data was collected through different methods including documentary research, semi-structured interview and observation.

1.4.1 Research site and rationale for choice of case studies

The selection of three schools (two public schools and one NGO learning center) in Samut Sakhon, Thailand as a field for research is purposive. Samut Sakhon is an economic area where their economic activities employ a large number of unskilled migrant workers. As a result of high dependency on migrant workers and large number of migrant population including children, the provincial policy towards migrants are quite progressive especially its education management for migrant children. Three schools were selected for field interview: (a) a NGO migrant school/learning center; (b) a public school with majority of Thai students; (c) a public school with majority of migrant students. The NGO migrant school/learning center is tied to the Public school with majority of Thai students whereas the public school with majority of migrant.

My main research focus is aiming at the public schools, their operation in relation to the RBA and the 2005 Cabinet Resolution, and challenges they face while learning centre was also an alternative choice for many migrant parents. The public school with majority Thai students was selected due to its special characteristic as the only school in the province where migrant students outnumbered Thai students and more than 30 percent of migrant children enrolling in public schools in Samut Sakhon were clustered in this one school. On the other hand, the public school with majority Thai students served as a good example of most public schools providing education for migrant children and therefore by exploring this school, we can identify conditions and challenges schools face. The study of two public schools will be useful in investigating the differences and commonalities in their operation, factors that create their different conditions and also how they cope with their challenges. At the same time, in order to comprehensively understand the situation of liminal legality and its impact on right to education for migrant children in Samut Sakhon, the NGO migrant school was also very important as they also acted as alternative service provider for migrant children's education in Samut Sakhon.

1.4.2 Methods: Semi-structured Interview

Semi-structured interview were used to generate the school practices and teacher's perception towards migrant students as well as migrant children's and their parents' attitude towards education. Apart from that, semi-structured interview were also used to gather information on migrants' community, sense of belonging as well as the effect of legal status on their lives and access to education.

The interview was based on a list of topics and questions with some space available to let the conversation flowed naturally and to let new or unexpected issues to come out. There were three different sets of questions for three different groups; educators or service providers (teachers, principal, Samut Sakhon Education Service Area officers and NGO workers), migrant parents and migrant children.

1.5 Structure of the paper

Following this introduction, Chapter 2 discusses the frame for implementing the right to education for migrant children by starting with explanation of Thai policy towards labour migration with the focus on children. Then the chapter explores the concept of liminal legality as a barrier to migrant children's right to education as well as explore the concept of rights-based approach to education and the 4As framework as a tool to assess migrant children education

Chapter 3 examines migrant children's experiences in education in Samut Sakhon. It starts by giving background of migrant workers and their children in Samut Sakhon, the context of reception as well as policy concern on children's education. This chapter then moves on to research findings and examine how liminal legality affects migrant children's experiences in education and their aspiration and assess the situation of migrant children's education in Samut Sakhon by using the 4As framework as a tool. The last chapter is conclusion.

Chapter 2 Implementing the Rights to Education for Migrants Children

“Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development.”

“Literacy unlocks the door to learning throughout life, is essential to development and health, and opens the way for democratic participation and active citizenship.”

Kofi Annan (Seventh secretary-general of the United Nations, 2001 Nobel Peace Prize.)

2.1 Introduction:

This chapter provides an overview of Thailand policy towards migrant labour, bringing into focus how and why the education of migrant children became an issue for the government. The chapter will use Cecelia Menjivar’s concept of ‘liminal legality’ to illustrate how migrants’ uncertain legal status can affect the experience of their children in the Thai education system as well as their educational aspiration, despite the government commitment to implement the CRC. Additionally the last part of this chapter will introduce the right-based approach to education and the 4As framework as a tool in assessing the situation of migrant children’s right to education.

2.2 Thai policy toward Labor Migration: Emerging Issues on the Right to Education for Migrant Children

2.2.1 Thai policy toward labour migration

The expansion of nearly all economic sectors in Thailand since 1980s has created a large demand for labour especially at the unskilled level. Unskilled works have been shunned by local Thai labors partly because of the extension of basic education to secondary school, thereby improving local labors to move into semi-skilled to skilled labor. In addition, the preference of Thais citizens to work in service sectors as well as a decline of birth rate in Thai population has resulted in acute domestic labor shortage especially in labor-intensive industries (Chantavanich 2007: 1). A combination of these features have turned Thailand into the destination for many international migrants from neighboring countries in Southeast Asian region especially from Myanmar, Cambodia, and Laos, who fill in the gap of unskilled labour shortage. The majority of unskilled labours who migrate to work in Thailand are reported to be migrants from Myanmar.

As a result of pressure from business sector which demands the permission to employ foreign workers to fill their labor shortage, since 1992 the Thai government have developed the first immigration policy for unskilled labor migrants, mostly in the fishing, construction, agricultural and some other industrial sectors. Paradoxically as Muntabhon (2005: 13) states, “national law with the greatest impact on migrant workers is not the labour laws themselves but the national immigration law.” Immigration policies governing migrant workers’ lives in Thailand were developed based on two major acts, the Immigration Act 1979 and the Foreign Employment Act 2008. The Immigration Act 1979 indicates unauthorized entry and/or breach of immigration law is illegal and may be subject of deportation and/or other form of penalty. However Section 17

provides the Ministry of Interior with discretion in exempting irregular migrants from being deported when they come out into registration. Employment of migrant workers is regulated by the Foreign Employment Act 2008 which requires that an alien must have a work permit to work in Thailand and he/she is allowed to work only in activities designated by law by relevant authority (the Ministry of Labour)” (Muntabhon 2005: 13) However, as Thailand has never allowed the employment of unskilled foreign workers in the country before, “its existing legal framework did not provide clauses for such initiatives so the government decided to use the cabinet resolution as the mechanism to create new legal framework. The cabinet resolution is an ad hoc type of policy formulation based on the belief that the employment of migrant workers would be a temporary event and the situation would change after some years (Chantavanich 2007: 1-2). This belief has proven to be incorrect since the situation has been prolonged and many sectors in Thai economy have been depending on migrant workers for more than three decades and there is no prospect for Thai labors to come back to these labor-intensive jobs.

There is a key linkage between immigration law, national security and national policy; the national policy reflecting national security shapes the application of the Immigration Act. Thus the various Cabinet decisions noted above offer leverage in applying the Act and interplay with the half-open door policy which was practiced in recent years towards migrant workers (Muntabhon 2005: 13).

Thai policies among immigration can be divided into 4 periods as followed.

First Period: Area-based, Non-Quota System (1992-1998)

In 1992, the first registration was introduced through a Cabinet Resolution which allowed registered migrant workers to work for some times before deported them back to their home countries. It was limited for just only Burmese workers in four border provinces and later it was expanded to 9 provinces but only 704 Burmese were registered (Chintayananda, Risser and Chantavanich 1997 cited in Chantavanich 2007: 2).

After that, the government ordered the Ministry of Interior (MOI) and the National Security Council (NSC) to set a framework for the prospective policy. There was also an agreement on the principle of migrant worker employment on necessity basis and an impact assessment from hiring migrant workers. Moreover, the business groups required more migrant workers to fill the gap therefore another registration was announced via a cabinet resolution in 1996 (Chalamwong 1996: 18). And it was expanding to cover Lao and Cambodian workers in 43 provinces for 2 years. There were 323,123 migrant workers coming for the registration, though only 239,652 were eligible to get work permits due to the fact that many migrants work in jobs that were not allowed by law and would therefore be subject to deportation. Later in 1997, the NSC was set up a committee and the policy makers reached an agreement to establish a central organization to supervise the migrant worker policy at the national level.

In late 1997 Thailand was hit by economic crisis which then led to high rate of unemployment. As a result the government pushed 300,000 migrant workers back to their countries to open up more jobs for Thai but only few Thai labors came to replace those migrants. A cabinet resolution, therefore, launched another registration of migrant workers in 54 provinces and a

health insurance was a compulsory. There were 90,911 workers out of 230,617 who came for registration that had work permits.

The Second Period: Area and Quota-Based System (1999-2000)

During 1999-2000, another two registrations for irregular workers were launched for Burmese, Lao, and Cambodian migrant workers. But the government limited numbers of the register by following a recommendation from the academics who suggested the number of 106,684 registers which comprised of fisheries and fishing related work, agriculture and husbandry, construction, mining, transportation and other minor labor work. But domestic work and manufacturing work were excluded because local Thais were available in both sectors. There were 99,974 applicants from 355,050 in 1999 and 99,656 applicants from 117,379 in 2000 received work permits of which the numbers were lower than the quota. It was because many workers were employed in sectors which were not allowed to hire migrant and some employer were unwilling bring workers to be registered due to the high cost of register so they preferred to pay the bribe to the police instead (Chantavanich 2007:6).

The Third Period: Amnesty Policy and the Implication of Pagan Declaration (2001-2003)

The past policy mainly focused on registration but it did not go successfully. In 2001 the new government changed the policy to open the registration for migrant workers in all occupations throughout the country without limiting any quotas. The assumption was to bring all underground irregular migrant workers to the light, so that the government can have an accurate number for future policy input. The register number was 568,000 which was the highest number. But in late 2002, another following renewal of registration was announced and the number has dropped to 409,339. At the same time, the government started to negotiate with government of migrant sending countries which consequently led to the Memorandum of Understanding (MOU) with Myanmar, Laos and Cambodia in relation to migrant worker legalization focusing on the government-to-government recruitment of migrant workers for specific period of employment in Thailand, conditions which motivate the workers after the completion of employment to return home, labor protection and dispute settlement, and measure against illegal employment (Chantavanich 2007: 7). Moreover, Pagan Declaration was signed in November 2003 after all of four governments had a conference on Economic Cooperation Strategy. This declaration stated the importance of partnership among the four countries to enhance economic growth, facilitate production, create employment and reduce income gaps, and advocate sustainable peace, stability and wealth in all the four countries (Ibid).

The Fourth Period: Second Amnesty Policy and A new management (2004-2005)

The Cabinet made a decision to invent a new system of registration in April 2004 by which migrant workers, their dependents, and employers are all required to register themselves.

Migrant workers and dependents were getting a thirteen –digit ID number for the purpose of better alien management which the total of showed up migrants was 1,284,920 at the second amnesty. Among this, 838,943 of them went through the full process of registration while another 103,082 persons are children under 15 years and 10,000 elderly persons. As for employers side, there were 248,746 employers that came to make a registration (Chantavanich

2007: 7). In March 2005, the government announced an extension of work permit for registered migrant workers to come for re-registration. However, as of June 2005, the number of re-registration decreased to only 343,777 persons.

The main administrative bodies involving in migrant management are Ministry of Interior (MOI) and Ministry of Labor (MOL). MOI manages the regularization of migrants through civil registration and issuing a thirteen-digit ID number which will grant migrants' temporary residence. Ministry of Interior has their prime concern about national security therefore they tend to support and come up with strict policies containing migrants from tiding migrants to employers whom they had registered with, to restriction of their freedom of movement. They lay policies on the belief that the need for migrant labor in Thailand is temporary thus, these migrant labors are 'working migrants' who would eventually leave and go back to their country of origin. MOL works in the issues of work permit which will allow migrant workers to legally work in Thailand. Their concern is on the demand for migrant labors to fill domestic labour shortage in the country and since they work directly with domestic labor market and business sectors, thus MOL has seen the importance and the potential that Thailand will still depend on migrant labourers in many sectors in the future. Therefore policies from MOL tend to be more open and grant some welfares and protection for migrant labourers such as healthcare, decent working conditions, and other regulation, though these policies are still limited to workers only and without any implication of protection for their children.

Most laws and policies regulating migrant population had been concerning about migrant workers, their work conditions, wage and welfare while there had been neither law nor policy concerning migrant children who reside in the country before.

2.2.2 The focus on Migrant Children

The concern on migrant children started in 2000 when international organization like ILO brought attention to the issue of child trafficking and exploitation of migrant child labour especially worst form of child labour in many industries such as fishery and seafood processing factories. At the same time, increasing number of migrant children has raised state concerns on their integration and potential threat to national security. Education is seen as the best solution since it is believed to be an important mean to bring children out of poverty and end child labour while education is also very important for their incorporation to Thai society thus help strengthening national security.

In addition, based on the norms of international treaties to which Thailand is a party (see appendix 1), the Ministry of Education (MOE) introduced the 'Education for All' policy which has an important goal to expand universal education to reach all children from every group in society including migrant children. The MOE first came up with policy providing educational opportunity for advantaged children of which migrant children are considered to be included. Then in 2005, with mandate from the Education for All Cabinet Resolution, MOE has been working in corporation with other related organization to provide education for migrant children without civil registration evidence or Thai nationality. There has been corporation with MOI in issuing civil status which will grant temporary residence for children to legally stay and fully enjoy the rights provided by state. However as there is no clear and coherent policy for migrant

labours in Thailand and each organization involving in migrant management have different interest as well as agenda thus there is high possibility of misunderstanding of existing policies at local level.

Paradoxically the Thai government provided rights to education which is an important mode of incorporation as well as belonging while at the same time, Thai immigration law ensure the legal production of prolonged precarious status and the way to permanent status as permanent resident or citizenship is almost impossible. As a result Thai immigration policy towards assimilation is very unclear and the migrant assimilation process relies greatly on how migrants manage to deal with their precarious status. This situation goes in line with the theory of segment assimilation where outcome of assimilation varied due to various factors from personal to inter-personal factors

2.3 Liminal Legality: A Barrier to Migrant Children's Right to Education?

2.3.1 The concept of liminal legality

Legal status has been recognized by scholars to be one of the most essential aspects of migrants' lives, given that immigration law govern and shape many vital spheres of their existence from their health risk, access to healthcare, vulnerability in the streets, ability of combat domestic violence, chances in labor market as well as wage level to their identity, self-recognition and more importantly incorporation in the receiving country (Menjívar 2006: 1000). The impact of legal status on migrants' lives has been stressed as very influential to the point that it creates different classes of immigrants with different rights and privileges contributing to variable experiences faced by migrants from different legal categories (Freeman 2004: 950).

In the study on “segmented assimilation”, Portes and Zhou (1993) point out the influence of different context of reception on migrants' lives which can consequently lead them to different directions (Menjívar 2006: 1002). Immigrants do not form homogeneous groups, they vary in resources (economic, social, and legal status) and conditions in destination areas, therefore their outcomes of incorporation in the host society are varied. Conditions in receiving country or context of reception includes personal factors like skills and extra personal factors such as immigration law and labor market which work together to shape opportunity structure for migrants in receiving country (Ibid.). Immigration law determine which legal categories the immigrants belong to (regular/irregular or documented/undocumented) as well as their status and participation in society which closely linked to their entitlement to resources (Ibid.). At the same time immigration law is also a constraining factor affecting migrants' opportunities in labor market by determining who can/cannot do certain kind of jobs and for how long, as in the case of migrant workers in Thailand which immigration law strictly govern their condition for working. Legal status is a factor which is as important as jobs available in labor market. Moreover immigration law and legal status also govern migrants' interaction with welfare and cultural regulation (Freeman 2004: 950).

Legal status is closely linked to the concept of “citizenship”, which forms the basis for access to rights of an individual and responsibility of the individual to state. Citizenship also shapes immigrants' membership in society and understanding of their place in it (Menjívar 2006: 1003). As described by a famous sociologist, George Simmel (1950) ‘Immigrant is a stranger, physically

present but not a member of a community” (Calavita 1998: 401). Thus the concept of immigrant and citizenship are closely related as they reproduce and reinforce each other’s conceptualization in a significant way that any change in one inevitably lead to change in another’s conceptualization. There are extensive studies around distinction between migrants as outsider and citizen as insider.

Legal status of migrants is traditionally divided into a dichotomy between regular and irregular or documented and undocumented. However as globalization has bring about changing pattern of movement and migration as well as variable migration policy in different context and time, the boundary of legal categories between the black area of illegality and the white area of legality has become blurred. The new category of immigration status emerges in the grey area between the two traditional categories. The newly emerged in-between status has been explored and called differently by different scholars, from ‘liminal legality’ (Menjivar 2006), ‘permanent temporariness’ (Bailey et al. 2002: 125), ‘legal nonexistence’ (Coutin 2002: 34, 47), to ‘precarious status’ and ‘less-than-full status’ (Goldring et al. 2009: 240). Based on the concept of ‘liminality’ and ‘legal-nonexistence’, Cecilia Menjivar develops the concept of ‘liminal legality’ to explain Central American immigrants’ uncertain status and its impact on their lives. Victor Turner’s concept of ‘liminality’ is used to conceptualize the becomingness-state or the transitional period between two relatively fixed or stable conditions (Turner 1967: 93). This perspective is highly relevant to the case of Burmese migrant workers in Thailand, as will be demonstrated in Chapter 3.

Susan B. Coutin’s concept of ‘legal nonexistence’ captures the experiences of undocumented Central Americans as being “physically present and socially active but lacking legal recognition.” Undocumented migrants living in legal nonexistence are under a state of subjugation which makes them “vulnerable to deportation, confinement to low wage jobs and denial of basic human needs, such as decent housing, education, food and healthcare” (Menjivar 2006: 1008). More importantly, Coutin stresses the negative impact of legal nonexistence as an “erasure of rights and personhood thus making violence against people in this condition not only legitimate but sometimes even required”. Without legal recognition from state, the rights of people who live under this situation become ambiguous and thus usually violated (Coutin, 2000 cited in Menjivar 2006: 1008).

Liminal legality is characterized by its ambiguity, as it is neither a regular nor irregular status but may have characteristic of both. It is neither uni-dimensional nor a linear process for it is not simply a changing phase from undocumented to documented status but the transition is never complete as their legal status is usually fluctuate. Migrants who come into registration and become regularized are granted with temporary resident permit and work permits which generally valid for no more than two years. Thus their status is in “temporary legality”. In addition they can return into irregularity through many channels; when their temporary status ended, when their work permits expired or when they violate the immigration law and regulation such as change employers without employers and authority’s permission or when migrant workers leave the province they had registered without authorized permission. In addition they also risk losing their legal status if their renewal of temporary residence permit or work permit is rejected which can be affected by the any changes in government policy or economic at the time.

As such, a migrant status in Thailand is a precarious status, constantly moving in and out of legality. After the registration, they become documented so they are no more living in the dark area of illegality or as Thai authority usually call 'underground' anymore. But at the same time they are not quite there with a stable legal status because Thai immigration law and policy make sure that their legality is temporary, thus making their status precarious and their being vulnerable to falling back into illegality if they want to extend their stay. Migrant families thus often live in suspicious and insecure feeling since any change in policy can further marginalize or lead them to deportation.

2.3.2 The implications of liminal legality on migrant children's access to education in Thailand

Migrant children in Thailand are a heterogeneous group, differentiated by age, ethnicity, as well as the legal status and the patterns of mobility of their parents. They can be divided into 3 groups: children who accompany their parents in migration to Thailand; children who are migrants themselves and children born to migrant parents while in Thailand (Huguet and Punpuing 2005: 124). However all three groups share the same character of living in liminal legal status due to their mode of entry and that of their parents of which result in their vulnerability and affect their experiences as well as their attitude towards education in a significant way.

For children who accompany or later follow their parents to Thailand as well as the group of children who are migrants themselves, their original legal status was determined by their unauthorized mode of entry, like majority of migrants from Myanmar before they were registered and obtain a temporary status. However for children born to migrant parents in the country, it is even more complicated as they cannot obtain citizenship of either Myanmar or Thailand. Though they were born to Burmese parents, Myanmar law requires that a child be registered within a month of birth. Then parents must use the birth certificate to apply for household certificate, requirement that Burmese migrant parents cannot fulfill while working in Thailand. At the same time, though Thai nationality can be obtained by birth for children born within Thai territory (*jus soli*) but migrants are in the groups of exceptions that does not apply to this principle according to Thai law (Yang 2007: 523). Therefore even when migrant children were born in Thailand, they cannot require for Thai citizenship. Without Thai or Burmese citizenship, these children are left "stateless"¹ or what Bhabha (2009) called "*Arendt's children*", a situation when "supposedly inalienable rights are unenforceable for individual who lack their government" (Bhabha 2007: 411). Though as Hannah Arendt argued migrant children, like all other children, have a right to have rights especially rights to education (Ibid.) and the government of Thailand has expanded these rights to cover migrant children. However due to the fact that rights are tied to state and state traditionally define their obligation and entitlement they grant through the relationship of the person to the law, migrant children's ambiguous legal status bring about difficulties and complication in realizing their rights.

Though migrant children are granted with temporary status for the purpose of their education, their future is still very uncertain. There is no clear implication of their legal status after they

¹ According to Article 1(1) of the Convention Relating to the Status of Stateless Persons, adopted in 28 Sep. 1954, statelessness refer to when a person is "not considered a national by any States under the operation of its law" (Bhabha 2009: 411).

complete secondary school level. However if they wish to continue their education in higher education (of which it is very hard to almost impossible considering their socio economic status and access to resources which was limited by the family's liminal status), there is only series of another temporary status awaits. On the other hand, after graduate from secondary level, migrant children have to apply through the same procedures and attain the temporary and precarious legal status like their parents. Due to their liminal legal status, job opportunities in the labor market for these children will still be labor jobs as restricted by immigration law. These jobs require no educational qualification or certificate but workers who have Thai language proficiency might have better job opportunity and be able to work in higher position with higher wage than labours who cannot communicate in Thai. Chance for Burmese labor migrants in naturalization process is very low since the process of granting citizenship involves great discretion by the decision of MOI. The law requires that aliens must be of "good behavior" which almost excludes migrants (as well as migrant children) who illegally entered the country (Yang 2007: 526). Since there is no clear policy for migrant children's future, migrant parents and their communities look at the rights to education provided to their children with suspicion. Moreover, a series of shift in immigration policies in the last decade exacerbate their insecure feeling about future in Thailand and significantly affect their attitude towards education.

Precarious status of migrant children as well as their family brings about ambiguity in entitlement to the rights to education of migrant children. State's decision to provide rights to education for migrant children is based on the concern on human security where the migrant children's education was reduced to the cost and benefit of providing education. Without education, migrant children are seen as potential threat to national security. As such, the policy towards providing education for migrant children, like other migration policy, is tied to the idea of national security in a significant way.

2.4 Rights-based approach to education and the 4As framework as a tool to assess migrant children education

2.4.1 Right-based approach to education

Migrant children are granted with rights to education by Thai national law of which the realization of their rights rely in the hand of the duty bearers. In this regard, state has been identified by international law as prime duty bearer to ensure the fulfillment of the right to education and address contextual factors which may impede the ability of a rights holder to enjoy their right to education. In addition, the CRC and other international law have proposed the right-based approach as an important method in realization of rights to education.

According to the rights-based approach, provision of education is considered as an obligation to be fulfilled rather than a service or act of benevolence (UNESCO 2011). Right based approach hold duty bearer accountable in fulfilling their responsibilities towards rights holder by clearly identifies who are the rights holder and duty bearer. In the case of rights to education, state is identified as prime duty bearer in delivering rights to education to children who are rights holders as stated in Article 4 of the International Covenant on Economic Social and Cultural Rights(ICESCR), "governments are obliged to take all appropriate legislative, administrative, and other measures to respect, protect, and fulfill an individual's right to education". At the same

time schools are duty bearers at local level while parents and guardians are also responsible in providing education for their children.

Figure 1: The reciprocal relationship between rights holders and duty bearers



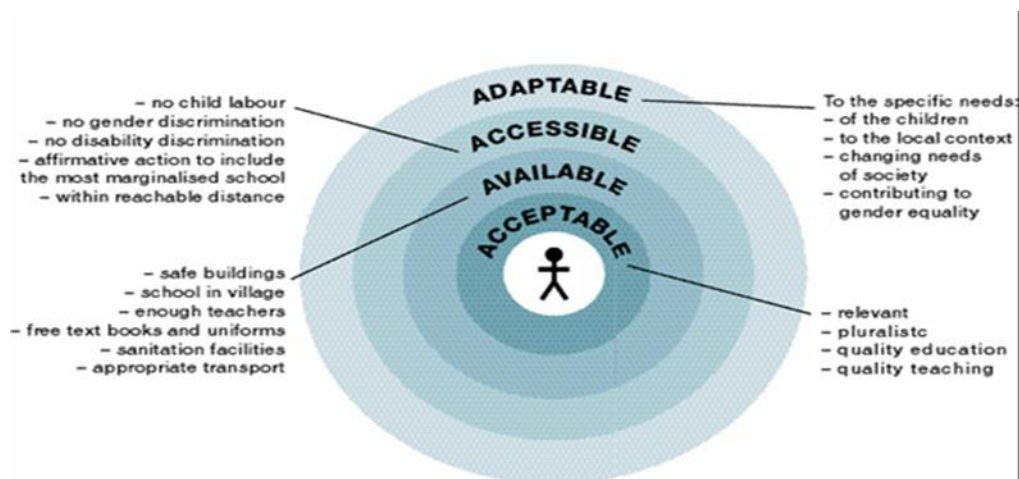
Source: <http://www.unfpa.org/rights/approaches.htm>

As a result of its international obligation, Thai state has put effort and measure to ensure the rights to education for all children in its territory including migrant children. In this study, the situation of migrant children with regard to their education will be assessed through rights-based approach with the 4 As framework as a tool.

2.4.2 The 4As framework

It is unarguable that education for children is an important issue. Thus, many countries in international community attempt to guarantee equal access to education, provide quality standards and eliminate educational discrimination. The concept of universal rights encourages international community to make this issue an obligation for all countries. The goal to support education for children can be summarized by using the following four-fold schema; 4 As framework, as developed by Katerina Tomaševki, the former UN Special Rapporteur on the right to education. Tomaševki considerably contributed to the understanding of the right to education by dividing the obligations relating to the right to education into 4 concepts: availability, accessibility, acceptability and adaptability.

Figure 2: Education rights circle diagram



4 As diagram © Action Aid

Source: <http://www.right-to-education.org/node/231>

This framework is best suited to identify state obligations relating to the right to education (Beco 2009: 11). They are three advantages in taking the 4As framework as starting point to establish right to education indicators. First, indicators based on this framework is the most closely linked to international human rights law, since the framework appears to be the best way to classify state obligations relating to the right to education. This not only facilitates the creation of a comprehensive and accurate set of right to education indicators but also helps to establish a clear general structure for these indicators. Second, the four-fold schema has proven to be effective in bridging disciplinary gaps, which is especially important considering that indicators stem from the development field. As a result, it has been possible to integrate development concerns into the 4 A's, which in turn allowed to take advantage of existing education indicators. Third, the 4 As framework emphasizes both the quantitative and qualitative aspects of the right to education, by measuring not only the right to education but also rights in education and rights through education (Ibid.).

Availability

The first element of four-fold schema is Availability. Regarding to various international treaties, such as the Universal Declaration of Human Rights (UDHR) and the Convention on the Rights of the Child (CRC), free and good quality primary schools for all children should be supported and funded by the government of each country. The government should also support parents' freedom to choose how their children are educated, whether in public-funded, private-funded schools, or home-based education (Tomasevski 2004: iii-iv).

Accessibility

Accessibility involves with the elimination of exclusion and discrimination against marginalized, disadvantaged and vulnerable children. However, discrimination and prejudice can move from one target to another. For example, children with HIV have become the new population which is excluded from accessible educational system. The principle of accessibility aims to reduce the gap between each group of population. (Tomasevski 2004: iv-v)

Acceptability

Acceptability relates to children's quality and relevance learning experiences. Good quality learning experiences create environment which enable children to improve themselves with their full capacity. The government should make the syllabus, the curriculum and instructions meet the need of children, not only when they are studying, but also after they finish education and enter the job market. To improve acceptability of education, the government should pay attention to other important sectors in education, especially teachers and educators. When teachers have no financial or quality support, children also have less chance to have proper education. (Tomasevski 2004: v-vi)

Adaptability

The final feature is Adaptability. The government should make education suitable and sensitive to various needs of each individual student. Regarding to human rights perspective, adaptability also intends to eliminate poverty and intolerance of individual differences. When adaptability includes children, especially ones from poorer background, into educational system, there is more chance to reduce child labour and child marriage. Adaptability is based on the key principles of child rights as adaptability stresses that education should respond and adapt to the best interest of the child (Tomasevski 2004: vi-vii).

2.5 Concluding remarks

This chapter argues that liminal legality brings about ambiguity in migrant's entitlement to education; their unstable temporary status of migrant children shapes their vulnerability, experiences and attitude toward education in Thailand. By affecting the attitude of both migrant families as well as state towards the educational entitlement of migrant children, liminal legality in turn affect a great deal in migrant's assimilation process.

Chapter 3 Samut Sakhon and migrant children's experiences in education

3.1 Introduction

This chapter brings into focus the experiences of migrant children in Thai education system. Following a discussion on the context of migration in Samut Sakhon province, the situations of migrants and their children, the chapter presents the research findings on experiences of children in three schools highlighting the difficulties they face and using the 4As framework as a tool to contrast with the cabinet resolution.

3.2 Migrant Labor in Samut Sakhon province²

Map 1: Map of Thailand highlighting Samut Sakhon



Source: http://commons.wikimedia.org/wiki/File:Thailand_location_map.svg

Map 2: Map of Samut Sakhon



Source: http://www.samutsakhon.go.th/data/data_index/index_1/index_1.htm

Samut Sakhon is one of the province experiencing rapid economic growth which has expanded the labor market in all three key sectors (fishery, industrial and agricultural sectors) with high revenue, the nature of work makes it unattractive for local Thais (see appendix2). A survey on demand for labor from entrepreneurs in Samut Sakhon in 2008 suggested that there was demand for 220,000 workers. However after 60 days of job vacancies with priority for Thai workers to apply first, only 0.05% of the vacancies were filled (Senate report 2008). The labor shortage situation in the domestic labor market paves the way for migrant labors from neighboring countries namely Myanmar, Laos and Cambodia to fill the gap. Half of the workers in these sectors are now migrants. Responding to the pressure from the private sector which needs sustainable labor supply, the Thai government had allowed for registration of undocumented migrants from Myanmar, Laos and Cambodia to temporarily work in the province since 1997. The law allows them to work only in fishery and fishery related factories, construction, farming and domestic services works.

² See detailed information in appendix 2

Samut Sakhon has the second highest number of registered migrant workers in Thailand, after Bangkok, with 168,313 registered migrants in 2011. Among them 1,218 are children under 15 years old who came to register as dependents of migrant workers. However this number cannot represent the actual number of migrants in Samut Sakhon since many of them did not come forth and register or did not complete the registration. From large demand for labor and their mobility, the actual number of migrants in Samut Sakhon when taking into account unregistered migrants is estimated to be 200,000 whereas the number of Thai local population is 543,302 (ILO and OEC 2006: 5, Tu 2006: 31).

Samut Sakhon is an attractive destination for migrant workers also due to relatively high wage level compared to other provinces³. However if the workers are undocumented, they often get lower wage than minimum wage level without any negotiating power. Even when the workers are legally documented, they still have very little negotiating power for their wage since the registration system tied them with their employers who they had registered with. Migrant workers who quit or left without employer's and authority's permission will immediately lose their work permits, a situation that leaves them with little room for wage negotiation⁴.

The majority of migrant workers in Samut Sakhon are from Myanmar⁵ of which among various ethnic groups that enter Thailand, Mon and Burman are majority. Their main entries to Thailand are via Karnchanaburi province which is a border to Mon state in Myanmar, and via Tak province which is border to Kayin state in Myanmar. Samut Sakhon also has old Mon-Thai communities of which these Mon had migrated to Thailand long time ago that they are now Thai citizen of Mon ethnic origin.⁶ Majority of migrant workers are concentrated in Muang Samut Sakhon district especially in Mahachai where seafood processing and fishery related factories are located. There are 21 migrant communities in Muang district alone varying in size from small communities of 1,000 people to large communities of 15,000 migrant population (Senate report 2008).

³ The minimum wage level in Samut Sakhon is 215 Baht per a day whereas other provinces with concentration of migrant workers such as Chiang Rai, Tak and Ranong the minimum wages are 166, 162 and 185 respectively.

⁴ Also sometimes wage level depends on type of jobs and how they pay it. For example in shrimp peeling factories as well as some other seafood processing factories, the wage is not paid on an hour or daily basis but rather paid per weight of shrimp they peeled. Migrant workers in seafood processing factories generally have monthly income of 2,000-3,000 Baht.

⁵ Out of 76,059 registered migrants in 2008, 75,614 (99.41%) are from Myanmar while 378 (0.5%) are from Laos and 67 (0.09%) from Cambodia.

⁶ Mon is an ethnic group from Myanmar who had long history of migration to Thailand due to ethnic conflict in Myanmar. Their first migration could date back to 16th Century. They have built communities in many part of Thailand but mostly they are concentrated in Central part of Thailand. Samut Sakhon is a home to one of the oldest Mon-Thai communities. Mon people in Samut Sakhon have been in Thailand for many generations that they are now Thai citizen of Mon ethnic minority. Many of them assimilated to Thai society through marriage. At the same time they still kept some of their ethnic identity and culture from language to traditions and customs.

Most of migrant workers in fishery related industry live in crowded room with 10 or more people to share the rent. The rent can varied from 4,000-5,000 Baht per a month which is relatively high compare to their average income of 2,000-3,000 Baht. As a result most of them have to share room, with friends or strangers they met in Thailand. Some of migrant workers live in rooms provided by their factories. However most are living in poor sanitary condition. Workers in agricultural sector such as orchards or orchid farm live in huts at their workplace.

3.3 Migrant children in Samut Sakhon and their education as a policy concern

As Samut Sakhon is experiencing rapid growth especially in fishery sector, the province has employed a large number of migrant workers to take over low-skilled labour jobs that are abandoned by local Thais. And since there is no prospect of Thai labors to return into these jobs, there is an expectation that Thailand especially Samut Sakhon province will continue to depend on migrant workers in many sectors especially fishery and fishery-related industries. Hence there have been some shifts in migration policy especially in relation to social welfare; education and healthcare.

Concerns for the education of migrant children are derived from two main perspectives. In compliance with the Convention on the Rights of the Child (CRC) to which Thailand is a party since 1992, a national law introduced in 2005 has granted universal access to education for **all** children in Thailand, and as a result, some provincial governments attempt to fulfill its obligation as a state party to CRC. From another perspective, there is also a concern among government officials that if these children were left without access to education they may become an uneducated underclass vulnerable to exploitation and illegal activities, such as drug trafficking and human trafficking for sexual exploitation, which can eventually affect national security and stability of the province (Caouette 2001: 92, 107).

According to the recent registration in 2011, there are 1,218 migrant children who are under 15 years of age came to register with the Ministry of Labour as dependents of migrant workers in Samut Sakhon. However this number does not reflect the reality of migrant children due to the short period of registration (15 June – 14 July 2011), inadequate publicity about government registration and complication in the registration system lead to small number of children who came to registered.

According to Labour Rights Promotion Network (LPN), an NGO working with migrant children in Samut Sakhon, every year there is estimated number of 2,000 children born to migrant parents in Samut Sakhon, given the number of some children who were sent home and some who accompany their family in search for work to other provinces, the estimated number of migrant children in Samut Sakhon will be at least 7,000- 10,000 (accumulative number from 2004-2011).

Though Samut Sakhon governor has put a lot of attention on education for migrant children, the implementation has also been very much pushed and supported by international organizations. Main organizations that have been working in promotion of education for migrant children in Samut Sakhon are International Labour Organization/International Programme on the Elimination of Child Labour (ILO-IPEC), IOM and Save the Children. Their works include their own projects and partnership with local organizations both governmental (i.e. Samut

Sakhon Educational Service Area) and non-governmental (i.e. local NGOs namely LPN, Rak Thai Foundation). However their main objectives in the educational intervention in Samut Sakhon vary from education as a key mechanism to bring children out of child labour (Serving the unserved, ILO) to education as a mean to protect children from trafficking as well as exploitation (Save the children UK) and education as a mean to enhance their livelihood and bring them out of poverty.

As a result of the convergence of objectives and interests from various parties at local, national and international level in providing educational opportunities for migrant children in Samut Sakhon, the educational situation of migrant children has improved. However there still remain some challenges facing by institutional duty bearer i.e. schools and barriers causing from migrant children's liminal status.

3.4 Migrant Children's experiences with Education: Tracking differences and Commonality

There are two main educational options for migrant children in the research area; formal (Thai public school) and informal (migrant learning center). This research focus on these two main educational options with special emphasis on their operation and challenges they face in educational provision for migrant children.

According to Samut Sakhon Education Service Area, in 2010 there are 1,953 migrant students enrolling to 68 public schools in Samut Sakhon. However migrant students only concentrated in very few schools. Out of 68 schools providing basic education varied from pre-primary to higher secondary, only 18 schools have more than 15 migrant students. There is a cluster of migrant students at Sirimongkol School of which it is the only school that migrant students outnumber Thai students. The concentration of migrant students in a few schools reflects the fact that despite the attempt at policy level to provide equal opportunity to education for migrant children, at micro level there still be some barriers or challenges that obstruct schools from providing equal access to education for all children.

As a result, to explore the situation of provision of education for migrant students in public school, I decided to conduct interviews in two public schools of which one has majority migrant students while the other has majority Thai students in order to compare their differences in school operation and challenges they face as well as comparing the situation of students in the two schools. Apart from this, one migrant school/learning center was selected for the field interview as migrant school is an educational option for many migrant families.

There are many actors in provision of education for migrant children varying from schools, educational authorities, NGOs, learning center to communities. The research collected the data from three main groups of stakeholders; teachers, students and parents/guardians with some additional interviews with education officials from Samut Sakhon Educational Service Area and NGO workers from LPN.

3.4.1 Public school with majority of migrant students/ Sirimongkol School

The first sample school is called “Wat Sirimongkol School” of which it provides education from pre-primary to primary level (grade 6). There are 604 students of which 591 are migrants whereas there are only 10 Thai students. Sirimongkol School has largest number of migrant students with more than 30% of migrant students enrolling in public schools in Samut Sakhon. It was also the only school that migrant students outnumber Thai students. Apart from the openness of school policy, another reason for a friendly context of reception for migrant children in this school is ethnic affinity from local community. The school is located in the old Mon-Thai community of which people are working in agricultural sector. These Mon-Thai community is quite open for the new comers. They still share some ethnic identity with the new comer Mons such as language, cultural practices and belief. While at the same time they are also open to people of other ethnic as Burman too.

The school receives funding from Ministry of Education (MOE). They applied for per head budget by sending total number of students and school registration documents without applying for the 13 digit numbers for their students as they leave this duty for secondary school. The rationale behind is at the minimum age for legally working. If they applied for civil registration for their students, it might contribute to the dropout of students before grade 9 since some migrants might just use school as a mean to get civil registration and legal status to stay in the country and then after they could get the 13 digits number, they might take their children out to work.

The main reason for the school popularity among migrant students is because of the flexible curriculum adjusted to the specific needs of migrant children and migrant friendly environment. The school uses the core curriculum as assigned by MOE but adjusted some details to fit migrant children learning needs such as providing one translator to help the teachers in primary classes so that new students can follow the class and gradually learn Thai language before they continue to higher classes. Apart from that, the school had activities that help to promote the understanding of Thai culture and value which can facilitate the children’s integration into Thai society such as Thai etiquette and courtesy and teach the children about the King who represent a very influential institution in Thai society. As a result these children don’t feel alienated and can develop their identity and their place in Thai society of which they are living in.

3.4.2 Public school with majority of Thai students/Srisuttaram School

‘Srisuttharam School’ is a big public school with 583 students, among whom 124 are migrants. The school provides education from pre-primary to lower secondary level (grade 9). The school is located in the same area and is functionally linked to the learning center in that migrant students in the NGO learning center are trained in ways to prepare them to join this public school. The students from the learning center who wish to continue their study in this school have to do the exam to identify whether which class fit their academic knowledge. Many migrant children’s ages are older than their academic year due to the fact that they join school at older age than academic standard. Some migrant students are already 15 years old while still studying in grade 2, making them older than most of their classmates.

The school has legal duty to provide education to all children regardless of their legal status. When children with no legal registration evidence come to enroll, the school registrar will issue a

personal record of students which include a photograph and parents' details. Also this school will apply for civil registration or the 13 digit ID numbers for their students by sending documents to MOI who is responsible in issuing the ID numbers. The ID numbers will allow for temporary residence of maximum 10 years for migrant children. This sample school reported that the process of issuing 13 digits ID number from MOI can be very slow. It can be up to 2 years or more before the students receive that 13 digits civil registration. The delayed procedure causes the budgetary challenge to school because in order to require for the per head budget from MOE, school needs to send the actual number of students attached with their 13 digits numbers. As a result, school could not receive per head budget for students who are waiting for the 13 digits numbers and school has to share budget from other students to take care of these students. Therefore, the bureaucratic difficulties in receiving funding for migrant students is acting in contradiction with school's legal duty to provide education for migrant children.

Apart from budgetary importance for school, the 13 digits number is also very important for migrant children because it is evidence of civil registration that grants them the right to temporarily stay residence in Thailand. As a result, school is also acting as a field of legal protection for migrant children without document.

There are two ways for migrant children without documents to get registered and have legal status namely through the registration as a dependent of migrant workers (see appendix 2) and registration with school.

However if migrant children apply through schools, they can get a longer temporary residence permit of up to 10 years while registering as dependent will grant them the same status as their parents and the same period of 2 years residence permit. Accordingly a number of migrant parents decided to send their children to public school to get legal status.

Migrant children without 13 digit ID numbers could face arrest and deportation since they could be charged for illegally entered the country. However if they are students of a public school (both children who have not apply for 13 digits number and those who were waiting for it), teachers can show to the police the evidence that they are students of their school and they are in the country for the purpose of education so that the police would let them out of custody. Some migrant parents sent their children to school just to get the legal status for fear of police harassment, arrest and deportation.

"I and most parents send our children to school because we are afraid that police could arrest our children. Now we are mostly registered at the new registration this year so police cannot arrest us anymore but for many of children who did not know about the registration or the employer did not take them to registration, they still have no documents. But if children come to school, police cannot arrest them."

Interview with A, a migrant parent, Srisuttaram School 2011

Aside from budgetary challenge that school faced due to the delay of the issuing of 13 digit numbers, school also faces problem from student dropout. Many students had to move with their parents when they change their jobs causing difficulties for them to continue their study as they might leave before they receive the 13 digit ID card while they cannot reapply for it again from the new school. Also public schools only open for enrolment twice a year, at the beginning

of new semesters while migrant families' pattern of mobility vary all years, migrant children might end up arriving in the new area in the middle of the semester, unable them to immediately continue their study in a new school or end up in repetitive classes many times which is bad for their academic development. At the same time school face technical difficulties in the application for budget and 13 digit ID numbers when students suddenly leave school due to their parents' frequent mobility.

Poverty and debt was the main factor that caused the dropout. Even though there was no school fee and there was subsidies for uniforms and textbooks but parents still have to pay some additional expenses such as transportation cost and daily allowance while the income of some migrant families is lower than they can afford their children's education. To send a child to school, every month parents have to spend at least 300 Baht for their lunch and at least 500 Baht for transportation while average monthly income of a worker in seafood processing factories is about 2,000 Baht. When added other necessary expenses such as housing and foods, the educational expenses can go beyond migrant families' affordability. Apart from low income, most migrant families are in debt bondage situation from their journey across the border and sometimes in job seeking.

"When I first arrived here, I joined school but my mother and brother alone cannot work to pay our debt so I left school to work in shrimp peeling factories...Then when we paid off all our debt I came back to study in school."

Interview with Min, a migrant student, Srisuttharam School 2011

"Many migrant parents want their children to study in school but they are in debt from the journey across border. Especially sometimes they didn't come together, the parents have to go back again to bring their children so they are really in debt. And children have to work to help their parents pay the debt."

Interview with Vava, a migrant student, Srisuttharam School 2011

Many children leave school to enter labor market when they reach the age of 9-10 years old by working in informal sectors or lie to employers about their real age since minimum age for employment in Thailand was 15. This is especially obvious when we look at the dropout rate of students in school. The educational level that have highest dropout is grade 2, from a total number of 46 students to only 10 students in grade 3.

3.4.3 NGO migrant school/ learning center

The migrant school was founded 5 years ago by LPN (Labour Rights Promotion Network). LPN is an NGO working in the field of migrant labours in Samut Sakhon set up in 2004. Its activities cover issues of labour rights, human trafficking, child labour, rights to healthcare and education of migrant children. It was solely funded by foreign donors. Its main donors are;

1. ILO/IPEC (International Labour Organization/International Programme on the Elimination of Child Labour)
2. UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP)

3. Oxfam

4. Save the Children UK

Currently there are 140 migrant students in the learning center varying from pre-primary to primary level (grade 2). Majority of the migrant children are Burman and Mon from Myanmar. The learning centre is linked to Srisuttaram School academically and also by location as it is located at the back of Srisuttaram School. Their classes aim to prepare migrant students to enter public school system, so they try to create the environment like public school from academic setting to school rules and regulation such as requiring students to wear uniform, singing national anthem and pray every morning and using the same curriculum and textbooks. However though the learning center is using the same curriculum as public school, they are more flexible and sensitive to migrant children's situation and specific needs. The main language of instruction is Thai with some additional use of Burman and Mon languages so that the new students, who cannot speak nor understand Thai well, can follow the lesson and don't feel isolated from classmates.

Sending children to the learning center has more additional cost than public school due to the fact that, though the centre does not require school fee, parents still have to cover transportation cost, lunch, uniforms, textbook and stationeries. However parents still prefer to send their children to the learning center before they enter Thai public school in order to mentally and academically prepare their children to formal school system because the Thai public school have no preparatory class for migrant students. Apart from that, the learning center has a more flexible acceptance period for new students which can better suit the pattern of migrant families' mobility. They accept new students all year while public school only accepts new students twice a year at the beginning of new semester.

Though many people call it a migrant school, the law does not recognize its status as a school but only a learning centre. Therefore they do not receive support from government despite their act as duty bearer in providing education for migrant children. Lack of support from government poses main challenge on their financial burden. The school does not require a school fee whereas all school expenses come from foreign donors (from running the learning center, administration cost to salary of the teachers) and the learning center subsequently ran out of fund after 5 years of external support.

With limited resource, the learning center faces difficulties in operating the center and maintain infrastructure. They have to cut many expenses. Free lunch is cancelled while textbooks and some stationery are scarce. Moreover lack of funding leads to another important challenge, the lack of teacher. When the donors' support ended, it inevitably affects the payment of teachers as well as the attractiveness for new teacher to fill the personnel shortage. In this case, it is clear that lack of support for duty bearer can affect the quality of education provided for children. As such problematic legal status of the learning centre is in tension with the legal obligation to provide education to migrant children.

Apart from financial difficulties, 'status of the teachers' in the centre is another issue that emerges from problematic status of the learning centre. Teachers in learning centre are considered to have lower status than teachers in formal schools. They also receive lower wage,

lower social status and lack of legal recognition of their status. As a result people who are qualified for the job would prefer to apply to formal schools.

3.5 Assessing migrant children's education in Samut Sakhon: Through the 4 As framework

Rights-based approach to education with its 4 As scheme is an effective approach in holding duty bearer accountable as it clearly identifies state as a prime duty bearer who has human rights obligations to make education available, accessible, acceptable and adaptable. As required by its international obligation, Thai government has made their efforts in providing education for all children in its territory through the RBA of which this paper will assess the education situation of migrant children in Samut Sakhon regarding the 4 As scheme as a tool.

Availability

The Thai government has made a progress in making education available by ensuring free and compulsory education. Compulsory education of 12 years and free education of 15 years are guaranteed by the constitution as well as national law to cover every child within its territory. Government also take measure in eliminating financial obstacles that might prevent children from school by granting financial assistance (e.g. the per head budget) for all children to cover educational cost. However, though migrant children are entitled with equal right to free and compulsory education as well as financial support, their entitlement to the subsidy is hindered by their problematic legal status and its long bureaucratic procedure in applying for a regular status.

Accessibility

Though at policy level, Thai government has provided some measures to prevent discrimination in order to make education accessible for all including migrant children, some discrimination still exist at local level. The fifteen years cost free schooling with some financial assistance for all is seen as a measure for prohibition of discrimination based on socio-economic status which migrant children can equally enjoy. Additionally, the 2005 policy states that all children regardless of their status and documentation can enrol to schools. Majority of migrant parents stated that it was not difficult for them to register their children in the two sample schools as well as the learning centre. Nevertheless some parents reported that some schools nearby their community refuse to accept their children, forcing their children to travel far from their community to come to the sample schools. The reason for those school to refuse migrant students as given to migrant parents were lack of sufficient school facilities and personal therefore unable to accept the new migrant students while the interview with educators (principle and teachers in sample schools) revealed that the reason for some schools to refuse the acceptance of migrant children are based on prejudices of Thai parents and educators as well as their unwilling to deal with the long and complex procedure in applying for the budget and ID numbers for migrant students. This finding also goes in line with the statistic from the Education Service Area of which from 140 schools dispersedly located in Samut Sakhon, the number of schools with more than 10 migrant students is only 21 schools reflecting the reality that although education is made available, it is still not fully accessible for all migrant children since there are schools available nearby their communities but they still lack of access due to discrimination thus have to travel afar in order to get education.

At the same time, migrant children are often clustered in only few schools due to the practice of parents, local educators and schools. Even in school where Thai students are majority, migrant students tend to be placed together in the same class. The practice of zoning or de facto segregation reflect the discrimination at practical level based on their problematic legal status, despite the government's effort to eliminate discrimination.

Acceptability

Acceptability refers to the focus on quality education. All three sample schools use the core curriculum as assigned by the MOE as well as taking the same national standard tests. However the difference lies in the language of instruction. Samut Sakhon Education Service Area and public schools promote the sole use of Thai language as language of instruction due to their concern on children's integration while learning centre use bilingual between Thai and Burman or Mon languages because their concern is on children's ability to learn. However, according to the interview of parents, children and some teachers, they agree that the use of bilingual in classes of young children is very useful for migrant students to understand and follow the lesson while the sole use of Thai language without preparation class can lead to difficulties in following the lesson which consequently bring about their feeling of isolation and negative sentiment towards school.

In addition the condition and rights of teacher is also important in providing quality education. As the learning centre is not recognized by law as a school, they do not receive funding from government leading to the low paid and unrecognized status of teachers. Teachers in learning centre receive low salary which is even more problematic when the centre ran out of funding from foreign donors. Also their unrecognized status leads to the denial of their rights (e.g. right to join labour union) and welfare as granted for teachers in schools that are recognized by law. Low salary and unrecognized status lead to a shortage of teachers in learning centre and consequently reduce the quality of education provided for migrant children.

Adaptability

Adaptability requires that schools respond to the need of individual child (Tomasevski, 2004: 7). Migrant children are living in specific conditions that educators and teachers need to acknowledge and be mindful of their conditions. Curriculum in Sirimingkol School (majority migrant students) and LPN learning centre are adjusted to the need of migrant students such as classes on etiquette and Thai value aiming at better understanding of Thai culture and integration into society. At the same time Sirisuttaram School (majority Thai students) as well as other public schools following the Education Service Area policy, are using the traditional approach in which school expect students to adapt to whatever form of education school provided. Also as most migrant children are living in multiple vulnerabilities due to their legal and socio-economic status, they incline to face rights violation (especially child labour, human trafficking and other forms of exploitation). While public schools did not pay much attention on human right in education, the learning centre is more sensitive to the issue and adjusted their classes to include human rights education.

In addition, adaptability includes the enhancement of human rights through education especially elimination of child labour and child marriage. As for migrant children in Samut Sakhon, their

main rights violation is in the use of child labour as a consequence of debt and poverty. Though Thai law requires minimum age for employment to be the same as school leaving age of 15 years old, in practice migrant children in Samut Sakhon still leave school to enter labour market before they reach the legal age. Though the Education For All policy help in reducing the number of very young child labour in Samut Sakhon as they are now in schools but for children older than 9 or 10 years old, they still continue to dropout from school to enter labour market by working in informal works or lie about their real age. In response to that, Sirimongkol School does not apply for the civil registration for their students but leave it as a burden of secondary school to prevent migrant students from using school as a mean to receive the ID number and leave school to work. However stronger measure is needed with inclusive cooperation of all involving organizations from MOE, MOI, MOL and the police force. As for the issue of gender disparity, this study found no gender discrimination in migrant children's access to education as the number of boys and girls in all schools are not significantly different. This is partly due to the labour market in the province which is open for both genders as jobs in fishery boats are mostly occupied by male workers while jobs in factories require female workers resulted in perception of girls as income generating as well as boys so girls do not face gender discrimination in their educational opportunity.

3.6 Impact of liminal legality on migrant children's experiences in Thai education system and their aspiration

Liminal legality of migrant children as well as their families mainly affects children's experiences in education system and their education aspiration. The combination of immigration law, socio economic status and their parents' preferences not only affect migrant children's educational lives, but also their assimilation in Thai society.

3.6.1 Migrants' children Education and Household Decision-making

A. Household composition, Mixed status family and Family separations

As mentioned earlier, immigration law plays vital roles in migrant children's experiences in Thai education system. By regulating their primary institution as migrant families, their composition, their separated character as well as their mixed status members, immigration law and legal status determine a large part of children's opportunities in Thai educational system.

Most migrant children are living in "mixed legal status" families where each family member has different places vis-à-vis immigration law (Fix and Zimmerman 1999:). Also as parents are main actors ensuing rights to education of their children therefore, their uncertain status inevitably affect their decision on migrant children's education.

The registered migrants are granted with temporary relief from deportation with multiple and confusing deadlines which are often not well publicized and the deadline varied in each case. As a result, migrant children often live in a mixed status families where parents and children hold different type of temporary legal status. Migrant children who apply for the ID number through school will be granted with type "0" ID number which will allow them for temporary residence

of no more than 10 years. As for registered parents, they are identified with the ID number type “00” which will only allow for 2 years of temporary residence and maximum 2 years work permit. However, they are not in a full status as immigration law produce migrants’ status of liminal legality by making the status uncertain and difficult for migrant labourers to maintain in the legality and make sure that at the end they will fall back into illegality through various channels in order to ensure their temporary stay as working migrants. Sometimes one family can comprise of members with all different types of status in relation to the law. For example, a migrant children might live in a family where one of the parents is registered while the other is unregistered or had been registered but already fell back into irregularity (therefore he/she was documented but just already slipped out of that legal protection). At the same time, migrant children may have siblings who are too young to join school and register through the school system thus still living with no legal status. Even the migrant children themselves, some have received the ID number through school, some are on the waiting list of which the process can be prolonged to years before they can receive it while some migrant children cannot even apply through their school since some primary school do not deal with the registration for ID number for their students but leave it as the burden of secondary school. In sum, migrant families often comprise of mixed status members of which all of them are living in the precarious situation thus inevitably affect migrant children’s experience in relation to schools and their educational aspiration.

Living in the grey area of precariousness, their mixed statuses lead to dubious attitude toward education which will consequently affect children’s opportunity. As parents and other guardian members are constantly move in-and-out of legality, there is fear of deportation of parents or guardians who fall out of the legality, which will consequently affect the children’s education. Some parents feel that contact with state authority like public school can lead to inquiry about their irregular status, therefore prefer to send their children to NGO learning centers which usually provide only classes of basic education till primary or lower secondary level and end their children’s education at basic level due to their fear of contact with government authorities. Also though children are granted with 10 years temporary status for the full enjoyment of their right to education but as children are dependent of parents or guardians, deportation of parents and guardians subsequently truncate migrant children’s education.

Additionally, as migrant parents do not see secure future in Thailand, they do not want their children to engage in education system for a long time due to lack of clear policy on status of their children after graduate from secondary school whether they will be placed in the same liminal legality as their parents and be restricted by law to some certain jobs as of their parents. This brings about doubt in value of education for migrant parents since they feel that even though their children stay in school longer, they are still tied to the same type of labor jobs that do not require high educational degree but only some level of Thai language literacy so that they can communicate. Moreover, frequent shifts in immigration law and regulation bring about uncertain feeling of parents and children about their future in Thailand as some shifts means their deportation back to country of origin. Consequently this dubious attitude towards education lead to a sway toward taking children out of schools when the parents weigh between possible gain from education in the future and income from child labours since they do not have secure feeling about immigration policy regarding their status and the openness of labor market for their children.

This is also partly due to migrant's experiences in their country of origin as one respondent recalled her mother telling her the situation of underemployment in Myanmar which lead to different attitudes towards value of education from that of meritocratic value that is highly evaluated in Thai society (interview with Vava, a migrant student from Srisuttaram School 2011). For some parents with their previous experiences in Myanmar, higher education does not necessarily translate into better paid job since the economy does not offer wide range of jobs and majority of people faced unemployment or underemployment. In this context, parent's year of education and length of time in Thailand also make a difference in their attitude towards the value of education since parents who have longer years of education and longer period of time in Thailand tend to value education more than just language literacy and tend to keep their children in schools for a longer time.

In addition, most migrant children in Thailand has had experiences of family separation, both from some family member who are still living back home in their country of origin and the separation caused by immigration law that restricted freedom of movement of migrants⁷ or deportation of some family members who lack regular legal status. Family separation can have important impact on migrant children's performances in school as well as mode of incorporation. Immigration law therefore dictate whether migrants will have access to education or not and how far. In addition it also shapes immigrants' expectation and goal.

B. Socio-economic status: poverty and child labour

One of the most important factors affecting migrant children's access to schools is their insecure financial situation. Poverty is major obstacle to migrant children's access to education. Even though education is provided by state free of charge, parents still need to pay additional direct and indirect cost of education such as transportation and daily allowance which can be considered unaffordable compare to low income of migrant families. As migrant families are bound by their liminal legality, their inability to find better paid jobs, no negotiating power for their wage level⁸, and frequent need to pay the high registration fee bring about economic difficulties in migrant families. Immigration law and their liminal status determines migrants' opportunity in the labor market by assigning the type of jobs they can do of which all are in labor sectors, tying migrants to low paid jobs and consequent poverty. In addition, immigration law also determines the access and type of resources that migrants are entitled to as well as determines whether they qualify as full participants of society or some of its most destitute members. Without other access to resources, children have to enter labour market and become child labour in order to support their families. Many families decide to take their children out of school before the full enjoyment of the 15 years free education because of opportunity cost of child labor that children can help supporting the family in paying debt from the journey or to remit to other family members back home.

⁷ Immigration law requires that migrants are restricted to stay in the area where they have registered and movement out of that area without authority permission is the violation of the law. As a result, many families are living in separated area where jobs are available with very limited chances to meet often.

⁸ As migrant labors are tied to their employers by the registration system, they lack of negotiating power on their wage and most of them receive lower wage than the minimum wage level and lower than Thai labors.

Most migrant families live in debt from their journey to Thailand since they have to pay large amount of money for brokers who facilitate their perilous journey across the borders and for some, they have to pay brokers for their job seeking. The financial burden keeps going on as migrants still have to save to bring their family members to unite with them in Thailand. Also as for many children who are migrant themselves who came into Thailand in search for jobs as a response of lack of well-paying jobs, unemployment, and underemployment in Myanmar, they have to remit the money back home to support their family members who lived off their remittance. As a result, this group of children usually do not have access to formal education since they have to work. Some families whom all members already migrate to stay together in Thailand still send money back to build houses and buy assets in case there is any change in Thai policy and they are pushed back to Myanmar. Uncertain feeling due to liminal status and fear of deportation lead to investment in their home country as an alternative for savings to secure their future. Migrant's socio-economic status is the factor that mainly dictate the access to education as it shape opportunity structure in education system. Socio economic status is exacerbated by uncertain legal status of which it molds migrants' access to financial resources (for example, education fund, and bank loan). Without access to financial resources, migrant children are pushed into child labours, a great barrier preventing children from the realization of rights to education. Marginal legal status also shapes their interpretation of opportunities in the market and also in school and education system.

C. Parents' preferences

Parents are important actors in ensuring rights to education and educational opportunity of migrant children by deciding types of education (formal, informal or non-formal education), schools and duration of time in school or level of education their children should receive. As a result, parents' attitude towards education; how they perceive the benefit of education as well as their goals play a significant role in educational opportunity of migrant children. Though migrant children are the right holders, the realization of their rights rely very much on their parents' decision as duty bearer. And as their parents as well as migrant children are living in the condition of precarious liminal status, it contributes a great deal to their experiences as well as attitudes towards importance of education. The opportunity structure of how parents reach out for education services provided by state for their children

Though all three groups of actors interviewed, from parents, children and educators, agreed on the positive gain migrant children can get from education however their views on the value of education varied. As mentioned earlier, migrant families feel insecure about their future in Thailand due to their precarious status and frequent shift in immigration policy. As a result, they have adjusted their educational aspiration to their conditions in lives. Their expectation from education is mainly aim at basic skill as basic math and language literacy for the purpose of communication at workplace and everyday life rather than aiming at attaining a degree certificate or higher educational level than their basic communication needs.

However there are also other factors affecting migrant parents' aim in their children's education which are years of parents' education and length of stay in Thailand. As parents who have had higher education or longer years in schools tend to see more value of education as well as parents who have been in Thailand for a longer time, they tend to keep their children in school

for a longer period since they have been exposed to Thai value, culture as well as educational system. As a result, these groups of parents have developed higher aim and expectation from education. They believe that, with higher education, their children will be able to find better jobs at skilled level of which will lead them out of poverty and to better future. However though they are optimistic about the value of education in alleviating poverty, some parents also expressed concerns on the frequent shifts policies and their uncertain future since their liminal status serve as a barrier preventing them from access to educational loan⁹ or bank loan while cost of higher education is relatively very high comparing their family income. Apart from the 2005 Cabinet Resolution that provides free basic education for 15 years which migrant children are included, there is no other social policy or measure to support the need of this group of vulnerable children.

In addition, schools and teachers seem to ignore situation of migrant children at home as well as ignore their specific need as migrants who have to live in the uncertain legality. Lack of consideration of the effect of status on their performance and educational objectives lead to the feeling of isolation or exclusion of children at schools which can consequently make the children stop wanting to come to schools.

Concluding remarks

Though education is made available to migrant children, lack of access is due their problematic legal status. The RBA is a very useful approach in guiding the provision of education, and the 4As framework gives detailed rights based-indicators; yet they still lack of attention on legal status as a ground for discrimination. Legal status is also very important as it can reinforce and exacerbate the negative impacts of other ground of discrimination (e.g. race, gender, and socio-economic status); as well problematic legality affects children experiences in education system and shapes their educational aspiration. Without addressing the problematic legal status of migrant children, the RBA alone cannot effectively lead to the full realization of right to education of migrant children.

Chapter 4: Conclusion

The aim of my research was to examine the situation of right to education of migrant children in Samut Sakhon. My emphasis were on how schools as institutional duty bearers are acting in

⁹ One of the prior conditions in requiring an education loan is Thai nationality, the condition which migrant children lack and resulted in exclusion of migrant children.

accordance with their legal obligation stated in the Education for All Cabinet Resolution as well as in the CRC. In addition this research also focused on challenges that migrant children face in accessing education in Samut Sakhon.

By applying the rights-based approach as a tool to assess the situation of migrant children's education in Samut Sakhon, this research found that Thai government had made an effort to ensure the Availability of education by granting free and compulsory education for every child within its territory and had tried to reduce the discrimination against migrant children by requiring that school accept all children regardless of their legal status. However, there still is some discrimination in the implementation which prevents migrant children from access to education. The discrimination mainly based on the problematic legal status of migrant children. According to the long bureaucratic procedure in applying for the budget for migrant children, many schools are left with financial difficulties of which it discourages most schools from accepting migrant students. This leads to the concentration of migrant children in a few schools. While there are schools available close to their community, but due to lack of Accessibility many children have to travel afar in order to get education.

In addition, insensitivity to migrant children's conditions and specific needs such as language barrier leads to challenges for schools in acting in accordance to the principle of Acceptability. Apart from that, the research found the learning centre with their unrecognized status (lack of status as school thus receive no support from government) faces financial problem which bring about low wage and low status of teachers. Subsequently it leads to lower quality of education provided for migrant children. As for Adaptability, the research found that there is a need for stronger measures from all relevant actors to combat the problem of early dropout and child labour.

The concept of liminal legality was used to conceptualize the problematic legal status of migrant children. The study found that liminal legality was the main factor preventing children from enjoying rights to education by shaping migrant children's experiences in education system as well as their education aspiration which can explain the low enrolment rate of migrant children in public schools and their early dropout. Liminal legality affect migrant's lives in fundamental way and shape the opportunity structure of migrant children in education. By affecting fundamental institution of migrant family like household composition, mixed status and family separation to socio-economic status and parent's preferences, liminal legal status can shape the household decision making in education for their children thus also shape the opportunity structure for migrant children. It does not only affect educational opportunity for migrant children but also significant in the integration into Thai society.

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Appendices

Appendix 1: International law and Thailand's obligations to the Education of Migrant's children

1. Main Treaty

Thailand has signed and ratified several international human rights treaties. As a signatory, Thailand has binding obligations to respect, protect, and fulfill human rights stipulated therein. One of the most important among these rights is the right to education which is a key to the enjoyment of other human rights, and individual economic development since education provides means to which everyone becomes aware of their rights and opportunities.

A) The Universal Declaration of Human Rights (1948)

The right to education has been recognized since 1948 in the **Universal Declaration of Human Rights (“UDHR”)**, the almost universally adopted international Bills of Rights. Thailand, together with other 47 United Nations member states, voted in favor of the UDHR since 1948. The UDHR outlines that elementary education must be free and compulsory. Article 26 states “*Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*” It also iterates that education shall be directed to “*the full development of the human personality*”, and “*the strengthening of respect for human rights and fundamental freedoms*”.

B) The International Covenant on Economic, Social and Cultural Rights (1966)

In 1966, the **International Covenant on Economic, Social and Cultural Rights (“ICESCR”)** characterizes the right to education as fundamental rights, and legally obliges state parties to achieve the full realization of the right. Thailand has ratified the Convention on 5th December 1999. According to Article 13, primary education shall be compulsory and free of charge while secondary and higher education shall be made available and equally accessible for all. Aim of education is emphasized in article 13 of the Covenant as “*directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.*” The Covenant also place special concern on respect for parents and legal guardian's liberty to choose for their children's school or type of education.

C) The Convention on the Rights of the Child (1989)

In addition, the **Convention on the Rights of the Child (“CRC”) of 1989** reaffirms the right of the child to education, and underlines the right to a specific quality of education. Most states in the world (except only Somalia and US) are parties the CRC. Therefore its obligation cover most states in the world. Thailand has ratified and become a party to the CRC on 26th April 1992. Article 2 of the CRC underscores the non-discriminatory basis for children's access to education regardless of “*race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status*”. Article 28 affirms the right of the child to education by defining that “*all state parties are obligated to establish educational systems and ensure access to them*” while Article 29 (1) “*...underlines the individual and subjective right to a specific quality of education.*”

In sum, international law unequivocally appreciates the right to education as basic human rights, and recognizes that the realization of the right remains the duty of states. ICESCR and CRC explicitly charged countries with the responsibility to respect, protect, and fulfill the right to education of all right holders. In carrying out this right-fulfilling obligation, states are encouraged to pass legislation and implement policies that ensure education for all in compliance with international law.

2. Rights to education under national law and policies

*A) The Constitution of the Kingdom of Thailand B.E.2550 (2007)*¹⁰

The constitution of Thailand establishes free basic education as a legal right for all children in Thailand. Chapter 3, part 8, section 49 of the constitution (On Rights and Liberties in Education) states that “A person shall enjoy an equal right to receive education for the duration of not less than twelve years which shall be provided by State thoroughly, up to the quality, and without charge.” The constitution also emphasizes state as prime duty-bearer, prime implementer and guarantor of right to education as it states “The education and training provided by professional or private organization, alternative education of the public, self-directed learning and lifelong learning shall get appropriate protection and promotion from State” (Chapter 3 Part 8 Section 49).

*B) National Education Act B.E. 2542 (1999) and the B.E. 2545 (2002) Amendment*¹¹

Current educational framework in Thailand is based on the 1999 Education Act and the 2002 Amendment. Chapter 1 section 6 of the Act articulates the aims of education as “to the full development of the Thai people in all aspects: physical and mental health; intellect; knowledge; morality; integrity; and desirable way of life so as to be able to live happily with other people.” Section 7 emphasizes on social integration as well as national identity building as it states that “*the learning process shall aim at inculcating sound awareness of politics; democratic system of government under a constitutional monarchy; respect of the rule of law, equality, and human dignity; pride in Thai identity; ability to protect public and national interests; promotion of religion, art, national culture, sports, local wisdom, Thai wisdom and universal knowledge*”. Section 8 accentuates importance of life long education for all and participation of all segments of society in the provision of education.

Chapter 2 of the National Education Act focuses on educational rights and duties. Section 10 stresses on universal rights to free education provided by state as it says “*all individuals shall have equal rights and opportunities to receive basic education provided by the State for the duration of at least 12 years. Such education, provided on a nationwide basis, shall be of quality and free of charge.*” Section 11 identifies parents or guardians as duty bearers, responsible for the education of children under their care from compulsory education to further education according to the families’ capabilities while

¹⁰ Unofficial translation of the Constitution of the Kingdom of Thailand B.E.2550 (2007) by Foreign Law Bureau, Office of the Council of State, retrieved on 23rd October 2011 from <http://www.asianlii.org/th/legis/const/2007/1.html#C03P08>

¹¹ National Education Act B.E. 2542 (1999, Amended 2002), Office of the National Education Commission, retrieved on 23rd October 2011 from <http://www.edthai.com/act/index.htm#2>

section 13 states government support for parents and guardians by providing free basic education and tax rebates or exemptions for educational expenditures.

C) The National Education Plan (2002-2016)¹²

The 15-year *National Education Plan* (2002-2016) was drafted by the *Office of Education Council* (OED) to replace the former *National Scheme of Education* as mandated by section 33 of the 1999 *National Education Act*. The Plan focuses on the integration of all aspects of the quality of life. It emphasises human-centred development and an integrated and holistic scheme of education, religion, art and culture. The National Education Plan is a major reform plan in Thai educational system. The National Education Plan serves as a framework for formulating the development plans pertaining to basic education, vocational education, higher education, and religion, art and culture. It also provides guidelines for formulating operational plans at the levels of educational service areas and educational institutions. It aims to promote continuous learning process together with participation of all segments in society which will subsequently lead to a knowledge-based economy and society (OEC 2004, p.17-18).

D) The 15 years free education policy¹³

In the statement of government policy of Prime Minister Abhisit Vejjajiva given on 29th December 2008, the 15 year free education policy was introduced as a measure to reduce cost of living and as a state support for parents' expenditure on their children's education by providing a quality education free of charge for 15 years, from pre-primary to upper-secondary level. In addition, government also provides subsidy for some educational expenses such as uniforms and books for student in public school called the per head budget. This policy works in line with the constitution of 2007 which previously guaranteed 12 years of free education, from pre-primary to lower secondary level. In addition the policy emphasizes on equal access and opportunities for all children which is in accordance with the Education for All policy of Ministry of Education.

E) The educational policy for the management of education for disadvantaged children (2004)

The educational provision for disadvantaged children was created in 2004 by the Education Council. Migrant children without status are among the six categories of disadvantaged children indicated in this policy¹⁴. It is aimed at providing disadvantaged children with education or vocational training, in order to create equal opportunities for them, which in turn will also benefit the country.

¹² <http://www.edthai.com/publication/edu2004/edu2004.pdf> Retrived on 23rd October 2011.

¹³ The statement of government policy of Prime Minister Abhisit Vejjajiva given on 29th December 2008 retrieved on 23rd October 2011 from http://www.onec.go.th/onec_administrator/uploaded/Category/plan/27-policy-apisit.pdf

¹⁴ In the context of education provision, "disadvantaged children" are defined as those under age of 18 who find themselves in difficult circumstance or less favorable situation thus need special assistance for a better life and wellbeing. Six categories of disadvantaged children indicated in this policy are 1) abandoned and neglected children; 2) children physically or sexually abused; 3) children with undesirable behavior; 4) children with physical, mental, emotional, intellectual, and learning deficiency; 5) socially deprived/poor children; 6) HIV/AIDS affected children

F) *The Education for All Cabinet Resolution of July 5th 2005*¹⁵

In July 2005, Thai cabinet approved the new registration to allow children without any evidence of civil registration or Thai nationality to access Thai education system. The cabinet resolution includes the following issues.

- 1) Extension of educational opportunity to all children with no civil registration or Thai nationality.
- 2) The same amount of unit cost per head budget as given to Thai students will be allocated to schools providing education for stateless and migrant children.
- 3) Setting up of the data base for people without legal registration evidences or Thai nationality
- 4) Provision of proper education for refugee children (ILO and OEC, 2008:12-13).

Appendix 2: Profile of Samut Sakhon

Samut Sakhon is a coastal city located in the lower central part of Thailand. It is on the gulf of Thailand, 36 kilometers away from Bangkok. The province is administratively divided into 3 districts: Muang Samut Sakhon, Kratum Ban and Ban Paew, occupying the total area of 872 square kilometers. Majority of local population are Thai with Chinese and Mon ethnic origins. Their migrations to Thailand dated back as far as 16th Century. The majority of this population now lives in semi-urban area of the city of Samut Sakhon.

Though Samut Sakhon is a relatively small province, it is one of the wealthiest and well economically advanced provinces in Thailand¹⁶ (ILO and OEC 2006: 5, Tu 2006: 31). It has high potential for economic enhancement in fishery, industrial and agricultural sectors. According to Office of the National Economic and Social Development Board, Samut Sakhon's economy has been growing continuously in the past decade. It has always been one of the top ten provinces with highest revenue. In 2008, its Gross Provincial Products (GPP) was 340,816 million Baht (approximately 11,091 million USD), standing at the sixth highest revenue of the country. In 2010 Samut Sakhon enjoyed the second highest Gross Provincial Product Per Capita with 692,525 Baht (approx. 22,329 USD) at current market price while the country average is 150,118 Baht (approx. 4,840 USD).¹⁷

The slogan for the province, *Fishing City, Factory Town, Agricultural Ground, Historic Site*, reflects its economic reality. With a costal line of 41 kilometers and rich agricultural land, Samut Sakhon has been able to build its economy mainly on fishery and fishery related industry. It has the biggest fishery businesses in the country, covering marine fishery, aquaculture farming and fishery

¹⁵ Cabinet Resolution of July 5th 2005 (in Thai) retrieved on 23rd October 2011 from <http://www.eppo.go.th/admin/cab/cab-2548-07-05.html#3>

¹⁶ Comparing its area of 872 square kilometers ranking as 74th largest out of 76 provinces in Thailand with the rank of province with 6th highest Gross Provincial Product in 2008 and remain in the top ten highest revenue provinces in the past decade.

¹⁷Source: Office of the National Economic and Social Development Board
http://www.nesdb.go.th/Portals/0/eco_datas/account/gpp/2010/Executive%20SummaryGPP2010_thai.pdf

processing industry. There are numerous fishing boats of various sizes, from small to large deep-sea boats sailing within Thai territorial water to international territorial water (Indonesia, Vietnam, and the coast of East and West Africa, from Somalia to Nigeria). It also has several major ports where everyday tons of marine and aquacultural products such as fish, shrimp, crab, seashells are unloaded and sent to trade at seafood markets and seafood processing factories for internal consumption and export.

The demand for labor in fishery is high and increasing, not only due to the growing business but also due to national labor shortage. Thai workers are not interested to work in fishery and fishery related industry because of the harsh working conditions. Many jobs in this sector are seasonal and involve labor-intensive activities in dirty and pungent environment with low wages relative to other sectors. Some workers who work for the fishing boats do not receive fixed wage but a share from the fish they catch, thus their income is unstable. More over the working hours are uncertain; work depends on the time of arrival of the fishing boats, which can be very early in the morning or late at night. Entrepreneurs have tried to fill the labor gap by drawing from the migrant labor pool, both legally and illegally.

In addition to the fishery sector, the province also serves as an industrial cluster and hub of factories for the country. Its location within vicinity of Bangkok allows Samut Sakhon to enjoy growth and expansion of economy from Bangkok. Together with its suitable infrastructure for factories, Samut Sakhon has become attractive destination for industrial investment. As a result, many factories were built in the area from textile, plastic, metal to furniture factories. In 2009, there were 4,711 factories in Samut Sakhon with registered capital of 420,740,244,451 Baht¹⁸. Industrial investment in Samut Sakhon has been growing continuously in the past decades resulting in large demand for labour without sufficient local supply. Thai workers with a high level of education are unwilling to work in labour intensive industrial jobs which pay less than the service sector.

In addition Samut Sakhon also has a strong agricultural sector due to its location at the Tha Chin River Basin together with frequent rain from the Southwest monsoon resulting in fertile farmland and suitable weather for agriculture. Samut Sakhon agricultural products include rice, vegetables, fruits and orchids which are produced for both domestic consumption and exportation. Like other two sectors above, agricultural sector of Samut Sakhon also faces labor shortage because Thai workers are not willing to work in hard condition, where they are exposed to the sun and risk of pesticide and chemicals while the wage is even lower than industrial and service sector. As Chantavanich (2007) points out, the extension of education from basic to secondary school and higher levels has produced a generation of Thai who are not interested in unskilled labour opportunities anymore (Chantavanich 2007: 1). They move away from jobs that are considered as 3Ds; dirty, dangerous and demeaning with labor intensive and low paid to service sectors of which they can earn higher wage (ILO and OEC 2006, Tu 2006).

Appendix 3: Migrant children and the registration as dependent

¹⁸ Source: http://skno.moph.go.th/WebInformayion/P_data5.html

Migrant children can register as dependents of migrant workers. In April 26, 2011 the government had adopted a Cabinet Resolution to allow for a registration of Burmese, Laos and Cambodian migrant workers who had illegally entered Thailand, who had no work permit or those whom their work permit had expired and had not been renewed. The 2011 registration would allow for their temporary stay and work permit until July, 14th 2012. Families including children of these migrants can register as dependents of migrant workers but children under 15 years of age cannot apply for a work permit. After the registration the migrant workers will receive the 13 digits numbers that start with number 00 which identify their legal status as illegally entered Thailand but got an amnesty for temporary stay and work while dependents including children will receive 13 digit numbers of the same status but cannot apply for work permit. The 13 digits numbers was very important as it identified a person's legal status in Thailand and it was also important in healthcare service and education for children. Both migrant workers and their dependents cannot leave the province of which they had registered for work. However, due to the fact that the duration of time for registration of dependents was only one month (15 June – 14 July 2011) and to the fact that government publicity about the registration and its details was limited, only small numbers of children were able to register. Moreover, in registration, migrants and their dependent need to have employers and registration fee, thus some employers who did not want to pay the fee did not take their migrant employees to registration. According to Department of Employment, Ministry of Labour there was 1,218 migrant children who came for the registration.

