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Legislative Intent: The Convention on the Rights of the Child: Is Thailand to Blame?

By Jamie Collins

The recent situation of Rohingya refugees in Thailand creates an opportunity to criticize Thai policy when it comes to the rights of children. The policies the Thai government has adopted regarding the refugee children crossing the country's border appear to conflict with the general aspects of the Convention on the Rights of the Child ("CRC") when it comes to child safety and a child's right to a home country and a nationality. Thailand is vilified for circumventing portions of the CRC, yet many other countries do the same; the United States has not ratified the CRC at all. However, a comparison of Thailand and the United States' reasoning demonstrates that each country has its own motivation for responding to the CRC the way they did, and a look at later legislation shows that a country does not need to comply with the CRC in its entirety to advocate for children's rights and best interests.

The CRC and Thailand

The United Nations' furthest reaching treaty, the CRC, took effect on September 7, 1990. Since then, more countries have ratified this convention than any other human rights treaty in history. Currently, 192 countries are parties to the CRC, meaning the country acknowledges the treaty via accession, signature, or ratification. These three methods of acknowledgment signify different levels of action. Accession shows that the party accepts the opportunity to become a party to a treaty already negotiated by other states; signature does not establish consent to be bound by the treaty, but does express willingness to continue the treaty-making process; ratification indicates consent to be bound to a treaty. From these 192 countries acknowledging the treaty in some way, only three parties either did not sign or ratify the CRC. Both the United States and Somalia have signed the CRC but not ratified it; as of November 2014, South Sudan has passed a law to ratify the CRC, but the president has yet to sign the law.

Although Thailand is a signatory to the CRC, it became one with a reservation. Article 22, Section 1 of the CRC states, "State Parties shall take measures to ensure that refugee children receive protection and assistance in the enjoyment of their rights and in other human rights to which the said States are Parties." Additionally, Article 22, Section 2 mandates that nations cooperate with United Nations organizations to aid refugee children in reunifying with their families. A reservation is a declaration made by a state that enables it to accept a treaty as a whole with the possibility not to apply certain provisions. Thailand's reservation provided that it would deal with child refugees according to its own policies and domestic laws.

The CRC imposes obligations on its signatories to respect and enforce all of the methods that help carry out the CRC. In doing so, the countries must respect the rights of children and establish a border for all children on their territory. To further these goals, the CRC has the Committee of the Children's Rights, which monitors the implementation

of the CRC by all States' Parties. All States' Parties must submit periodic reports to the Committee regarding their efforts to implement the treaty, as well as the current situation of children in their country.

By the 2012 Committee Report, Thailand had successfully set up legislation and state structures for the protection of children and their rights; however, the Committee noted several concerns. Among other criticisms, the report detailed that Thailand needed to improve by: (1) protecting the rights of asylum-seeking and refugee children; (2) ensuring full and effective implementation of national legislation; (3) ensuring access to the basic services for the most vulnerable, including minority children, refugees, asylum seekers, migrant children, etc.; and (4) ensuring equality between regions and groups in Thailand. Even with these shortcomings, it is important to note that Thailand was the first Asian country to ratify the CRC.

The United States and Others

Conversely, the United States is one of three countries that have yet to ratify the CRC. South Sudan is the most recent addition to the United Nations and has yet to sign or ratify the CRC, while Somalia has no functioning national government and is simply unable to ratify at this time. The United States, however, had a significant hand in writing the provisions of the CRC.

The United States has not ratified the CRC mainly due to the provisions concerning the death penalty. Until a recent U.S. Supreme Court decision holding the death penalty for minors unconstitutional, the United States allowed minors to receive capital punishment sentences in violation of the CRC. Without concerns regarding the death penalty, the debate has turned to corporal punishment and the limits the CRC imposes on parental rights to discipline. The CRC has passed a number of precedents without the text making it to the legislature, and the topic is one of great debate. President Obama publicly announced his embarrassment at the United States' failure to ratify the CRC, but some sections of the public are still pushing against ratification.

While it is easy to vilify Thailand's reservation and the United States' non-ratification, a glance at The United Nations Treaty Collection's entry on the CRC shows the reality of the situation. Sixty countries ratified the CRC with at least one reservation to the articles of the treaty, and nine more had objections or additions to those reservations. While many countries created legislation specifically tailored to the language in the CRC, many more already had legislation substantially similar and sometimes conflicting that they needed to work around. Such reservations are therefore natural in a broadly ratified treaty like the CRC.

The United States and Thai Legislation

Despite available criticism regarding both countries' approach to the CRC, the United States and Thailand both have positive legislation in place that promotes the welfare and protection of children.

In 2003, the United States enacted the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 ("PROTECT Act"), dedicating resources against those who victimize youth. The purpose of the PROTECT Act is the comprehensive strengthening of law enforcement's ability to prevent, investigate, prosecute, and punish violent crimes committed against children. The PROTECT Act

focused on three problems and established solutions to each. The first problem was the inadequate tools available to locate missing children and prosecute offenders. The PROTECT Act addressed this by implementing the AMBER Alert Program and providing new investigative tools. The AMBER Alert allows national efforts in the search for missing children, combined with law enforcement's ability to use all existing legal tools to investigate and prosecute the full range of serious sexual crimes against children.

The second problem was the inability to ensure adequate punishment for those committing crimes against children. The PROTECT Act responded by increasing penalties for non-family member abduction, sexual exploitation, and child pornography. In addition, the PROTECT Act implemented a "two strikes" provision that requires life imprisonment for offenders who commit two serious sexual abuse offenses against a child.

The final problem was a related concern that legal obstacles made prosecuting child pornography difficult. Offenders were able to claim reasonable doubt that the images were those of real children and not computer-generated images. The PROTECT Act introduced strengthened prohibitions on virtual child pornography that prohibits any obscene materials that depicts children. In addition, the PROTECT Act provides tougher penalties and encourages greater reporting of suspected child pornography found by internet service providers.

The same year the United States enacted the PROTECT Act, Thailand implemented its own means of protecting children from crime. The Child Protection Act of 2003 is a revision on previous laws protecting Thai children. In Chapter One, the Child Protection Act created a National Child Protection Committee made up of a variety of chairpersons and government officials. In addition, the Child Protection Act mandates no less than one third of the members must be women. This committee has the power to make recommendations and coordinate with other government agencies to promote child welfare as well as inspect nurseries, welfare centers, development centers, etc. and remedy an issues found within.

In Chapter Two, the Child Protection Act elaborates on the appropriate treatment of the Child, including the overarching theory that the best interests of the child are of primary importance. The Child Protection Act confirms that guardians must develop a child under their guardianship in manners appropriate to legal tradition, custom, and culture, but must safeguard the child against potentially harmful circumstances. Further, the Child Protection Act generally forbids abandonment, neglect, and withholding from the child things that are necessary for the sustaining of life. Specifically, guardians may not torture the child's body or mind, force or induce the child to adopt behavior that is inappropriate or the cause of wrongdoing, employ the child, exploit the child commercially or pornographically, or advertise the child for sale. The Child Protection Act also details throughout several more chapters the duties of public workers devoted to the care of children and, in Chapter Nine, the penalties for violating the Child Protection Act.

Legislation Reveals Motivation

Though developed and enacted almost simultaneously, the United States' PROTECT Act and Thailand's Child Protection Act focus attention on very different issues. While the PROTECT Act strengthens law enforcement capabilities in child violence and sexual exploitation matters, the Child Protection Act expends the majority of its power putting governmental institutions in place and under careful watch. The focus of these two acts highlights the values and focus of the two countries and speaks to the attitude with which they approached the CRC as a whole.

The United States focuses more on external dangers to children, including how to effectively investigate and punish in such instances. The PROTECT Act leaves out any discussion of children who do not fit within the traditional victim mold (such as those convicted of crimes) and directs no attention to matters of the home and how to raise a child (speaking to the controversy of corporal punishment). Meanwhile, Thailand's Child Protection Act goes so far as to reserve guardians the right to raise the child as is culturally normal. This phrase speaks directly to the issues with child refugee treatment that sparked scrutiny of Thai policy.

Thailand consistently reserves the ability to act in accordance with custom and culture, rather than an imposed international norm, while the United States consistently values police power to protect the idyllic image of child safety. In both cases, the countries' legislation mirrors their treatment of the CRC, but helps explain their actions in adopting or declining to adopt certain provisions contained within the CRC.

The CRC Today

The CRC celebrates its twenty-fifth year during 2014, and it has led to a variety of positive impacts, such as law reform, improvements on the access and quality of programs and services for children, strengthened national institutions for children's rights, and more effective national mechanisms for children's rights. While many of the countries ratified the treaty, as Slezak, Roussos, and Ramadurai state, "even strong legal mechanisms require international cooperation and follow-through within each country in order to have a true impact." All signing and ratifying countries need to remember the importance of that impact.

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