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DISSERTATION

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under the United Nations Convention on the Rights of the Child

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## **Abstract**

Thailand is party to the United Nations Convention on the Rights of the Child (CRC). Thailand therefore has to enact and integrate child rights protection to be more consistent with the Convention. However, the human rights situation in Thai society including the child rights situation need to be strengthened in terms of protection and development. The child rights violations have directly and indirectly impacted childhoods. These issues need to be addressed and they must find the solution or emergency assistance for children in Thailand. Thus, the Shelters for Children and Families which are a government agencies unit of Thailand will be reviewed with the implementation of their operations under the Convention on the Rights of the Child. It is significant to study the factors that make the implementation more difficult in developing child protections and a welfare system in Thailand, especially in emergency cases. This study will review the operation of the Shelters for Children and Families in Thailand, the Convention on the Rights of the Child to identify the rights that children can enjoy and which rights that the Shelters can be extended to fulfil the gaps in child protection.

The role and duty of the Shelters for Children and Families support the guidelines of the Convention on the Rights of the Child particularly, article 3, 19 and 20 to assist in emergency cases and comprehensively work as a system for the best interest of the child. While the Shelters for Children and Families could be extended to be more conducive in integrating the principle related to article 22 and 30. In addition, the SWOT analysis of the Shelters for Children and Families present a strong network, but lack human resources and have limited public relations. In addition, the challenges of the child protection system in Thailand are more than that, the domestic law are rarely consistent with the Convention on the Rights of the Child, and enforcement is weak. Culture and values of Thai society has huge impact on child rights because the family values and privacy are barriers for children to enjoy their rights. Thus, the enforcement and consistency of domestic laws should be reviewed by the government to find the best solution for child protections, and the government needs to pay more attention and offer financial support for the public relations about child protections and social services.

**Abbreviations**

ASEAN	the Association of Southeast Asia Nations
CSG	Child Support Grant
CRC	the Convention on the Rights of the Child
GMS	the Greater Mekong Sub-region
ILO	International Labour Organization
MSDHS	Ministry of Social Development and Human Security
SWOT	Strengths, Weaknesses, Opportunities, Threats
UN	United Nations
UNHCR	United Nations High Commissioner of Human Rights
UNICEF	United Nations Children's Fund
UPR	United Nations' Universal Periodic Review
USA	United States of America

## Introduction

Thailand has developed in promotion and protection of human rights in a progressive way, but nowadays, human rights violations in the country still appear and tend to be more violent than ever. Human rights violation situations in Thai society including child rights are result of economic and social changes which weaken Thai family institutions in terms child care. The child rights violations cause the issues of child abuse, drug abuse, orphans, street children, child labor, child prostitutes, and juvenile delinquency.<sup>1</sup> These issues need to be addressed and we must find the solution or emergency assistance for children in Thailand. There are number of issues of concerning regarding children in Thailand especially, child abuse and violence in families (domestic violence). The annual report in 2018 from Social Assistance Center Hotline 1300 Ministry of Social Development and Human Security during October to September, outlined that there are children who were abused by family violence or external family violence 1,222 times.<sup>2</sup> On average, there are three child abuse cases every day. In this way, the Shelters for Children and Families were established to protect child rights. The Shelters for Children and Families are government agencies under the Department of Children and Youth, Ministry of Social Development and Human Security, Thailand. At present, there are 77 shelters located in 77 provinces in Thailand. The Shelters have the authority to assist in emergency cases and comprehensively work as a system under the Child Protection Act, 2003 (B.E. 2546).

The role and duties of the Shelters for Children and Families support child welfare to be fully integrated and comply with the United Nations Convention on the Rights of the Child (CRC). Thailand has been a party to the Convention on the Rights of the Child since 1992 and acceded to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts, and Optional Protocol to the CRC on a Communications Procedure.<sup>3</sup> Since then, Thailand has followed various commitments according to the

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<sup>1</sup> Duanghathai Buranajaroenkij, and Paksiri Aenihon, 'Human Rights with the Current Society' (Thai), (2017), (2), (1), Journal of MCU Buddhapanya Review,13.

<sup>2</sup> Statistic 1300 <<https://1300thailand.m-society.go.th/records>> accessed 29 June 2019.

<sup>3</sup> United Nations Treaties Collection <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en)> accessed 1 July 2019.

provisions of the CRC, Thailand has acted and is amending existing child rights protections to be more consistent with the Convention. The operation of the Shelters for Children and Families have both implemented and addressed gaps to the CRC. It is significant to study the factors that make the implementation more difficult in developing child protections and welfare systems in Thailand, especially in emergency cases. Therefore, this study will review the operation of Shelters for Children and Families in Thailand with CRC to identify the rights that children can enjoy and which rights they cannot enjoy. The study will be divided into three chapters. The first chapter is the child rights situation in Thailand which will examines the child rights situation in Thailand which has had raising number of violence and child abuse issues that extend to the child protection system including the international mechanisms and domestic laws. Then the role and duty of the Shelters for Children and Families will be explained as the authority to assist in emergency cases and comprehensively work as a system. The second chapter will review the child rights in Thailand under the operation of the Shelters for Children and Families. It will identify an important role and support in implementing CRC to child protection systems in Thailand, however, the facilities within and competence of the Shelters could be extended to be more conducive in integrating the CRC principle. In addition, the SWOT analysis of the Shelters will be utilized to find obstacles and challenges to their operations. These obstacles and challenges might be the reason that the implementation of the CRC is less effective.

The last chapter explores the challenges of the Shelters for Children and Families and child rights protections in Thailand. The national policies and domestic laws should work systematically to provide services including budget, personnel, programmes as well as strengthen the enforcement of child protection. Moreover, certain attitudes have impacted on child care and child rights, especially family values and parental power over their children. In conclusion, there is no “vaccine or universal blueprint” for child protection, but there is plausibility to create the resolution in “country by country, situation by situation” to enable the system to decrease “violence, exploitation, and abuse against children”.<sup>4</sup> The CRC principles are covered, connected and linked to child development issues and can be used as the material for analysis and policy recommendations.<sup>5</sup> In Thailand, the Shelters for Children and Families have significant roles in

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<sup>4</sup> Karin Landgren, ‘The Protective Environment: Development Support for Child Protection’, (21). (1), Human Rights Quarterly, 223.

<sup>5</sup> Pia Rebello Britto and Nurper Ulkuer, ‘Child Development in Developing Countries: Child Rights and Policy’, (83), (1), ImplicationChild Development, 94.

supporting child rights systems as emergency services for children who are in need. However, the Shelter require better public relations in order for society to better understand about the operation along with child rights protection.



## Chapter I: Child rights situation in Thailand

The Definition of “child”, was a the critical discussion in the drafting of the Convention on the Rights of the Child (CRC).<sup>6</sup> It is important to set up and define the distinction because children cannot be thought of as legal agents in the same way as adults.<sup>7</sup> However, the outcome of the CRC which is known as the general principles for child rights protections sets the international definition of a child as;

*Article 1 For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.*<sup>8</sup>

Many countries define the age of maturity as 18 years and also have specific legislation that have legal capabilities in particular areas.<sup>9</sup> However, the definition of child or “a boundary of childhood” may be different in each society. Some societies even have “passage or initiation ceremonies which celebrate the end of childhood and beginning of adulthood” such as marriage and a departure from their parent’s home.<sup>10</sup> It can be found in some countries that the uniform definition of child in the laws and policies of the country does not exist, for instance, the legal ages of “children for marriage according to whether civil law or sharia law applies”.<sup>11</sup> In some countries, like India, the “prevalence of child marriages and child labour” are major problems.<sup>12</sup>

In Thailand, “child” means a person “below 18 years of age, but does not include those who have attained maturity through marriage”.<sup>13</sup> Thai law allows those who are 17 years or older to marry, except in the area of the southern border provinces, Pattani, Narathiwat, Yala and Satun provinces. These provinces have used Islamic law in family and legal matter since 1941 which has led to marry child marriage problems. Recently, the case of an 11 year old Thai girl marrying a 41 year old Malaysian man impacts in

<sup>6</sup> Trevor Buck, 'International Child Law'. (2011), 123.

<sup>7</sup> David Archard, 'Children Rights and Childhood', (1933), 24.

<sup>8</sup> United Nations Convention on the Rights of the Child, (1989).

<sup>9</sup> Buck (n6) 123.

<sup>10</sup> Archard (n7) 24.

<sup>11</sup> Buck (n6)

<sup>12</sup> Buck ibid

<sup>13</sup> Thailand: Child Protection Act of 2003 <<https://www.refworld.org/docid/46b2f91f2.html>> accessed 22 July 2019

both Thailand and Malaysia.<sup>14</sup> The societies now recognize how these marriages are problem for children's rights and require the government to consider this gap that allows marriages for children under the age of 18 to take place. Marriage at an early age, the children often ends in divorce. Most of the girls will escape from the community after the divorces because they would be unsafe otherwise. Then they will often encounter poverty or drug problems because they have insufficient education.<sup>15</sup>

On the other hand, Thai children are facing depression and violence because of the rapidly changing social structure. Thailand is another Asian developing country with a rapidly ageing population and declining fertility rates. Moreover, Thai people are having longer lives which is making the demographic of the population change significantly to aging society. In December 2018, the Ministry of Interior for Thailand reported that the population of people 0-18 years old is 13,730,927, which is 20.74 per cent of the Thai population.<sup>16</sup> There is a prediction that in the year 2035 the number of children under 15 years will be reduced to 9 million which will be 14 per cent of the Thai population.<sup>17</sup> The overall demographics of the Thai family is changing as well, family patterns are more diverse, but mostly they are nuclear families. Thai society has changed from a kinship society to be more of an individualized society<sup>18</sup>. For instance, a single-parent family that has a father or mother raising children is more common now and generations of children are being raised by their grandparents.<sup>19</sup> While the number of marriages is decreasing, the number of divorces is likely to increase.<sup>20</sup> The changing of family structure is also often the cause of the problem of using domestic violence. The domestic violence is mostly seen as a matter of physical and mental abuse, including sexual abuse and persecution between spouses.<sup>21</sup> In addition, domestic violence leads to a lack of child care, and leading their children to imitate them in the future.

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<sup>14</sup> The dark secret of Thailand's child brides <<https://www.theguardian.com/world/2018/sep/01/thailand-malaysia-muslim-child-forced-marriage>> accessed 22 July 2019

<sup>15</sup> Right or Wrong? Permission to child marriage in four provinces (Thai) <<https://www.komchadluek.net/news/scoop/341094>> accessed 22 July 2019

<sup>16</sup> Child and Youth Development Report 2017. <[https://www.dcy.go.th/webnew/upload/download/file\\_th\\_20181211144021\\_1.pdf](https://www.dcy.go.th/webnew/upload/download/file_th_20181211144021_1.pdf)> accessed 22 July 2019

<sup>17</sup> Population in Thailand in the future (Thai)

<<http://www.ipsr.mahidol.ac.th/IPSR/AnnualConference/ConferenceII/Article/Article02.htm>> accessed 22 July 2019

<sup>18</sup> Child and Youth Development Report 2017 (n16).

<sup>19</sup> Child and Youth Development Report 2017 (n16).

<sup>20</sup> The marriage statistic, 2017 Department of Provincial Administration

<<http://stat.dopa.go.th/stat/statnew/statMenu/newStat/home.php>> accessed 22 July 2019

<sup>21</sup> Sukanya Sodsri, 'The Problem of Family Violence in Thai Society', (Thai), Journal Of MCU Peace Studies Special, 602.

Thailand has a rapidly ageing population with declining fertility rates, but the number of infant mortality rates is increasing. The mortality rate is higher because the medical technology is more advanced and therefore can be adapted to save infants. For example, the report of infant mortality rates in 2018 was 4.41 per 1,000 live births, it was higher than the rate 3.94 per 1,000 infants in 2016.<sup>22</sup> Even though the survival rate of infant is increasing, the number of children at present is not balanced for workers in the future. A worker may have to be responsible for taking care of children and elderly people. This can also lead to stress and domestic violence in families. It creates a competitive environment for children, it can be found that Thai teenager's ages 13 - 17 years old have increasing rate of suicide, and are at risk of depression.<sup>23</sup> The mental health state of all Thai students should be an issue of concern. The students between the ages of 13 and 17 years in grades 7–12 are facing the suicide problem. Regarding violence and unintentional injury, there are the students who reported that they had been physically attacked, and seriously injured.<sup>24</sup> This is one of the major problems children face in Thailand that is an obstacle during childhood development which can be detrimental to their futures.

At this point, the main child rights issue is child abuse. From the annual report from Social Assistance Center Hotline 1300, there are children who were abused from domestic violence or external family violence, there were 1222 cases in 2018.<sup>25</sup> There were 681 cases of family violence while the case of external family violence was 541. From the Hotline's report, the number of violence in families are higher than the external violence, and the majority cases of family violence are physical abuse and sexual assault.<sup>26</sup> In addition, UNICEF Thailand's Annual Report 2018 noted a record 25,000 children were screened for child protection risks, and 1,589 cases were found to be at medium and high-risk.<sup>27</sup> The report found that there are 52 children who are reportedly abused in Thailand every day. Most of whom are abused are girls, although rate of incidence is "probably much higher because of the under-reporting of cases".<sup>28</sup> The most common cause for domestic violence involving children is that children are born into a family

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<sup>22</sup> Child and Youth Development Report 2017 (n16).

<sup>23</sup> Child and Youth Development Report 2017 (n16).

<sup>24</sup> Thailand 2015 Global School-Based Student Health Survey (GSHS) <<http://www.searo.who.int/thailand/areas/global-school-based-student-health-survey/en/>> accessed 22 June 2019.

<sup>25</sup> Social Assistance Center Hotline 1300 Records 2018. <<https://1300thailand.m-society.go.th/records>> accessed 22 July 2019

<sup>26</sup> Social Assistance Center Hotline 1300 Records 2018. (n25).

<sup>27</sup> UNICEF Thailand Annual Report 2018. <<https://www.unicef.org/thailand/reports/unicef-thailand-annual-report-2018>> accessed 22 July 2019

<sup>28</sup> UNICEF Thailand Annual Report 2018. (n27).

which is not ready to have children, so parents lack proper care for the children. Also, the insufficient child care by parents who let the children stay at home with relatives, babysitter or stay alone.<sup>29</sup> This situation may lead to physical abuse from relatives or babysitter without parents noticing. If children are being mistreated often, then children become depressed, and affects them both physically and mentally.<sup>30</sup>

Another vulnerability for children in Thailand is child labour, children are at risk of being exploited or work harder than the specified time but receive low wages.<sup>31</sup> Many of them are working in inappropriate conditions and are in danger of being abused. Moreover, there are children and youth who were brought to be sexually exploited or trafficked due to family economic problems or by fleeing from home.<sup>32</sup> The stateless children in Thailand are often from ethnic minorities or children whose parents are migrant workers.<sup>33</sup> The Thai government has repealed the provision of Article 7 on the registration of births and nationality in the CRC which forced the state to protect every child who was born in Thailand. In practice, the regulations regarding births and late registrations to eliminating statelessness is still an obstacle for many children to enjoy their rights.<sup>34</sup> Their status might limit access to basic services such as health care or education. Besides, this limitation will increase vulnerabilities to the statelessness becoming “involved in criminal trafficking and prostitution networks”.<sup>35</sup>

From the issues above, the mental health, violence, trafficking and statelessness are causes of the vulnerability for Thai children. These challenges of child rights protections need to be responded to, in particular the urgent cases in which children are at risk. It is important to set up the instruments to protect and develop children, especially a protective environment in the times of crisis. In some countries, the operation of victimizations has been treated separately or independently.<sup>36</sup> The agency that is responsible for domestic violence will deal with violence between adults, while agencies of children protection are responsible for “supporting, defending and advocating for child victims of abuse and

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<sup>29</sup> Sodsri (n21).

<sup>30</sup> Sodsri (n21).

<sup>31</sup> Child and Youth Development Report 2017 (n16).

<sup>32</sup> Child and Youth Development Report 2017 *ibid*

<sup>33</sup> Child and Youth Development Report 2017 *ibid*

<sup>34</sup> Child and Youth Development Report 2017 *ibid*

<sup>35</sup> International Covenant on Civil and Political Rights, Concluding observations on the second periodic report of Thailand. 2017.

<sup>36</sup> Stephen M. Haas, Simon Bauer-Leffler And Erica Turley, ‘Evaluation of Cross-Disciplinary Training on the Co-Occurrence of Domestic Violence and Child Victimization: Overcoming Barriers to Collaboration’, (34), (3), *Journal of Health and Human Services Administration*, 354.

neglect”<sup>37</sup>. At present, the child rights issue cannot be fixed by one agency as was noted that “one agency alone cannot properly address the needs of families experiencing both domestic violence and child victimization”.<sup>38</sup> Thus, the new strategies of using multidisciplinary agencies to increase collaboration should be established in Thailand to support child protection.

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<sup>37</sup> Haas et al (n36) 353.

<sup>38</sup> Haas et al (n36) 353.

## Chapter II : Child protection system in Thailand

In general, the history of social protection in Thailand can be classified into five main periods.<sup>39</sup> The first period of social protections started in 1932 due to “the transition from an absolute monarchy to a constitutional monarchy”.<sup>40</sup> It was a time of introduction and recognition of social protection. The second period was in the early 1970s when social protection schemes began in Thailand.<sup>41</sup> Then it came “the turning point period”<sup>42</sup> which happened in the late 1980s, which was the third period. The fourth period was in the 1990s during “the development of paternalistic welfare state”.<sup>43</sup> It was the time that Thailand experienced increases in gross domestic product (GDP) and per capita income, but economic crisis of 1997 increased significantly poverty and unemployment during the crisis.<sup>44</sup> The fifth period is known as the “universal social protection scheme”,<sup>45</sup> which has been happening since the early 2000s. At present, the social protection systems concentrate on “preventing, managing, and overcoming situations that adversely affect individuals' well beings”. However, they focus more on poverty because Thailand is a developing country, the main interest is economic growth. In fact, social protections should concern not only economic growth, but also consider the better quality of life and equality.

The social protections came about later than human rights, which has been associated with Thai society since the abolition of slavery in 1905.<sup>46</sup> This event was marked as a major human rights development in Thai history. However, the development of human rights in Thai society has struggled in the military dictatorship period after the coup of 1947 until the era of the revolutionary system in 1958.<sup>47</sup> Since then, the human rights development in Thailand has not grown. Although Thailand has endorsed the international human rights convention and other instruments, the concept of rights, and liberty from the Western ideologies is growing slowly in Thai society due to the political backwardness. This situation may

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<sup>39</sup> Yongyuth Chalamwong and Jidapa Meepien, ‘Poverty and Just Social Protection in Thailand’, (29), (3), ASEAN Economic Bulletin, 236.

<sup>40</sup> Chalamwong and Meepien (n39)

<sup>41</sup> Chalamwong and Meepien (n39)

<sup>42</sup> Chalamwong and Meepien (n39)

<sup>43</sup> Chalamwong and Meepien (n39)

<sup>44</sup> Amara Pongsapich, Rakawin Leechanawanichphan and Maruemol Bunjongjit, ‘Social Protection in Thailand’, (2002), Social Protection in Southeast and East Asia, 313.

<sup>45</sup> Chalamwong and Meepien (n39)

<sup>46</sup> David Feeny, ‘The Decline of Property Rights in Man in Thailand 1800-1913’, (1989), (49), (2), The Journal of Economic History, 293.

<sup>47</sup> Buranajaroenkij and Aenihon (n1)18.

include child rights in Thailand, but there are some instruments and progress in child rights protection system in Thailand.

Thailand is party to the Convention on the Rights of the Child (CRC) and has been since 1992 and acceded to the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, the Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts, and the Optional Protocol to the CRC on a Communications Procedure.<sup>48</sup> Thailand has revised domestic laws and developed mechanisms for implementation and established a national mechanism to implement the obligations under the instruments.<sup>49</sup> There are 4 main mechanisms to operate and implement the CRC which are the Legislative mechanism, Administrative mechanism, Judicial mechanism and Private sector mechanism.

At a domestic level, the Constitution of the Kingdom of Thailand, 2017 (B.E.2560) and Child Protection Act, 2003 (B.E. 2546) are the significant instrument for protecting child rights. In the Constitution, the rights and liberties are in Article 27 that;

*Article 27. All persons are equal before the law, and shall have rights and liberties and be protected equally under the law.... Measures determined by the State in order to eliminate an obstacle to or to promote a person's ability to exercise their rights or liberties on the same basis as other persons or to protect or facilitate children, women, the elderly, persons with disabilities or underprivileged persons shall not be deemed as unjust discrimination under paragraph three.<sup>50</sup>*

The Child Protection Act, 2003 (B.E. 2546) is for the protection, welfare and promotion of children. To comply with the Constitution of the Kingdom of Thailand and Section 80 of the CRC, the Child Protection Act specifies the meaning of "children" as person who are under 18 years old. Therefore, the contents of the law aim to provide protection and prevent child rights violations. The significance of the Child Protection Act, 2003 is that it includes participation and relevant agencies, and determined criteria,

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<sup>48</sup> Status of Treaties. <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en)> accessed 25 July 2019

<sup>49</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\* Thailand 2016. < [http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=26280](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=26280)> accessed 25 July 2019

<sup>50</sup> Constitution of the Kingdom of Thailand (B.E. 2560 (2017)). (n29)

methods that conform to the objectives of the CRC. It provides guidelines and measures to the people who are involved with children or government agencies who respond and develop children in all aspects. It can be said that this function of the Child Protection Act, might solve the issue of child protection and that “one agency alone cannot properly address the needs of families experiencing both domestic violence and child victimization”.<sup>51</sup>

The Child Protection Act 2003, effective on March 30, 2004, was designed for children to receive proper foster care, instruction and appropriate development, including preventing children from being abused. Its priority is to prevent children from falling into exploitation or being treated unequally. This Act promotes and cooperates in protecting children between government and private agencies appropriately. It can be said that this Act established social protection measures and “define the details of operations more than other laws had been in the past”.<sup>52</sup> These social protection measures provide positive assistance, relief and protection to children. At the same time, the measure has negative consequence for the perpetrators, because the authority can still take action against the perpetrators who threaten or violate children according to the Act.

In addition, the establishment of child protection laws changed the attitude and reviewed the ideas related to children that and created social awareness on many issues. One of the ideas is that “children are the property of the state, not family property”<sup>53</sup>. Moreover, the living space of children in a house becomes a public area where people must respond to children’s problems without ignorance. Family should provide safe and secure place for children to grow and develop but not to remain a private area or unregulated space.<sup>54</sup> The responsibility to children is not just providing regular help but also creating a system to protect children and youth both presently and in the future.<sup>55</sup> Another idea that the child protection law changes the attitude of people is the process of solving problems. The assistance that is provided to

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<sup>51</sup> Haas et al (n36).

<sup>52</sup> Thittayaporn Deekaew, ‘Study on Efficiency Of Child Protection Mechanism Of Child Protection Act B.E. 2546 (2003), Under Operation of Shelter For Children And Families: A Case Study of Nan Province’, 2015, Thammasat University, 31.

<sup>53</sup> Deekaew (n52)

<sup>54</sup> Jackie Turton 20 Tornton, J., (2008). Child Abuse, Gender and Society. Oxon: Routledge, 25.

<sup>55</sup> Deekaew (n52)



children “must have academic principles” and be considered by working groups as a multidisciplinary team.<sup>56</sup>

Article 7 of the Child Protection Act established the National Child Protection Committee and Article 8 to 21 provide roles and duties of that Committee. In addition, Part 2 of the Act focuses on the treatment of the child and notes that “any case shall give primary importance to the best interests of the child and any discrimination of an unfair nature shall not be allowed”. An interesting is Article 30, which authorizes the officer to “enter homes, any establishments or vehicles” for the purpose of searching if there is an act of “abuse, detention or neglect has been committed against a child”.<sup>57</sup> Therefore, the Child Protection Act, 2003 is an effective mechanism to support the children who are facing problems and in danger. And also establish a mechanism in the provincial level for the child protection committee as a representative of the state, private sector, and civil society to protect and help “local child protection systematically”.<sup>58</sup>

At domestic level, the government agency who is the focal point of child promotion and protection in Thailand is the Ministry of Social Development and Human Security (MSDHS). The MSDHS provides welfare and basic services to people who are affected by socio-economic crisis; therefore, the Shelters for Children and Families was established as social welfare services to those people, especially children, youth and women.<sup>59</sup> The Shelter for Children and Families was first established in 1993 in 9 provinces to work as an emergency housing service for children, women, families and those suffering various social issues. The Shelters for Children and Families provides accommodation, food, necessities, and medical supplies and working for 24 hours to keep up with the problems of target groups.<sup>60</sup> At present, there are 77 shelters located in 77 provinces in Thailand under the control of Department of Children and Youth, MSDHS. The Shelters for Children and Families have the authority to assist in emergency cases and carry out comprehensive aid work due to the Child Protection Act, 2003 (B.E. 2546). The Shelter is an example of the child protection agency that will have a significant role in supporting child rights in Thailand.

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<sup>56</sup> Deekaew (n52)

<sup>57</sup> Thailand: Child Protection Act of 2003 (n13).

<sup>58</sup> Deekaew (n52) 30.

<sup>59</sup> Deekaew (n52) 38.

<sup>60</sup> Deekaew (n52) *ibid*

## The Shelters for Children and Families

According to the Child Protection Act 2003, the Shelters for Children and Families have become the primary shelter for children and women who are in need, and the officials at the Shelters for Children and Families must have clear missions, and follow operations and procedures. The diagnosis must have “clear evidence and supporting reasons not because of experience or feelings”.<sup>61</sup> The multidisciplinary team is the key for the operation because the diagnosis will not be based on one person’s knowledge. The main duties of the competent official of the Shelter for Children and Families under the Child Protection Act of 2003 are;

1. To receive reports to protect children’s welfare by the authority from the Shelters for Children and Families which is ready to go out to help 24 hours a day
2. To help children and women who have suffered from physical or sexual abuse, exploitation, homeless, and engaging in risky behaviors
3. To provide emergency housing services under the assistance of social workers, psychologists and child welfare protection staff
4. To coordinate the operations by creating a network with the public and private sectors in order to create cooperation and coordinate operations continuously
5. To educate or create campaigns to raise awareness of the families and communities about child care and the various support services from the government <sup>62</sup>

It is also important to emphasize the duty and role of the Shelters for Children and Families that were enabled by the Child Protection Act, 2003. The duty and role which authorize them to work more efficiently and faster in emergency cases, for instance, they can enter homes, any establishments or vehicles as mentioned in Article 30, especially, in the case that a child is at risk. In addition, the Shelters for Children and Families has more abilities with Article 41 which protects the officer and citizen who reported the case.

*Article 41 Upon having witnessed or come to know of conduct which leads a person to believe that an act of abuse has been committed against a child, ...Persons notifying or reporting in good faith under this Article shall receive protection and*

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<sup>61</sup> Deekaew (n52) ibid

<sup>62</sup> Deekaew (n52) ibid

*shall not be held liable for any civil, criminal or administrative action arising therefrom.*<sup>63</sup>

The Shelters for Children and families will be “the first place where a child is temporarily sheltered and cared for according to the Child Protection Act, 2003”.<sup>64</sup> After the child has arrived at the Shelters for Children and Families, the competent official has “no longer than seven days to investigate and examine” the case.<sup>65</sup> If there is a necessity and for the benefit of the child, the child protection officer can apply a petition to a Central Juvenile and Family Court in order to extend the duration of investigation, but “the extension shall be no longer than 30 days”.<sup>66</sup> However, the investigation cannot be complete by only the competent official or find the details that are covered all issues of the case. The competent official needs cooperation from various professionals who work in the medical, educational, legal, and psychological fields.<sup>67</sup> Moreover, the comment from experts in various organizations or foundations are significant to analyze and set up the procedures and methods for providing child protection. This working process is related to the laws in the Child Protection Act 2003.

The general procedures of the Shelters for Children and Families under the Child Protection Act 2003 started since receiving the report and the last step will be rehabilitation and the return of the child to a family member or to transfer them to social welfare agency. When an officer receives a report by a citizen or coordinated by relevant agencies, the officer will proceed to the area to search for facts and gather evidence to find the cause of the child abuse.<sup>68</sup> The target groups can be divided into two groups, which are “children and women who are abused both physically, mentally and sexually and child who suffer from exploitation, such as child laborers and child forced in prostitution”<sup>69</sup>. If it is found that the child is actually being abused or exploited by family members or people who has influence over his or her family, the child “must be protected in a safe place to stop the repetition”<sup>70</sup>. Moreover, the officer must take

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<sup>63</sup> Thailand: Child Protection Act of 2003 (n16).

<sup>64</sup> Thannawatt Pornnithidolwat, 'Performances and Problems of Officers on Working with Multi Professional Teams according to Child Protection Act B.E. 2546 (2003) : Case Study on Officers of Home for Children and Families', 2009, Thammasat University, 5.

<sup>65</sup> Pornnithidolwat (n64)

<sup>66</sup> Child Protection Act of 2003 (n16).

<sup>67</sup> Pornnithidolwat (n64)

<sup>68</sup> Kasinee Piandee, 'Management Styles and Problems of Children and Family Aid House', 2015, Thammasat University, 3.

<sup>69</sup> Deekeaw (n52) 44

<sup>70</sup> Deekeaw (n52) ibid

care of “other children in the family who live in the same surroundings, may be brothers or sisters”<sup>71</sup>. They must then separate those children from the family or force a family intervention. In case like this, the police must assist to proceed with a lawsuit, whether in a civil case about administrative power, or separation of children. Moreover, the police will proceed with the criminal case to prevent the suspect abusing or exploiting children again.

The Shelters for Children and Families will then coordinate with the hospital and take the child to check their body for infections, especially infections from sex, and pregnancy testing. After that, the child psychiatrist, psychologist and social worker will monitor the child during their stay at the Shelters for Children and Families. Then they will collect information from other professional practitioners that are related to this child to “analyze symptoms of mental disorders”<sup>72</sup>. When doctors diagnose that children are sexually abused, but the primary information cannot identify the offender; the case conference will be set up with all the multidisciplinary team and all evidence in order to find the offender and protect others from being abused.<sup>73</sup>

After this, the team will analyze the causes of the symptoms and relationship between the child and surrounding people. If the result of the investigation comes out that the child was sexually abused, then they will take the child to report to the police. They will then coordinate with the inquiry officer and bring the child to be interrogated according to the Penal Code Amendment (No. 20), BE 2542.<sup>74</sup> Then the officer has to follow up the case and coordinate with the inquiry officer to prosecute the offender. The next step, rehabilitation will be provided for the children so that they can be happy and healthy both physically and mentally. The staff will bring the child to meet the psychiatrist continuously.<sup>75</sup> When the procedure has finished, the family will be evaluated to find out if they are ready to take care of the child or not, if not the officer will take the child to a social welfare agency.<sup>76</sup> There is a report in 2016 that the number of children and youth who entered or took care by the Shelters for Children and Families was 11,483 cases.<sup>77</sup> The highest number was 3,532 cases of children who had problem of poverty, and the second was 3,531 cases

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<sup>71</sup> Deekeaw (n52) ibid

<sup>72</sup> Pornnithidolwat (n64)

<sup>73</sup> Piandee (n68) 3

<sup>74</sup> Deekeaw (n52) 45

<sup>75</sup> Deekeaw (n52) 45

<sup>76</sup> Deekeaw (n52) 45

<sup>77</sup> The report from all 77 shelters in 77 provinces

from children and youth who had insufficient child care from their families, while the number of abuse cases were 1,882 cases.<sup>78</sup> In addition, the record is slightly raising in 2018, it was found that there were 49,140 children and youth who used the services from the Shelters.<sup>79</sup>

It can be said that Thailand has the official instruments and institutions to support child rights protections. However, child rights issues are continuing with the concern of international societies and Thai society, especially the implementation and recommendation about trafficking, abused and stateless children. Therefore, the next chapter will review and discuss that the Shelters for Children and Family, which is the sub unit but located in all parts of the country, can do more to contribute to child rights protection which is based on CRC principles.

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<sup>78</sup> Statistic (Thai) <[https://dcy.go.th/webnew/uploadchild/yth/news/news\\_th\\_20171807182431\\_1.pdf](https://dcy.go.th/webnew/uploadchild/yth/news/news_th_20171807182431_1.pdf)> accessed 22 July 2019

<sup>79</sup> MSDHS reveals 75000 children and youth have problem in 2018 (Thai) <<https://www.msn.com/th-th/news/national/พบเผยปี-61-เด็ก-เยาวชนประสบปัญหากว่า-75-หมื่นคน/ar-BBN4xaN>> accessed 22 July 2019

### **Chapter III : Child rights under the operation of the Shelters for Children and Families**

This chapter will review of child rights protection and will be focused on the operation of the Shelters for Children and Families and their abilities as a child protection instrument. Shelters are one of the agencies that was inspired by the CRC, and they are significant to be discussed about because of their roles and duties. The implementations of the CRC to domestic laws were mentioned in the Child Protection Act, 2003, and the Act authorized officers to work to protect and support children under the Shelter's operation. The Shelters are small unit under the government agency, but are located in every part, of all 77 provinces, in Thailand. There should be some advantages from the number, location and authorities of the Shelters for Children and Families. The operations of the Shelters for Children and Families play an important role and should be supportive in implementing CRC to child protection system in Thailand, however, the facilities within and competence of the Shelters for Children and Families could be extended to be more conducive. In addition, the SWOT analysis of the Shelters will be utilized to find the obstacles and challenges of their operations. These obstacles and challenges might be the reason that the implementation of the CRC is less effective.

#### **The implementations of the Shelters for Children and Families to CRC**

Firstly, the Shelters for Children and Families integrate the CRC's guidelines into their roles by providing an emergency housing services for the children who are in need. The Shelters for Children and Families are opens for 24 hours in cooperation with the Social Assistance Center Hotline 1300 and multidisciplinary team.<sup>80</sup> As it was mentioned in chapter two, if there is a report of an incident, the Shelters staff can move to the area and help the child immediately. The Shelters are designed not only to protect children that have been in danger, but also to prevent other children who may be facing the same situation, perhaps cousins or relatives.<sup>81</sup> One advantage of the Shelters for Children and Families is that the officers who are authorized to can enter buildings and vehicles to rescue children without a warrant. Therefore, this operation is totally beneficial for child protection system and it is also keeping in line with Article 3 of the

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<sup>80</sup> Department of Children and Youth 2019 <<http://www.dcy.go.th/webnew/main/index.php>> accessed 22 July 2019

<sup>81</sup> Deekaew (n52) 44

CRC, that all actions will be considered with the best interests of the child as a primary consideration.<sup>82</sup> The best interest principle has appeared in the CRC several times to “urges states parties” to implement the principle into their domestic legislation, projects, programmes and services for children.<sup>83</sup> However, the principle has been discussed for its context, the differences in situations, cultures, or religions could be factors for consideration. It could be the intention of the drafters who desired “all decisions affecting children would be undertaken with the systematic consideration of the interest of the child as a general criterion”.<sup>84</sup>

The urgent action of the Shelters for Children and Families’ officers which are authorized and protected by the Child Protection Act, 2003 are related to article 3.<sup>85</sup> The safety of children is the most concerning issue and set as the priority of their operation, the next step after being rescued is also beneficial and in line with the best interest principle. Investigations and rehabilitation of children are important parts of the Shelter’s operations.<sup>86</sup> However, there is no one best practice for all children, the operations and procedures are different in each case due to “the best interests of a particular child or group of children”.<sup>87</sup> Furthermore, the multidisciplinary team also play an important role in the best interest principle because the individual officers cannot properly provide assistance to the children or families.<sup>88</sup> The “decision-makers” will evaluate the best interests and it is a part of the rules of the process.<sup>89</sup> However, the best interest practice is to listen to the opinion of the children as well because of “all the decision affecting her or him”.<sup>90</sup>

Secondly, the emergency housing services are also there to support Article 19 of the CRC that is to protect the child from all violence, abuse, neglect and exploitation.<sup>91</sup> The prevention of child abuse and neglect is “including their physical and psychological recovery and social reintegration”<sup>92</sup> because those recoveries can be a safeguard for the child to return to society in the future. Abuse and neglect has occurred in difference circumstances and places, it often occurs in places such as “homes, schools, and

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<sup>82</sup> UN CRC (n8)

<sup>83</sup> Buck (n6) 127

<sup>84</sup> Jean Zermatten, ‘The Best Interests of the Child Literal Analysis, Function and Implementation’, 2010, 8.

<sup>85</sup> UN CRC (n8)

<sup>86</sup> UN CRC (n8)

<sup>87</sup> Zermatten (n84) 7.

<sup>88</sup> Haas et al (n36).

<sup>89</sup> Zermatten (n84) 7.

<sup>90</sup> Zermatten (n84) 22.

<sup>91</sup> UN CRC (n8)

<sup>92</sup> Buck (n6) 142

detention centers”, especially in home where there is domestic violence used frequently.<sup>93</sup> Some researchers have studied the connection between “domestic violence and child victimization” and the result is domestic violence which “often occurs within the same family”.<sup>94</sup> Although most of the domestic violence that has occurred involves woman<sup>95</sup>, children are also at risk as they cannot protect themselves. There is an estimation that “adult domestic violence and child maltreatment was co-occurring in 30 to 60 percent of families” according to the various reviews during the 1970's to the 1990's.<sup>96</sup> While recent reports of the situation in Thailand mentioned that “three quarters of parents use corporal punishment or other violent means to punish their children”.<sup>97</sup> In addition, almost half a million Thai children (aged 1-14 years), have experienced tough physical punishment.<sup>98</sup> Although some of those punishment and acts of violence accuse that they have no intention to harm the child, the negative results such as “death, disability, and poor development” had already happened and cannot be deny.<sup>99</sup>

The Shelters for Children and Families have capacity for temporary stay if the victims need to, they can stay one day to 30 days based on the process or investigation. The child victim will stay at the Shelters for Children and Families under the protection of the Child Protection Act 2003, and the victim of trafficking will stay at the shelters and use it as their temporary home. The information of the victim, especially victims from trafficking will be classified due to their safety.<sup>100</sup> In general, the Shelters for Children and Families can provide services for 20-25 people<sup>101</sup> with separate rooms for males and females and it has a screening process to transfer the case to the appropriate places such as a Baby's Home, Protection and Occupation Development Center or another nearby Shelters.<sup>102</sup> The Shelters for Children and Families can be “lifesaving and can help prevent the revictimization of children already in a heightened state of vulnerability to abuse” as child victims have a right to access these services.<sup>103</sup>

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<sup>93</sup> Buck (n6) 142

<sup>94</sup> Haas et al (n36) 353.

<sup>95</sup> Ministry of Social Development and Human Security, 2016.

<sup>96</sup> Haas et al (n36) 353.

<sup>97</sup> UNICEF Thailand Annual Report 2018 (n27) 7.

<sup>98</sup> UNICEF Thailand Annual Report 2018 (n27) 7.

<sup>99</sup> Landgren (n4) 221.

<sup>100</sup> Jantima Sripet, 'Quality of Working Life of Social Worker in Shelter for Children and Families', 2017, Thammasat University, 60.

<sup>101</sup> Department of Children and Youth (n80)

<sup>102</sup> Department of Children and Youth (n80)

<sup>103</sup> Landgren(n4) 222



Moreover, the Shelters for Children and Families provide houses, food, health care, rehabilitation and learning for the children who are in need, and also provide consultations to the parents who have a problem taking care of their children.<sup>104</sup> This is also referred to as “necessary support, prevention, identification, reporting, referral, investigation, treatment and follow-up” for the child and for “those who have the care of the child” in article 19.<sup>105</sup> From the statistic of all Shelters, it can be seen that most of the services that the Shelter provided in the fiscal year 2016 were problems revolving around poverty and insufficient child care.<sup>106</sup> It can be said that basic needs such as food and medicine are important to children as much as protecting them from violence. This guidelines of the CRC are there to fulfil the poor families who are in a crisis and lack “appropriate assistance in the performance of their child-rearing responsibilities”.<sup>107</sup> As children and adults have different needs, the poverty and well-being of children have “long term impacts” to them.<sup>108</sup> The experience of poverty during childhood may cause them “delayed school enrolment and reduced grade completion, and exposure to physical and emotional abuse and neglect”.<sup>109</sup> In worst situation such as famine, “children die first” because they are dependent on adult and they are therefore the most vulnerable, insufficient food and vaccine deprivation are the fundamental rights to live of the children.<sup>110</sup>

Although Thailand has seen “significant achievements in reducing poverty and spearheading social development”, the child poverty number still high as 1.4 million children or ten per cent of children in Thailand.<sup>111</sup> The Shelters for Children and Families have a role to provide primary assistance and can extend to consultants or cooperate with other agencies or NGOs to provide long term assistance such as foster families or job opportunities.<sup>112</sup> In 2015, the government first launched the Child Support Grant (CSG) to provide “600 baht monthly cash transfers which have proven a vital fillip to poor families – particularly impoverished young parents – helping them to cover basic child needs for food, clothes and

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<sup>104</sup> Department of Children and Youth (n80)

<sup>105</sup> UN CRC (8)

<sup>106</sup> Statistic (Thai) (n78)

<sup>107</sup> Buck (n6) 111

<sup>108</sup> Nicola Jones and Andy Sumner, ‘Mainstreaming children in international development’ (2011), Bristol University Press, 8.

<sup>109</sup> Jones and Sumner (n108)

<sup>110</sup> Thomas Hammarberg ‘The UN Convention on the Rights of the Child--And How to Make It Work’, (12), (1), Human Rights Quarterly, 98.

<sup>111</sup> UNICEF (n27)

<sup>112</sup> Department of Children and Youth (n80)

toys”.<sup>113</sup> The head of the Shelters for Children and Families is one of authorities who can warrant the qualification of the parents that can receive CSG.<sup>114</sup> Moreover, the Shelters are also there to provide information of CSG and other child support mechanisms that are provided by the government.

Besides tackling child poverty, the Shelters for Children and Families provide services for pregnant teenagers which are mostly “unwanted pregnancies”. Every day, almost 300 girls (aged 15 – 19) are giving birth and they “commonly lack negotiating power, weakening their ability to demand the use of contraception and determine what happens to them after they get pregnant”.<sup>115</sup> Women’s ideology in Thailand is mostly to “blame the unwanted pregnancy mother as a bad girl and to not them”.<sup>116</sup> This ideology pushes girls into risky situation as they cannot talk to family or ask for help. The Shelters for Children and Families are increasing this role of consultancy to pregnant teens and providing the service to the girls if they or their babies need temporary places to stay.<sup>117</sup> From a case in 2010, the discovery of 2,002 aborted fetuses at a temple in Bangkok raised the awareness of unsafe abortion issues among Thai people.<sup>118</sup> Unwanted pregnancies and illegal abortions have been neglected for a long time and have not been systematically resolved”.<sup>119</sup> Some women who have had abortions are fortunate enough to be safe, but 40% have experienced severe complications. The average cost of the treatment from illegal clinic is higher than the cost of legal abortion at the hospital. While the cost of illegal abortion is “only 500-1,000 baht per person with the high risk of death”, the treatment after that could be “21,000 baht” if the woman was infected.<sup>120</sup> Then the Shelters will be their optimal route to find the other ways besides illegal abortions or abandoning children.

Lastly, in Article 20 it notes that a child who was deprived of a family “shall be entitled to special protections and assistance provided by the State”. The Shelter for Children and Families provide a short stay for the child a rehabilitation program to be happy and healthy both physically and mental and

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<sup>113</sup> UNICEF (n27) 17

<sup>114</sup> Child Support Grant (Thai) <[http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/123/T\\_0011.PDF](http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/123/T_0011.PDF)>accessed 30 July 2019

<sup>115</sup> UNICEF (n27) 7

<sup>116</sup> The Women’s Voice of Unwanted Pregnancy Among Thai Teen Mom: A Feminist Perspective <<http://www.globaleducationmagazine.com/womens-voice-unwanted-pregnancy-thai-teen-mom-feminist-perspective/>> accessed 30 July 2019

<sup>117</sup> Khon Kaen Shelter for Children and Family joins for helping pregnant teens <<https://www.thaihealth.or.th/Content/14202-บ้านพักเด็กและครอบครัว%20ขอนแก่น%20พนักงานช่วยเหลือวัยรุ่นท้องไม่พร้อม.html>> accessed 30 July 2019

<sup>118</sup> Thailand foetus find breaks abortion taboo <<https://www.bbc.co.uk/news/world-asia-pacific-11845572>> accessed 5 August 2019

<sup>119</sup> Abortion problems in Thailand (Thai) <<http://talkaboutsex.thaihealth.or.th/knowledge/3022>> accessed 5 August 2019

<sup>120</sup> Abortion problems in Thailand (n119)

bring the child to meet the psychiatrist continuously. At the end of the procedure, the family will be “evaluated to find out if they are ready to take care of the child or not, if not the officer will take the child to social welfare agency”.<sup>121</sup> In a case that child was abandoned, the operation of the Shelters for Children and Families will be related to adoption. For instance, there was a case of a ten years old boy was left to take care of his brother alone in Amnat Charoen Province.<sup>122</sup> The Amnat Charoen Shelter for Children and Families had a duty to come to the house to talk to the child in order to bring the two children to a temporary stay at the Shelters for Children and Families. While the officer attempted to contact their mother, the children were checked both physically and mentally health at the Amnat Charoen Hospital. In a case that a mother cannot look after her sons, the Shelters for Children and Families will cooperate with a Child Adoption Centre, which is also the unit under the Department of Children and Youth, to continue the adoption process.<sup>123</sup>

On the contrary, the Shelters for Children and Families has some gaps that are not covered with the guidelines of CRC and the children cannot enjoy the rights in some aspects. If the Shelters for Children and Families can be extended or cover more issues, there will be benefits for the children and will also help relive a number of other social problems. The example of some principles is that the Shelters for Children and Families should be considered a place of protection for refugee children. According to Thai law, Thailand does not officially recognize refugees but recognize them as illegal immigrants. There are both refugee and migrant workers that have arrived in Thailand illegally. Most of them are from Cambodia, Lao PDR and Myanmar which are neighboring countries, and “approximately 80 to 90 percent of these migrant workers are from Myanmar.”<sup>124</sup> The status of refugees in Thailand is complicated as domestic law limit their rights. Thailand is not party to the 1951 Refugee Convention but humanitarian actions have been provided with the cooperation of the United Nations High Commissioner for Refugees (UNHCR).<sup>125</sup> However, the policy on refugees and asylum seekers in Thailand is an impromptu policy and “applies different policies according to different demographic groups”.<sup>126</sup> There are more than one hundred thousand

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<sup>121</sup> Abortion problems in Thailand (n119)

<sup>122</sup> Helped the 10-year-old who left alone by mother to take care 1 year old brother <[https://www.khaosod.co.th/breaking-news/news\\_1962229](https://www.khaosod.co.th/breaking-news/news_1962229)> accessed 5 August 2019

<sup>123</sup> Helped the 10-year-old who left alone by mother to take care one-year old brother (n122)

<sup>124</sup> Chalamwong and Meepien (n39)

<sup>125</sup> Concluding observations on the second periodic report of Thailand <[https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=26280](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=26280)>accessed 5 August 2019

<sup>126</sup> Universal Periodic Review (Thai) [https://www.fortifyrights.org/downloads/Joint\\_Thailand\\_UPR\\_Submission\\_Mar\\_2016\\_Thai.pdf](https://www.fortifyrights.org/downloads/Joint_Thailand_UPR_Submission_Mar_2016_Thai.pdf)

refugees and asylum seekers who still have to live in temporary shelters along the Thai-Myanmar border, of which around 40,000 have never had access to an asylum process.<sup>127</sup> In addition, the UNHCR's refugee status determination and resettlement processes in Thailand take a long time. Although Thailand has a plan to "expand the detention centers and improve living condition and welfare for the detainees"<sup>128</sup>, child rights protection is still an issue of concern.

The main problem is that illegal child migrants cannot enjoy their rights such as development, education and health care. Although the laws provide equal rights to basic education, their parents afraid of being arrested.<sup>129</sup> The same goes for services from the Shelters for Children and Families, all children in Thailand can receive services and care but the status of both parents and children may make them vulnerable and deprive from social welfare. In Article 22 of CRC it notes that a child shall "receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention".<sup>130</sup> It is hard to claim that child migrants receive protection and assistance if they are in detention, surround by an inappropriate environment. As their parents are in detention, many of the children are also live there. The Shelters for Children and Families can provide assistance by receiving the children but the children will be separate from their families.<sup>131</sup> Moreover, the children use different languages and are from different cultures which might be complicated for the Shelter's service. The Shelters for Children and Families can provide general care while the languages, cultures and religions require more attention. Article 30 of CRC emphasizes that the children should "enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language".<sup>132</sup> It can be said that language is "a key barrier to learning for children who do not speak Thai" as it has a distinct impact to their learning.<sup>133</sup>

From the shifting demographics of both immigration and migration at present, the government should develop effective policies and practices to facilitate the integration the migrants who

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<sup>127</sup> Universal Periodic Review (Thai) (n126)

<sup>128</sup> Concluding observations on the second periodic report of Thailand (n125)

<sup>129</sup> Lost basic rights of children ... migrant children (Thai) <<https://www.ryt9.com/s/tpd/2883642>> accessed 5 August 2019

<sup>130</sup> UN CRC (n8)

<sup>131</sup> Descendants of asylum seekers are at risk of detention in Thailand (Thai) <<https://www.bbc.com/thai/thailand-45357866>> accessed 9 August 2019

<sup>132</sup> UN CRC (n8)

<sup>133</sup> UNICEF Report (n27)

are “the newcomers” into society.<sup>134</sup> Thus, it is significant to understand how immigrants and their offspring handle multiple cultural systems “as they adapt effectively, cognitively and behaviorally to the new society”.<sup>135</sup> To study about the adaption to new culture, the term of acculturation could be used. A acculturation can be interpreted as “assimilation to a different culture, typically the dominant one” or “phenomena which result when groups of individuals having different cultures come into continuous first-hand contact with subsequent changes in the original culture patterns of either or both groups”.<sup>136</sup> On the other hand, the Shelters for Children and Families have limited sources for this type of learning for children, the limitation is include materials and human resources.

From the review of the Shelters for Children and Families’ operation and CRC principles, the Shelters for Children and Families partly cover some of important principles of the CRC. The operation of the Shelters for Children and Families emphasize emergency cases and multidisciplinary team evaluations. Primary shelters are temporary place to stay for the children so the services are considered as a form of emergency aid. While the principle is that the Shelter could do or be more effective are mostly related to migrant or foreign children. This obstacle is caused by domestic laws and a lack of cultural understanding.

### **The SWOT analysis of the Shelter for Children and Families**

According to the implementations and the gaps, an analysis of the operation of the Shelters for Children and Families will be discussed to find the “strengths, weaknesses, opportunities, threats or SWOT”. The Shelters for Children and Families’ strengths and opportunities will be used to extend to more interests of child protection system while the weaknesses and threats will be seen as obstacles and a need to improve or reduce. The SWOT analysis is “one of the most popular tools in use for defining an organization’s strategic action”.<sup>137</sup> The results often provide ideas about improvement or determine the

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<sup>134</sup> Kimberly A. Noels, Richard Clément, ‘Situational variations in ethnic identity across immigration generations: Implications for acculturative change and cross-cultural adaptation’, (2015), I.J.P. 50, 451.

<sup>135</sup> Noels and Clément (n134) 451.

<sup>136</sup> Noels and Clément (n134) *ibid*.

<sup>137</sup> Coman, Alex & Ronen, Boaz, ‘Focused SWOT: Diagnosing critical strengths and weaknesses’, (2009), International Journal of Production Research, 5677.

performance not only use for business plans, but also apply to personal improvement and other fields. The Shelters for Children and Families are small government agency but the SWOT analysis may find the strengths and opportunities that can be beneficial for child rights protection. Moreover, the analysis of weakness and threats can be used to find the improvement and set future plans to fulfil the child protection systems.<sup>138</sup>

1. Strengths; the internal factor that looking for the good performance or valuable resources that the organization has such as land, equipment or knowledge.<sup>139</sup>

- Location; the Shelters for Children and Families are located in every part of country, so there are 77 shelters in 77 provinces of Thailand <sup>140</sup> that covered all area if people need to use their services.
- Human resource; the operation of the Shelters for Children and Families was separated into two groups which are “administrator section and social welfare section” to provide service more efficiently.<sup>141</sup>
- Financial support; the Shelters for Children and Families are government agency, so they always have a budget for each fiscal year <sup>142</sup> and are independent from donors.
- Authority; the Shelters for Children and Families’ operations are supported and protected by laws to rescue and provide services to children and people who are in need. <sup>143</sup>

2. Weakness is also one of the internal factors <sup>144</sup> which are a disadvantage or a condition that causes obstacles for the Shelters for Children and Families.

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<sup>138</sup> swot-analysis-how-to-do-it <<https://www.strategicmanagementinsight.com/tools/swot-analysis-how-to-do-it.html>>accessed 9 August 2019

<sup>139</sup> swot-analysis-how-to-do-it (n133)

<sup>140</sup> Piandee (n68) 4.

<sup>141</sup> Deekaew (n52) 39.

<sup>142</sup> Department of Children and Youth (n80)

<sup>143</sup> Chapter I

<sup>144</sup> SWOT Analysis: What It Is and When to Use It <<https://www.businessnewsdaily.com/4245-swot-analysis.html>> accessed 9 August 2019

- Capacity; the Shelters for Children and Families can provide services for 20-25 people<sup>145</sup>, they have separate rooms for male, female and provide bassinets, but the spaces are not enough for the case of groups of victims. The Shelters will have to transfer victims to nearby shelters or other social welfare agencies.
- Human resource; the operation of the Shelters need to be ready 24 hours a day, the staffs need to rotate and work in shift patterns,<sup>146</sup> this may cause them to be the tired and stressed and cause them to have an improper “work life balance”.<sup>147</sup> Their works is risky and unsafe, and there might be at risk of infection from disease. The workload also impacts their time for participation in social activities.<sup>148</sup>
- Equipment; the operation of the Shelters provides services for various case, each case has different needs however.<sup>149</sup> The Shelters may not have sufficient equipment or, facilities that are appropriate for the operation.<sup>150</sup>

3. Opportunities are the external issues that could be advantages for the Shelters for Children and Families. These external issues could be “directly or indirectly elements” over control.<sup>151</sup>

- Network; there are many allies of the Shelters both government agency and NGOs, such as the One Stop Crisis Center Hotline 1300, UNICEF,<sup>152</sup> and the Children and Youth Council. The allies help to promote child protection systems, for example, the campaign “One Thousand Nightmares Can End with Your One Voice”, to receive reports related to social problems, including “child abuse, neglect and exploitation at Hotline 1300”.<sup>153</sup>

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<sup>145</sup> Department of Children and Youth (n76)

<sup>146</sup> Sripet, (n100) 179.

<sup>147</sup> Sripet (n100) 110.

<sup>148</sup> Sripet (n100) 110.

<sup>149</sup> Deekaew (n52) 27

<sup>150</sup> Sripet (n100) 182

<sup>151</sup> SWOT Analysis: What It Is and When to Use It (n144)

<sup>152</sup> programme-partners <<https://www.unicef.org/thailand/th/พันธมิตรของยูนิเซฟ#government>> accessed 5 August 2019.

<sup>153</sup> UNICEF and Government launch campaign to promote 1300 Helpline in a bid to curb violence against children <<https://www.unicef.org/thailand/press-releases/unicef-and-government-launch-campaign-promote-1300-helpline-bid-curb-violence>> accessed 5 August 2019.

- Multidisciplinary team; the evaluation in each case requires more skills, experience and expertise from people with different careers, and the Shelters cooperate with officers who work under the Child Protection Act 2003 such as social workers, psychologist, police officers, local governors and teachers.<sup>154</sup>

4. Threats are an external factor that are a serious issue to be addressed. Threats should be predicted or estimated to find a way to handle problems that may happened to the Shelter in the future.

- Process; there is limited time for the process of investigations and rehabilitation. The Shelters often cannot control the factors of time such as holidays, office hours, school hours or remoted locations.<sup>155</sup> Nor can they control all of time and distance of the external agency and people effect by the operation.<sup>156</sup>
- Cooperation; when the Shelters' staff do not receive enough cooperation and support from another agencies or communities, they find it to be an obstacle to provide assistance to the case and also the quality of life in working is decreasing<sup>157</sup>
- Intervention; media could be an advantage for child protection system as they raise awareness of people protecting children but sometimes this can have a negative impact. The disclosure of children or parent's information through the media often result in "decreasing their opportunities to return to society".<sup>158</sup> The Shelters for Children and Families can protect them while they are in the Shelter, but many cases were reported in the media before they were in the Shelters.

The SWOT display some idea to the Shelters for Children and Families in order to improve their operations. For example, the Shelters for Children and Families' networks can support cases of transferring if the Shelter have limited space. The Shelters for Children and Families also need to plan for evacuation due to

<sup>154</sup> Deekaew (n52) 47

<sup>155</sup> Deekaew (n52) 120

<sup>156</sup> Deekaew (n52) 121

<sup>157</sup> Sripet (n100) 171

<sup>158</sup> media not to violate children's rights <<https://www.thaihealth.or.th/Content/46327->  
 ทำความเข้าใจสื่อฯ%20ไม่ละเมิดสิทธิเด็ก.html>accessed 9 August 2019



natural disasters or emergency cases. It is significant to strengthen the network of the Shelter such as Children and Youth Council <sup>159</sup> which are the activities run by children and youth. The Children and Youth Council can help promoting child rights in protection among themselves. In addition, they have representatives in many levels such as the national, provincial and district levels, so the information and publications can be extended to communities more easily. Thus, the SWOT can raise some issues that the Shelters for Children and Families should address and therefore be more proactive than defensive.

### **The challenges of the Shelter for Children and Families and Child Rights Protection**

The main challenges of implementing CRC principles in the operation of the Shelter for Children and Families and child protection in Thailand, are mainly domestic laws, national policies and certain attitudes. In general, the domestic laws play important roles as instruments to protect children, and national policies is “helping institutions and communities identify and meet the survival, development, and protecting rights of young children and their families”.<sup>160</sup> It is often found that national capacities and “the absence of the rule of law” make the country unable to properly operate the shelters.<sup>161</sup> In addition, the national capacities should be more focused on cooperation, and development agencies and “human rights actors should develop strategies to address the gaps” and fulfil general measures of implementation.<sup>162</sup> Both domestic law and national policies should work systematically to provide services or “serve the role of allocating money for the improvement of social problems through cash and income transfer programs”.<sup>163</sup> In fact, there are some inconsistencies and problems that mean children cannot access the Shelter for Children and Families services. Moreover, certain attitudes such as cultures, traditions, beliefs, and religions impact on child care and rights, especially the parental power over their children.<sup>164</sup> The Shelter for Children and Families are more defensive than offensive, the cases need to be reported, and then the staff can do their work to protect the children

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<sup>159</sup> Department of Children and Youth (n80)

<sup>160</sup> Britto and Ulkuer (n5) 98

<sup>161</sup> Landgren (n4) 215

<sup>162</sup> Landgren (n4) 215

<sup>163</sup> Britto and Ulkuer (n5) 98

<sup>164</sup> John Locke, 'Locke on Parental Power', (1989), (15), (4), Population and Development Review, 752.

The CRC is an international instrument and has influenced the operation of international, regional and domestic laws and policies on children's rights.<sup>165</sup> The ratification enabled the State Parties to "better promote children's rights abroad,"<sup>166</sup> and develop their domestic laws in "dramatically new directions that empower children".<sup>167</sup> Archard suggests that the state party cannot deny the global effects "of their own actions" or citizens towards the responsibilities for all children of the world, as the CRC is an international charter and the world is bound together by "multiple economic, political and cultural bonds".<sup>168</sup> Bartholet emphasizes that CRC provides children with "powerful affirmative rights and imposes reciprocal duties on nation-states" such as rights to participate, rights to receive health, support, and education.<sup>169</sup> While Stark mentioned the importance of the Convention to children, they also noted that they are "incapable of exercising rights, and that others – parents, teachers, or state – must protect them", including providing an adequate standard of living, health care, education, and "protecting them from their own childish desires, by deciding what is the best for them".<sup>170</sup> It is obvious that children have a reproductive role to the state because they are "society's future citizens and workers, army, lawyers and politicians".<sup>171</sup> If the state intends to protect its society's future, then the state needs to "be concerned with children and their upbringing".<sup>172</sup> The government of Thailand need to be focused on this point, as the state party, the "value of children"<sup>173</sup> has a significant role to indicate the quality of life of citizens in the country.

The ratification of CRC is not only required for States Parties to provide childcare facilities, but it also addresses the duties to "develop and ensure that childcare facilities meet certain standards" and this will be included in country reports.<sup>174</sup> In fact, the ratification of CRC has influenced domestic law in Thailand, for example, the amendment to the Penal Code that capital punishment shall not be applied to those who commit an offense while under the age of 18.<sup>175</sup> Thailand is still using the capital punishment

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<sup>165</sup> Buck (n6) 89.

<sup>166</sup> Elizabeth Bartholet, 'Ratification by the United States of the Convention on the Rights of the Child: Pros and Cons from a Child's Rights Perspective' (2011), (633), (1) *The ANNALS of the American Academy of Political and Social Science*, 80.

<sup>167</sup> Bartholet (n166)

<sup>168</sup> David Archard, *Children, 'Family and the State'*, (Hampshire, Ashgate, 2003), 118.

<sup>169</sup> Bartholet (n166)

<sup>170</sup> Barbara Stark, 'Haman Rights and Children', (UK, Edward Elgar, 2017) xv.

<sup>171</sup> Archard (n168) 122.

<sup>172</sup> Archard (n168) 122

<sup>173</sup> Karen M. Smith, 'the Government of Childhood, Discourse, Power and subjectivity', (Hamshire, Palgrave MacMillan, 2014), 156

<sup>174</sup> Martha F. Davis and Roslyn Powell, 'The International Convention on the Rights of the Child: A Catalyst for Innovative Childcare Policies', (2003), (25), (3), *Human Rights Quarterly*, 697.

<sup>175</sup> Penal Code (Thai) <[https://www.lawphn.com/detail/law/penal\\_code-18](https://www.lawphn.com/detail/law/penal_code-18)>accessed 9 August 2019

while Cambodia and the Philippines are the only two countries in ASEAN<sup>176</sup> that have abolished the capital punishment. Although the capital punishment will not be applied to children, the defendants' families could “suffer serious social stigmatization”<sup>177</sup> and also has some negative effects to their children. There is an impact to children who become orphans, it brings questions to mind on how they are living. The CRC may have influence over children but there are some indirect impacts for them from this capital punishment issue. Another integration of CRC guidelines and is about education, the National Education Act, BE 2542 (1999), emphasizes that all children have equal rights and opportunities to access education for at least 12 years.<sup>178</sup> However, some children in Thailand are struggling to access education, especially children in refugee camp along the Thai – Myanmar borders and migrant workers' children in construction sites. They both have restrictions on movement and “have created a deadlock situation in which it is extremely difficult for the refugees to control the development of their own society”.<sup>179</sup> As it was mentioned earlier, there are language and culture barriers in the operation of the Shelter that impact on child migrants which are also barriers to accessing basic education outside the Shelter for Children and Families.<sup>180</sup> In addition, the Labour Protection Act, BE 2541 (1998), it adjusted the minimum age of employment from 13 years to 15 years and increased measures to prevent child labor.<sup>181</sup> Furthermore, the Prevention and Suppression of Prostitution Act, BE 2539 (1996) which emphasizes punishment for those involved in seeking sexual exploitation from children and protecting children who are victims.<sup>182</sup> However, there are many problems in the enforcement and operation of this principle that need to be addressed.

The CRC made significant change to the Child Protection Act, 2003. It can be said that the inspiration and instruction from the CRC strengthens child rights protection systems in Thailand. However, some of the domestic laws in Thailand may not be consistent to the principles of CRC and the enforcement may be insufficient for child rights protections. For instance, the Boxing Act BE 2542, (1999) set the minimum age of the boxer under 15 years. Thai boxing or “Muay Thai” has been considered as “a core part

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<sup>176</sup> ASEAN is the Association of Southeast Asia Nations, which has ten countries members

<sup>177</sup> Rachel King and Katherine Norgard, 'What About Our Families? Using the Impact on Death Row Defendants' Family Members as a Mitigating Factor in Death Penalty Sentencing Hearings', (1999), (26), (4), Florida State University Law Review, 1138. and 10 Beliefs and Truths about Capital Punishment <https://www.amnesty.or.th/latest/blog/43/> accessed 9 August 2019

<sup>178</sup> National Education Act, BE 2542 (1999)

<sup>179</sup> Barbara Zeus, 'Barriers to Higher Education in Protracted Refugee Situations', (2011), (24), (2), Journal of Refugee Studies, 257.

<sup>180</sup> Bureau of International Labor Affairs <[https://www.dol.gov/agencies/ilab/resources/reports/child-labor/thailand?fbclid=IwAR1sjL\\_wYpBgOWeL-AdXVZ8RvEk6byGM4c0wwYIB67n1Z\\_O7oL0krQCE--g](https://www.dol.gov/agencies/ilab/resources/reports/child-labor/thailand?fbclid=IwAR1sjL_wYpBgOWeL-AdXVZ8RvEk6byGM4c0wwYIB67n1Z_O7oL0krQCE--g)> accessed 9 August 2019

<sup>181</sup> The Labour Protection Act, BE 2541 (1998),

<sup>182</sup> Prevention and Suppression of Prostitution Act, BE 2539 (1996)

of modern Thailand's national identity", but in a different context it could be referred to as a job for children. It is often discussed if the age of the boxers is appropriate or not, because the effects of what will happen to their physical and mental health is an issue of serious concern. While some people argued that it is better to practice at a young age to be successful in this sport career.<sup>183</sup> This may affect the health, safety and development of children, namely because they often being hit on the head. The brain cells and nerves are often destroyed and lead to memory malfunctions, and the intelligence and IQ of children who are boxing will be much lower than those of other children generally.<sup>184</sup> From an interview with Wijarn Ponlid, the former Thai boxer and the 2000 Sydney Olympic gold medalist<sup>185</sup>, who started his career from a young age, expressed that he loves boxing but he had to quit. This was because he does not "want to be punished for money anymore", he noted that even when he fell unconscious, his instincts pushed him to fight back.<sup>186</sup>

Moreover, there was an incident that result in the death of a Thai child boxer in 2008, Anucha Thasako was a 13-year-old boy who was knocked out in a Thai boxing match. He was pronounced "dead from a brain haemorrhage two days after he fought in the charity match".<sup>187</sup> It is ironic that this is not illegal to the Labour Protection Act because the children do not get paid from the boxing camp or the promoter, so this is not regarded as child labour. The attitude of many Thai people consider child boxing as sport, so they will not report this incident to the OSCC Hotline or the Shelter for Children and Families. For the Labour Protection Act 1998, the minimum age of employment is the age of 15, but it can be said that the enforcement is weak. The prevention of child labor is not yet covered in all businesses that hire children under 15 years old that they also get unequal and unfair pay.<sup>188</sup> According to the International Labour Organization (ILO), "child labour" is often "defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development".<sup>189</sup> Besides the CRC, the ILO's Conventions on Minimum Age (1973) and on the Worst Forms of Child Labour (1999), sets the

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<sup>183</sup> Pattana Kitiarsa, 'Lives of hunting dogs: Muai Thai and the politics of Thai masculinities', (2005), (13), (1), South East Asia Research, 77.

<sup>184</sup> Child boxing: the issue of children's rights under the cultural and business <<https://www.bbc.com/thai/thailand-46218196>>accessed 15 August 2019

<sup>185</sup> Kittiasa (n183) 68

<sup>186</sup> Kittiasa ibid.

<sup>187</sup> BBC Get Inspired: Is boxing or MMA safe for children? <<https://www.bbc.co.uk/sport/get-inspired/46196929>>accessed 15 August 2019

<sup>188</sup> Combating the Worst Forms of Child Labour in Shrimp and Seafood Processing Areas in Thailand <[https://www.ilo.org/asia/projects/WCMS\\_161095/lang--en/index.htm](https://www.ilo.org/asia/projects/WCMS_161095/lang--en/index.htm)> accessed 15 August 2019

<sup>189</sup> What is child labour <<https://www.ilo.org/pec/facts/lang--en/index.htm>> accessed 15 August 2019

worst form of child labour into “light work and hazardous work, with unconditional worst forms of child labor being a subset of hazardous work”.<sup>190</sup> Thus, the cases of child boxers at 15 years-old needs to be reviewed in Thai laws because it is not consistent with the CRC and ILO's Conventions.<sup>191</sup>

In addition, child labour is also a leading human trafficking issue in Thailand because children are vulnerable group that can be exploited in many forms such as “long working hours for low pay, sexual abuse, physical violence and hazardous working conditions without adequate protection”.<sup>192</sup> Thai children and child migrants from the Greater Mekong Sub-region,<sup>193</sup> are exploited for “commercial sexual exploitation” including massage, bars, karaoke and internet live broadcasts.<sup>194</sup> Thailand hosts 4 million migrants who are “mostly seeking employment as low-skilled or semi-skilled workers”.<sup>195</sup> The number of children who are accompanying their migrant families to Thailand “is estimated between 300,000 and half a million and half of them are undocumented which make them illegal migrants”.<sup>196</sup> Furthermore, many of them engage in “hazardous work in shrimp and seafood processing” which placed Thailand in Tier 3<sup>197</sup> of the watch list in the US Trafficking in Persons Report in 2014.<sup>198</sup> Children who work in the seafood industry have to “clean and lift heavy loads of seafood and work late hours” and many of them have health problems such as injuries and chronic diseases.<sup>199</sup> This relates to the report that the victims of human trafficking are often “physically and mentally abused and lack medical treatment, and healthcare” or access to social services. They are often forced to work to pay off the “debt contracts” to their agency.

Many of the children flee from poverty in their hometown, and have to pay for an illegal agency to help them find jobs.<sup>200</sup> In addition, they are often not allowed to “leave their work premises or contact anyone outside the work place”, especially female migrants and children because they work in

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<sup>190</sup> Lisa Rende Taylor, 'Dangerous Trade-offs

The Behavioral Ecology of Child Labor and Prostitution in Rural Northern Thailand', (2005), (46), (3), Current Anthropology, 412.

<sup>191</sup> Worst Forms of Child Labour Convention, 1999 (No. 182) - a "child" a person under 18 years of age. It requires ratifying states to eliminate the worst forms of child labour, including .... work which is likely to harm the health, safety or morals of children.

<sup>192</sup> Yongyuth Chalamwong, Jidapa Meepien and Khanittha Hongprayoon, 'Management of Cross-border Migration: Thailand as a Case of Net Immigration', (2012), (40), (4), Asian Journal of Social Science, 451.

<sup>193</sup> Myanmar, Lao PDR, and Cambodia

<sup>194</sup> Bureau of International Labor Affairs (n180)

<sup>195</sup> UNICEF (n27)

<sup>196</sup> UNICEF (n27)

<sup>197</sup> Alese Wooditch, 'The Efficacy of the Trafficking in Persons Report: A Review of the Evidence', (2011), (22), Criminal Justice Policy Review, 471.

<sup>198</sup> Thailand promoted again in US trafficking report <<https://www.bangkokpost.com/thailand/general/1494014/thailand-promoted-again-in-us-trafficking-report>>accessed 15 August 2019

<sup>199</sup> Bureau of International Labor Affairs (n180)

<sup>200</sup> Beware of illegal agency <<https://mgronline.com/qol/detail/9600000078086>> accessed 15 August 2019

“closed environments and in private homes as domestic service workers”.<sup>201</sup> This creates the condition that they cannot ask for help or access the services from the Shelter for Children and Families or any other forms of child protection. Although the ranking of Thailand is higher now as it reached Tier 2 in 2016<sup>202</sup>, the government is still only meeting less than the minimum standard. They were just attempting to “make significant efforts to bring themselves into compliance with those standards”.<sup>203</sup> For example, the government issued a “pink card” registration scheme to “reduce the number of undocumented migrants working in Thailand, which has tied fishers’ legal status to specific locations and employers whose permission they need to change jobs, creating an environment ripe for abuse”.<sup>204</sup> However, Human Rights Watch mentioned that the pink card process fails to examine actual labour workers at sea <sup>205</sup> because it relies on paper records that are “submitted by fishing companies”.<sup>206</sup> The children under the minimum age of work may not be included in the system as the fishing companies and agencies let them working without a formal employment contract.<sup>207</sup>

The government agencies that are the focal point and are responsible for Child Labor Law Enforcements in Thailand are the Department of Labor Protection and Welfare (DLPW), the Ministry of Labor (MOL), and the Anti-Trafficking in Persons Division of the Royal Thai Police (RTP). They inspect workplaces, Operate Hotline 1546 and have “welfare offices in every province to answer questions about working conditions and receive complaints from the public about child labor”<sup>208</sup>. The MSDHS, has duties to provide social program through the Shelter for Children and Families including “emergency assistance, protection to human trafficking victims, medical care, psychological services, education” and life skills training.<sup>209</sup> There are also international organizations and NGOs who have important roles in helping and running the campaign against child labour, especially migrant, refugees and stateless children. Organizations such as UNHCR, UNICEF <sup>210</sup> or Save the Children or private sectors are also carry out

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<sup>201</sup> Chalamwong et al (n192) 451.

<sup>202</sup> Bureau of International Labor Affairs (n180)

<sup>203</sup> Wooditch (n197)

<sup>204</sup> Thailand: Forced Labor, Trafficking Persist in Fishing Fleets <<https://www.hrw.org/news/2018/01/23/thailand-forced-labor-trafficking-persist-fishing-fleets>>accessed 15 August 2019

<sup>205</sup> Thailand: Forced Labor, Trafficking Persist in Fishing Fleets (n204)

<sup>206</sup> Thailand: Forced Labor, Trafficking Persist in Fishing Fleets (n204)

<sup>207</sup> Bureau of International Labor Affairs (n180)

<sup>208</sup> Ministry of Labour <<http://www.mol.go.th/en/anonymouse/home>> accessed 9 August 2019

<sup>209</sup> Bureau of International Labor Affairs (n180)

<sup>210</sup> UNICEF (n27)

productive works for migrants because the migrants have a “fear of authorities, lack of understanding of policies and procedures”.<sup>211</sup> There are some MOU agreements that more than one agency which is helping to prevent child labour, but they should be considered as domestic laws that Thailand has at present and are of primary concern. Therefore, the amendment of the CRC has not covered all the child rights protections in domestic laws, and may have some gaps that still need to be fulfilled.

Beside the laws, the values and attitudes of people in Thai society are significant to child protections. In Thai society, parental authority is powerful in the attitude that a child is their property and family privacy is of primary concern. It is a dilemma between privacy of the family and state's interventions, especially when parents are put under investigation when child abuse is suspected.<sup>212</sup> Most of the family in Thailand provide safe and secure place for children and “at least an adequate environment within which to grow and develop”, however, there are some children that live in working-class families which often “remains a private domain and an unregulated space”.<sup>213</sup> There are many theories about parental authority which is also a tension between balancing the rights of parents and children, even in the CRC which contains the rights of children and the role of their families.<sup>214</sup> McDonald mentioned that parents identify their children as an “offspring or model of themselves”, and “the more parental power each parent is perceived to have, the higher the degree of offspring identification”.<sup>215</sup> Locke implied that the rule and jurisdiction that parents hold over the children is a temporary power.<sup>216</sup> The power belongs to the parents only at the beginning and this makes the children unequal when they are first born.<sup>217</sup> Another theory is the theory of “parental investment”<sup>218</sup>, which is quite relevant to the traditional value of many people in the countryside of Thailand. The parental investment theory assumed that the parent's success are concerned with their children's life as well as their survival. The economic and reproductive success related to their children's survival and “their genetic lineage”. In developing countries, time and resources are limited, parents are able to provide care and resources to their children under their potential only. Many children

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<sup>211</sup> UNICEF (n27)

<sup>212</sup> Turton (n54) 25.

<sup>213</sup> Turton (n54) 25.

<sup>214</sup> Smith (n173) 171

<sup>215</sup> Gerald W. McDonald, 'Parental Power and Adolescents' Parental Identification: A Reexamination', (1980), (42), (2), *Journal of Marriage and Family*, 289.

<sup>216</sup> Locke (n164) 751.

<sup>217</sup> Locke (n164) 751.

<sup>218</sup> Taylor (n190) 414.

who have their parents that cannot effort resources, they are more at risk in the child labour or child prostitutes problem.

Some researchers have found that in the Northern part of Thailand, there is a high risk of that girls that will turn into prostitutes because of family poverty. The risk is high for girls, who were born into poverty, and is based on "birth position and familial roles"<sup>219</sup>. The girls are possibly forced into prostitution and trafficking more than being a victim child labour, while boys are often placed in labour. While the number of child prostitutes is increasing, and it is mostly found that they are from the northern part of Thailand, the range of the ages is decreasing. The age was lowered from above 20 years old to the age of 13 – 18 years old.<sup>220</sup> The situation of child prostitutes in Thailand is continuous because there are more advertisements abroad about Thai child prostitutes. Many foreigners travel to Thailand for sex tourism. Montgomery argued that not all of the children were forced into prostitution because of Thai family culture. Some of them did not recognize that they were abused, they put themselves into prostitution.<sup>221</sup> Even they turn themselves to the prostitutes, it does not mean that they do not deserve child protections.

The topic about sex and violence that has spread throughout Thailand "are frequently taboo for public, and even private discussion".<sup>222</sup> Archard mentioned that families are not a private institution under the control of state. The nature and activities of families are beyond "the scope of legal and political governance".<sup>223</sup> For instance, the case of a husband physically assaulting his wife at home and in a public area will have different results. In a public area the husband is guilty but it is a private family matter when it happened at home.<sup>224</sup> It is impossible to say that all the actions that happened in houses or families are private. Those actions have essential impacts to public officials<sup>225</sup>, especially regarding the sexual abuse of children by their parents. Some people may address the sexual abuse of a child by her father and is common girls, in fact the trend of child sexual abuse in boys is increasing, and may be even higher than girls.<sup>226</sup> The attitude of Thai society regarding children and seeing them as a property and the attitude that

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<sup>219</sup> Taylor (n190) 423

<sup>220</sup> <<https://www.thairath.co.th/content/117942>> accessed 19 August 2019

<sup>221</sup> Heather Montgomery, 'Buying Innocence: Child-Sex Tourists in Thailand', (2008), *Third World Quarterly*, (29), (5), 908.

<sup>222</sup> Landgren (n4) 223

<sup>223</sup> Archard (n168) 123

<sup>224</sup> Archard (n168) 123

<sup>225</sup> Archard (n168) 124

<sup>226</sup> <<https://www.thairath.co.th/content/197787>> <<https://tna.mcot.net/view/5bd45ea5e3f8e40ace66f41e>> accessed 19 August 2019



topic about sex is a shame are both barriers for the Shelter for Children and Families to help children. For example, there was a case of sexual child abuse in Nan Province;

*The parents were reported to the police, but the police suggested that the parents should reconcile with the abuser to get compensation. The parents followed that advice, so it was not reported because they would get money. After one month, the abuser did not give them money, the parents reported to the police then the police informed the social worker at Nan Shelter for Children and Families.<sup>227</sup>*

The child was in the protection system under the Child Protection Act 2003, and was interviewed following the process. The first time that the child was sexually abused, the parents and abuser had reconciled for the money.<sup>228</sup> However, the sexual abuse was repeated again and again, the abuser denied to pay to the parent. That is the reason why the parents were asking for help from the police again. From this case, there are many gaps that need to be addressed. Firstly, the attitude and knowledge of the police officer that rejected the case. The Shelter for Children and Families cannot follow the procedures of child protection because the officers lack of knowledge and understanding about child protection under the Child Protection Act 2003. Secondly, the parents' attitudes that money can heal or help their child in this situation. Lastly is the information of child protection systems or "the way to ask for help" that may help children from being abused again.

The explanation of child abuse should be investigated and extended to the effects of cultural values, social conditions and problems of family interactions. There is a concern regarding the operation of the provisions of the CRC about traditional values and traditional cultural practices. It is in relation to the "protection and harmonious development of the child" that CRC states all 54 articles.<sup>229</sup> In some cultures, there are harmful traditional practices that force children to violate their rights such as female genital mutilation/cutting (FGM/C), child marriage and other forms of violations.<sup>230</sup> Although FGM is not addressed in CRC, it is a controversial issue of cultural practice worldwide, particularly in African nations.<sup>231</sup>

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<sup>227</sup> Deekaew (n52) 06

<sup>228</sup> Deekaew (n52) 6

<sup>229</sup> Kate Cregan and Denise Cuthbert, 'Global Childhood', (London, Sage, 2014), 71.

<sup>230</sup> Landgren (n4) 216-217.

<sup>231</sup> Cregan and Cuthbert (n229) 71

While child marriage stops the girl from going to school and increase maternal and infant mortality<sup>232</sup>, it also decrease the development opportunity for girls. Many of the girls who were sexually abused have been stigmatized and dropped out of school.<sup>233</sup>

According to the CRC, the states will “guarantee the child a range of fundamental rights”, and the child must enjoy the “highest attainable standard of health”. While the parents act as a legal guardian they have a “primary responsibility for the upbringing and development of the child”, and also concern for the best interests of the child.<sup>234</sup> Locke mentioned the power of the parents over their children, that it comes from the duty to take care of “their offspring during the imperfect state of childhood”.<sup>235</sup> Because the children are immature that their parents need to “inform the mind and govern the actions” and it is in this way that parents are bound to children’s needs.<sup>236</sup> Article 5 of the CRC specifically mentioned the “responsibilities, rights and duties’ of parents and extended family to support the child in exercising rights under the convention”<sup>237</sup>, so there is a need to afford the protection and assistance from families raising children.<sup>238</sup> Thus, it should be balanced for the rights of parents and children.<sup>239</sup> From the principle of the CRC, parents are primarily responsible and key to providing child care, but they cannot do it alone, they “require assistance in creating optimal environments”.<sup>240</sup> The state needs to support caregivers, as well as the “local community, service providers, national policy makers, and international communities”<sup>241</sup> because child protection is a large system. The CRC has a role for the implementation of child rights.<sup>242</sup> Even the best legislation cannot protect children, if the families, communities and institutions “do not attach high value to all forms of child protection”.<sup>243</sup> It could be said that a “social consensus” is important as much as the protections offer via government policy.<sup>244</sup>

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<sup>232</sup> Landgren (n4) 233

<sup>233</sup> Landgren (n4) 233

<sup>234</sup> David Archard, ‘Children Right and Childhood’, 3<sup>rd</sup> (London, Routledge, 2015), 169.

<sup>235</sup> Locke (n164) 752

<sup>236</sup> Locke (n164) 752

<sup>237</sup> Cregan and Cuthbert (n229) 68

<sup>238</sup> Cregan and Cuthbert (n229) 68

<sup>239</sup> Locke (n164) 751

<sup>240</sup> Britto and Ulkuer (n5) 93

<sup>241</sup> Britto and Ulkuer (n5) 93

<sup>242</sup> Britto and Ulkuer (n5) 93

<sup>243</sup> Landgren (n4) 218

<sup>244</sup> Landgren (n4) 218

The challenges of child protections in Thailand are obvious and that the consistence and enforcement of the laws need more attention. As for the State Party to the CRC, the follow up of all mechanism will be made to ensure that child rights in Thailand are meeting the standard. If the government reviews those gaps that obstruct children to exercise their rights, the children who are the future of the society will fully develop more stably and securely. Moreover, the culture and values also need to be reconsidered because they do not go along with the principle of the best interest of the child. Families cannot keep silent about child abuse or violations. The child victims should be reminded that they have someone to help them or a place to go and a proactive environment should be created for the children.<sup>245</sup>

## **Concluding Remarks**

The CRC principles are linked to many early childhood development issues because CRC can be used as the “lens for analysis and policy recommendations”.<sup>246</sup> Child survival development

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<sup>245</sup> Landgren (n4) 227

<sup>246</sup> Britto and Ulkuer (n5) 94

protections and participants are important policies that impact on childhoods. It cannot be assumed that “a vaccine or universal blueprint” for a child protection exists. It should be created “country by country, situation by situation” to enable the system to decrease child rights’ violations.<sup>247</sup> Although many countries have already ratified CRC, there are many issues that still exist including reservations and cultural pluralities.<sup>248</sup> There are some that suggest that the policies of the CRC committee should be formed “according to regional specificities”.<sup>249</sup> The developed countries in Europe may need to work on their specific problems such as “divorce, unemployment, alcohol, suicide”.<sup>250</sup> In Thailand, they should focus on child abuse, child labour, and domestic violence and child prostitutes. However, the CRC addresses all the “necessary environments and means”<sup>251</sup> to secure the development of children to their full potential. It also emphasizes the context of family and environment for children. The parents and state are demanded to do the “very best for each and every child” due to the best interest principle in the CRC, even it seems to be an extraordinary demand.<sup>252</sup>

The state should do more than just the enforcement or protection of legal rights. The public good and promotion of the public interests are so simple but the state needs to make better performances.<sup>253</sup> The government capacity to child protection is often weak, not only in terms of budget or resources but also in term of “administrative support and structures, trained professionals with adequate remit and authority, and experience”.<sup>254</sup> The Thai government also needs the cooperation from other governments to resolve “cross border issues such as child trafficking” and child migrants.<sup>255</sup> Furthermore, the promotion may need more than one government agency, individual or private organization.<sup>256</sup> There should be the establishment of “communications infrastructure, the protection of the environment, the maintenance of law and order, the provision of a national defense and the promotion of public health” all of these need to be started by government.<sup>257</sup> In addition, laws and policies matter especially for criminal

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<sup>247</sup> Landgren (n4) 223

<sup>248</sup> Abhinaya Ramesh, ‘UN Convention on Rights of the Child: Inherent Weaknesses’, (2001), (36), (22), *Economic and Political Weekly*, 1949.

<sup>249</sup> Ramesh (n248) 1949

<sup>250</sup> Ramesh (n248) 1949

<sup>251</sup> Britto and Ulkuer (n5) 93

<sup>252</sup> Archard (n234) 169

<sup>253</sup> Archard (n168) 118

<sup>254</sup> Landgren (n4) 230, Archard (n168) 118

<sup>255</sup> Landgren (n4) 230

<sup>256</sup> Archard (n168) 118

<sup>257</sup> Archard (n168) 118

responsibility and the justice system. Due to the challenges of the child protection system in Thailand there are the domestic laws which are not consistent with the CRC, and their enforcement is weak. Culture and values of Thai society have huge impacts to child rights because the family values and privacy are barriers for children to enjoy their rights. Thus, the enforcement and consistency of domestic laws should be reviewed by the government to find the best solution for child protection, and the government needs to pay more attention and financial support to the public relations about child protection and social services. For the operation of the Shelter for Children and Families, they should continue working as a multidisciplinary team and systematically find the most positive or least negative impact solution, and choose therefore the best solution based on the “best interest of the child”.<sup>258</sup> The general concept of child rights protections might not change, but the national policy might change the way that child protection agencies are working.

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<sup>258</sup> Zermatten (n84) 16

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