

STATE PARTY EXAMINATION OF CAMBODIA'S INITIAL REPORT ON THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

**68TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
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Cambodia ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 21 February 2002. On 12 January 2015, the Committee on the Rights of the Child (the Committee) examined the initial periodic report of Cambodia.

Opening Comments

The delegation of the Cambodia was led by H.E. Mr. Ith Rady, Member of the Supreme Council of Magistrates. He was supported by a delegation consisting of representatives of the Ministry of Interior, the Ministry of Economics and Finance, the Ministry of Social Affairs, Veterans and Youth Rehabilitation, the Cambodian National Council for Children (CNCC) etc. and the Cambodian Embassy in Switzerland.

The head of the delegation, H.E. Mr. Ith Rady, noted Cambodia's continued commitment to the implementation of the rights and best interests of the child as exemplified by the many measures and efforts that had been undertaken in dissemination and raising awareness about the Convention on the rights of the child (CRC) and the OPSC. The State had changed its status from a low income to a lower middle income country, by reducing the poverty to 19.8 per cent and increasing its budget allocations to social affairs, education and health sectors by 13.2 per cent for 2015. This was the result from the implementation of the second phase of

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the overarching Rectangular Strategy and the National Strategic Development Plan (2009-2013). Regarding worst forms of child labour, H.E. Mr. Ith Rady announced the State's goal to reduce child labour to 8 per cent in 2015 and completely eliminate the worst forms of child labour by 2016. In terms of child trafficking, he mentioned the work of the National Committee to Lead on the Suppression of Human Trafficking, Smuggling, Labour and Sexual Exploitation (NC/STSLs) based on the National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labour and Sexual Exploitation of Women and Children (STSLs), as well as on the Law on Suppression of Human Trafficking and Sexual Exploitation (TIPSE). With regard to the CNCC, he mentioned that this body had strengthened and expanded its structure, and had just completed a review of the Cambodian legal framework on child. He concluded by noting that while significant results had been achieved, challenges – such as the negative impact from globalization, limited capacity, poverty and limited law enforcement – still remained.

The Country Rapporteur and Committee Chairperson Ms. Kirsten Sandberg, welcomed the Cambodian delegation and commended the State party on all the efforts related to the domestication and implementation of the OPSC.

General Measures of Implementation

Legislation

The Committee expressed concerns about the large quantity of both new laws and gaps within the legal framework, and reminded the delegation of the issue of limited law enforcement. Furthermore, the Committee was wondering about the exact place of the CRC and the OPSC within the Cambodian legal hierarchy in case of contradictions with national law. Finally the Committee inquired whether all national provisions had been reviewed and revised after the ratification of the OPSC. The delegation did not respond directly to any of these questions.

Coordination of activities

The Committee asked if there was an overlap between the coordinative body on children's rights – the Cambodian National Council for Children (CNCC) – and the one on the suppression of human trafficking – the National Committee on Suppressing Human Trafficking (NC/STSLs) – on issues covered under the OPSC. The Committee also asked whether the National Plan of Action on Suppressing Human Trafficking (STSLs) (2011-2013) was properly assessed and renewed or included within the National Plan for Child Development. The Committee was also interested in better understanding the CNCC's relative position within the Cambodian administrative hierarchy, and in particular what actions the CNCC could take if the relevant ministries did not take into account its recommendations. The delegation responded that there was no overlap between the CNCC and the NC/STSLs: while the CNCC was the overarching coordinative body for children's rights, the NC/STSLs was leading on suppression of human trafficking and national organized crime, with CNCC only forwarding relevant information. In addition, both bodies were in charge of the implementation of their own National Plans. The delegation also highlighted the cooperation with many UN agencies, development partners and other stakeholders on the implementation of the CNCC's programme. With regard to trafficking of children, the delegation clarified that the government had assessed the efficiency and effectiveness of the implementation of the STSLs (2011-2013) and was in the process of drafting a new National Plan.

Resources

The Committee expressed concerns about the lack of resources for the implementation of the STSLS and the insufficient human resources and capacity in the field of social work. It asked if the government intended to allocate more resources for the functioning of the CNCC, for the implementation of the new National Plan for Child Development, as well as for social work on the local level. The delegation responded that the government had allocated the budget (2015-2018) to the Ministry of Social Affairs for the implementation of the overarching National Strategic Plan, and had increased the budget for the National Plan for Child Development by 230 per cent. Furthermore, the delegation stated that many ministries, especially the Ministry of Social Affairs and the Ministry of Economy and Finance, had collaborated in order to increase the budget to support the implementation of the CNCC's programme.

Data collection and research

The Committee noted the existence of 3 data systems run by different ministries that did not cover all issues in relation to the OPSC. It was therefore interested to know whether the State party had undertaken any concrete plans to improve this situation. Furthermore, the Committee asked if there was any research done in order to explore all the areas not currently covered by the various data systems, and in particular, on the various forms of sexual exploitation and their causes, especially online, and regarding prostitution of boys. The delegation responded that the development of the database system combining all the information on child trafficking and other children's rights issues, was underway. With regard to birth registration, as part of the reform of the current system, the delegation mentioned the establishment of a digital system in order to better track and monitor the gaps at local level in order to promote birth registration in the rural areas.

Reporting and complaints mechanisms

The Committee was concerned about the situation of complaints mechanisms for children. In addition, the helpline did not seem to cover all the areas of the State party, and the police was not prompt to react on any received calls. Furthermore, it seemed that there was no mandatory reporting of child abuse. The delegation responded that the helpline was nationwide, and added that the provincial offices of the NC/STSLS had their own hotline number and could directly receive all the complaints from all the victims. Furthermore, the delegation explained that there was a complaints mechanism not only for children but for all sorts of offenses. This mechanism was set up in courts where everyone, including children, could depose a complaint. The Committee asked if this mechanism was widely known and frequently used by children and recommended the establishment of a special line for children. The delegation added that on the national assembly level there was a commission on human rights that accepted child rights violations complaints and referred them to a competent authority. Regarding the mandatory reporting of child abuse, the delegation explained that according to the Penal Code if a public civil servant in charge of or responsible for children failed to report a violation of children's rights this was considered as an offense.

Dissemination and training

The Committee expressed concerns about the lack of knowledge about the offenses under the OPSC among government officials, State authorities, and society in general, including children. The Committee asked about any plans to disseminate the OPSC and raise awareness about its provisions, through the introduction of the OPSC into the school curriculum and about the training of professionals in all regions. With regard to the STSLS, the delegation stated that the government was considering including the OPSC into schools and universities' curricula, as well as in professional training (e.g. royal academy for police, for prosecutors,

and for military police). This, together with the dissemination of the OPSC, had been provided for by the new STSLS. Concerning the complaints mechanism, the delegation assured the Committee that the locations where children could depose their complaints were made widely known. Moreover, the Ministry of Justice – in collaboration with UNICEF – had produced promotional material on CDs in video format that showed and explained the complaints mechanism and the offenses. This was distributed to all relevant government ministries and institutions as well as NGOs. In relation to training on child trafficking, the Ministry of Justice had conducted a number of capacity-building activities with prosecutors, judges, and lawyers, in particular on how to suppress trafficking of women and children. Furthermore, the State had implemented a commune safety policy encouraging all the population as well as the local authorities to participate in programmes aimed at preventing child trafficking. With regard to the CNCC, the government was strengthening its capacity and mobilizing technical and financial resources, and had employed 18 more staff. In terms of social work and capacity-building of social workers at the community level, the delegation specified that Ministry of Social Affairs had provincial departments of social affairs which implemented their own tasks and responsibilities and tried to support the social welfare of all people, including children. At the same time there was collaboration with UNICEF and NGOs on capacity-building of social workers at the provincial and community levels.

Prevention

Reduction of vulnerability and birth registration

The Committee identified poverty as the main factor behind the quite widespread sexual exploitation of children in the country. It further noted that all the poverty reduction measures put in place were not far-reaching enough, and so regional disparities persisted. The Committee also asked if there existed any targeted programmes to reduce the vulnerability of migrant children, unaccompanied minors or children in street situations, and/or screening procedures to identify the possible exploitation of these children. Finally, the Committee was concerned about the birth registration rate in the State party (62 per cent in general, but 48 per cent among the poorest quintile). The delegation responded that the government was currently reforming the mechanisms for birth registration in order to focus on street and migrating children. A working group on the statistics of the population in communes and villages as well as mobile units were established for this purpose. A working group aimed at gathering relevant data in communes and villages as well as mobile units had been established for this purpose. With regard to children left behind by migrant workers, the delegation referred to the village and commune safety policy and the nation-wide establishment of commune councils for women and children.

Child labour and child prostitution

The Committee was concerned that the State party's Labour Law did not cover children working in the informal employment sector (domestic work, mining, manufacturing, agricultural, and the services sector). In relation to hazardous work, the Committee asked for a clarification on the legal age for working in the adult entertainment sector. Namely, under the Tourism Law children were not allowed on the premises of adult entertainment centres while the Sub-decree/Prakas on Hazardous Work allowed children above 16 to work in this sector. The delegation explained that according to the Tourism Law no minor was allowed to enter in an adult entertainment centre, and clarified that the Cambodian Labour Law allowed children above 16 to work – but not in hazardous circumstances or during night-time. With regard to child prostitution, the delegation specified that the Cambodian law treated children not as offenders but as victims and that so far no child had been arrested for solicitation. The delegation further clarified that if a child was soliciting prostitution, this would not be

considered as a prostitution offense but as an offense against the public order, with a penalty of 3000 Riels.

Child sex tourism

The Committee was concerned that child sex tourism was on the rise, and asked the State party whether the coverage of government initiatives tackling this issue (such as “Child Safe”). The Committee stressed the need for awareness-raising among children, parents and professionals on child sex tourism in rural communities, and education on internet safety for children. Furthermore, the Committee inquired whether a sex offender registration system was in place. The delegation informed that the Ministry of Tourism had established an inspection working group that, in collaboration with the judicial police, had the mandate to monitor, inspect, and make sure no children were allowed in entertainment sites. The Ministry of Justice, on the other hand, established a working group with the task of drafting a law on child sex tourism, in collaboration with the tourism police.

Prohibition and Related Matters

Definition and criminalization

The Committee noted that trafficking for sexual purposes was prohibited only if it was done through means of deception, force or coercion, and reminded the State party that this should not be a requirement for children. The Committee also remarked that while the law (TIPSE) covered sexual exploitation, transfer of organs and forced labour as cases of sale, it did not use the wording “offering, delivering and accepting” in its legal definition. With regard to child pornography, the Committee stated that the law did not cover pictures of sexual parts of children, nor written or audio material involving child pornography; the mere possession of child pornography was not criminalized; intentional access through ICT was not criminalized; grooming/soliciting children for sexual purposes through ICT was not covered. The delegation assured the Committee that any kind of acts of child pornography, especially in tourist locations, was criminalised, in all its forms, regardless of the type of material. As an example it presented a case of a tourist that was arrested and sentenced for photographing naked children on the beach for the purpose of child pornography. The delegation clarified that the law prohibited photographing children for purposes of child pornography and that, even if it did not explicitly mention “photographing of sexual parts of children”, those instances could still be considered as an offense. The delegation acknowledged that there was no specific provision in relation to the possession of child pornographic pictures and that this issue was still under review.

Prosecution and extradition

The Committee was concerned that while child sex tourism was increasing, such acts were rarely prosecuted and were mainly settled out of court. The Committee identified corruption as a major contributor to this problem. Furthermore, the Committee invited the State party to consider using the OPSC as a legal basis for extradition in cases where there were no extradition treaties with the concerned State. The delegation responded that in such situations the State party used the Penal Code to extradite the foreign offender.

Inter-country adoption

The Committee observed that, due to serious violations, inter-country adoption in Cambodia was stopped. In relation to this, the State party was asked to inform whether the Adoption Law was still on hold, and to specify what particular measures were taken in order to prevent using adoption mechanisms for offenses covered in OPSC. The Committee was also concerned about the growing orphanage tourism in the State party. Many of the children in those orphanages still had one parent. This showed a lack of regulation that could lead to

violations under OPSC. The delegation responded that the 2009 Adoption Law was still on hold and under revision and therefore inter-country adoption was effectively not allowed. It further specified that the government needed to develop different aspects of the Law, such as the procurement procedure, through appropriate sub-decrees. At the same time the Ministry of Social Affairs, which is the Central Authority responsible for inter-country adoptions, and the government were reviewing the Adoption Law in order to bring it in line with OPSC. With regard to orphanage tourism, the delegation explained that it was mandatory for every NGO to have a Memorandum of Understanding with the Ministry of Social Affairs, which contained the minimum standards for alternative care. The delegation added that recently the Ministry of Social Affairs issued a letter to close down 11 centers that failed to comply with these standards.

Extraterritorial jurisdiction

The Committee was interested to learn whether the State party has established and exercised extraterritorial jurisdiction in cases related to the OPSC. In response, the Cambodian delegation explained that the State party practiced extraterritorial jurisdiction, ie a Cambodian national abroad could be prosecuted within Cambodian law; at the same extraterritorial jurisdiction was established for foreigners who commit offenses on Cambodian nationals.

Protection of the Rights of Victims

The Committee expressed concerns over the weak capacity of the police to respond to the offenses covered under OPSC, the problem of limited law enforcement as well as the challenges related to the identification of victims. In relation to the protection of child victims and witnesses in judicial proceedings, there seemed to be no formal witness/victim protection programmes for children, and no provision of free legal aid. Furthermore, rehabilitation and reintegration programmes were available to victims of trafficking only. The Committee asked whether the government intended to extend those measures to other forms of offenses under the OPSC. In addition, the Committee noted that those programmes relied heavily on NGOs and UN agencies. In response, the delegation explained the State Party did not have a separate juvenile justice system and was still using the procedure stipulated in the Penal Code for both children and adults. However, the delegation mentioned that Cambodia was in the process of drafting a juvenile justice law with provisions addressing all offenses and issues related to children. With regard to child victim and witness procedures, video-conferencing equipment was installed in selected courts, as part of a pilot programme, while the rest of the courts in the State party were currently using court screens. The Committee was concerned that, under the current scheme, not all children were offered the same level of protection during court hearings. The delegation responded that this was due to lack of resources and capacity, and added that the courts with video-conferencing equipment had been selected in the areas where most of the child related cases occurred. Concerning free legal assistance, the delegation specified that in cases where children were unable to hire a lawyer themselves, the court appointed a legal representation free of charge.

International Assistance and Cooperation

The delegation stated that the government was collaborating with neighbouring countries (Thailand and Vietnam) in order to review the existing laws in relation to child sex tourism and identify what kind of offenses could be considered as sex tourism offenses. In terms of extradition, the delegation also mentioned that the State party closely collaborated with other State's foreign agencies especially in cases involving foreign offenders who escape in Cambodia.

Concluding Remarks

The Country Rapporteur and Committee Chairperson Ms. Kirsten Sandberg thanked the delegation for the dialogue and said it provided important information to the Committee.

The head of the delegation, H.E. Mr. Ith Rady, concluded by reiterating Cambodia's progress in responding to the issues of children. On the other hand, he acknowledged the gaps and shortcomings especially in the areas of child trafficking, prostitution and pornography and stated that the State party could not address these issues without continued participation and collaboration from all stakeholders (parents, guardians, children, development partners, UN agencies, and CSOs). He further expressed the State's commitment to promote the dissemination and increase the effectiveness of existing laws related to the OPSC. He finally thanked the international community for its technical and financial support and accepted all the constructive ideas, suggestions and recommendations resulting from the dialogue with the Committee.