



STATE PARTY EXAMINATION OF THE KYRGYZ REPUBLIC'S THIRD AND FOURTH PERIODIC REPORT

66TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

26 MAY – 13 JUNE 2014

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The Kyrgyz Republic ratified the Convention on the Rights of the Child (CRC) on the 07 October 1994. The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts (OPAC) were ratified respectively on the 12 and 13 August 2003. On 28 May 2014, the Committee on the Rights of the Child (the Committee) examined the third and fourth periodic report of the Kyrgyz Republic. It was last examined on 23 September 2004.

Opening Comments

The delegation of the Kyrgyz Republic was led by Mr. Bazarbaev Kudaibergen, Minister of Social Development of the Kyrgyz Republic. He was supported by a high-level delegation consisting of the Deputy of Supreme Council of the Kyrgyz Republic, the Deputy Chairman of the Supreme Court, representatives of the Ministry of Science and Education, the Ministry of Health, Human Rights Coordination Council, and the Counsellor in the Permanent Mission of the Kyrgyz Republic to the United Nations in Geneva.

Mr. Kudaibergen stated that the protection of children remained at the top of the State party's priorities and noted that a number of legislative achievements advanced the rights of the child, since the last Concluding Observations in 2004. As a matter of example, he emphasized the adoption of the 2006 Children's Code and its amended version in 2012, which provided new safeguards for children and families at risk, children in conflict with law and children with disabilities. At an international level, the Kyrgyz Republic had undertaken important steps, such as signing the Convention on the Rights of Persons with Disabilities, in 2011, and ratifying the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which was adopted by the Act. No. 166 of 10 August 2012.

Mr. Kudaibergen further highlighted efforts made by the State party during the reporting period in realizing children's rights to family life, development, health and quality education. In addition, steps had been taken to prioritize child welfare and to prevent institutionalization of children. In this context, the Social Protection Development Strategy (2012-2014) had been adopted to increase social allowances and services for disadvantaged families. Finally, Mr. Kudaibergen stated that the mandate of the Ombudsman (Akyikatchy) had been expanded in order to include the rights of the child.

Ms. Olga Khazova, the Coordinator of the Task Force, welcomed the delegation and commended the State party for improving the situation of children and bringing national legislation in conformity with the CRC, despite serious difficulties of political, social and economical nature.

General Measures of Implementation

Legislation

The Committee welcomed the legislative developments, in particular the Children's Code, which had established new agencies, mandated to monitor the rights of the child at a regional level: the Commission on Child Affairs (CCA) and the Department of Family and Children Support (DFCS). The Children's Code also provided for better guarantees in the field of juvenile justice and social assistance to children in vulnerable situations. The Committee also commended the State party for acceding without reservations to both Optional Protocols to the CRC as well as for signing the Hague Convention on International Adoptions.

Ombudsman

The Committee commended the State party for expanding the mandate and competences of the Ombudsman to include the protection of children's rights. The delegation explained that the Ombudsman Office was composed of 11 independent experts working on the rights of the child, who were also entitled to carry out monitoring and preventative inspections to public and private correctional facilities. It further noted that the Article 12 of the Children's Code expanded the powers of the Ombudsman to receive individual complaints from children or/and other persons, including stateless and non-Kyrgyz citizens concerning violations of children's rights. In addition, the delegation provided the Committee with statistics, noting that only 2.2 per cent of complaints were related to children's rights and explained that such low numbers might had been due to the fact that children feared reprisals and preferred not to report abuses.

Finally, the delegation noted that the Ombudsman, as a stand-alone independent body, also established a memorandum with a number of civil society organizations (CSOs) to strengthen cooperation in the area of the rights of the child.

Dissemination and training

The Committee enquired about awareness raising programmes around the CRC. The delegation answered that the CRC had been translated into the official languages (Kyrgyz/Russian) and that trainings had been carried out, targeting particularly judges, social workers and teachers.

Coordination

The Committee enquired about the place of the CRC in the domestic legal system and asked whether in case of conflict between domestic law and the CRC's provisions, the primacy had been attached to the CRC and related international standards. In addition, the Committee asked for more information on the body responsible for the overall coordination and implementation of the CRC at the federal and regional levels.

The delegation explained that the CRC, its two Optional Protocols and other international treaties, ratified by the State party had the primacy over domestic law and that there were no restrictions imposed on judges to refer to these instruments when deliberating. Regarding the coordination body, the delegation noted that the Children's Code established a Child Protection Department under the State Agency for Physical Culture and Sport which had been mandated to coordinate the implementation of the CRC, together with the Ministry of Labour, Employment and Migration. At a regional level, the implementation of the CRC had been carried out by the DFCSs and CCAs.

Ratification of international instruments

The Committee congratulated the State party for the ratification of the OPSC, the OPAC as well as for taking steps to ratify the Hague Convention on International Adoptions and the UN Convention on the Rights of Persons with Disabilities.

The role of civil society and non-governmental organizations

The delegation reiterated its commitment to strengthen cooperation with civil society in the field of child protection. It added that an Observatory Council had been established for strengthening the cooperation between non-governmental organizations (NGOs) and the government.

General Principles

Non-discrimination

The Committee was concerned about access to quality education in the southwest province of Osh, particularly for children belonging to the Uzbek minority. The delegation explained those children were discriminated and had access to a multi-cultural education, with a possibility to choose the language of study between Uzbek, Russian and Kyrgyz. In order to ensure the integration of minority children, basic notions of Kyrgyz and Russian had been taught in Uzbek educational facilities.

Best interest of the child

The Committee was concerned about the lack of legal definition of the best interest of the child. The delegation highlighted the cross-cutting nature of this principle and explained that the Children's Code stipulated that legislators had to attach priority to the best interest of the child when drafting laws, in order to provide children with adequate protection and access to services. It also added that the Office of the Ombudsman had been entitled to ensure the best interest of the child and children had been granted the right to file an individual complaint to its Office as of 14 years of age. Below 14 years of age, children needed to be represented either by parents or guarantors to file a complaint.

Civil Rights and Freedoms

Birth Registrations

The Committee was concerned about a high number of children who did not possess a birth certificate and asked whether those children were entitled to health services and education. It also enquired more specifically whether children could obtain a birth certificate if their parents did not have identification documents or residence permit. In addition, the Committee asked for more information about birth registration of children belonging to the Lyuli minority.

The delegation stated that any child, even without a birth certificate, had an unhindered access to school and medical care. In 2014, the Ministry of Health established, in cooperation with UNICEF, a new electronic birth registration system that would include children without birth certificates as well. The delegation explained that parents needed to have an identification document in order to be able to obtain a birth certificate for their child. As to the Lyuli children, there had not been any records of discrimination in issuing birth certificates, but the delegation noted that the sensitization of Lyuli families on the importance of birth registrations was a serious challenge.

Early Marriages and Bride Kidnapping

The Committee was concerned by the widespread phenomena of child early and forced marriages as well as of *Ala kachuu*, the practice of bride kidnapping. It emphasized that between 30 and 80 per cent of the marriages (depending on the province) were the result of non-consensual kidnapping. The Committee also pointed out at the high number of suicides committed by girls that were often the result of unlawful abductions and forced marriages.

The delegation stated that the legal age of marriage had been set up at 18 years of age, but that it could be lowered to 16 upon decision of competent authorities. It also noted that kidnapping and marrying off a minor had been criminalized and that perpetrators could be sanctioned with 7 years of imprisonment, while parents could be deprived of their parental rights. Although the delegation did not agree with the figures presented by the Committee, it noted that the existence of child early and forced marriages had been a serious challenge. It also explained that a number of cases had not been disclosed, due to their perception as taboo by the Kyrgyz society. To protect girls from such practices, the Ombudsman had launched in 2012 a campaign, encouraging citizens to denounce cases of child early and forced marriages. Also a number of shelters for victim of the phenomenon had been established.

Violence against children

The Committee was concerned about the fact that a large number of children were subjected to emotional, psychological and physical abuse and that law enforcement authorities had not provided children with effective protection. It enquired more specifically whether corporal punishment was lawful in educational, domestic and institutional care settings.

The delegation ensured that a number of measures had been adopted to guarantee the right of the child to live free from violence and that corporal punishment had been made unlawful in all settings. It further noted that a law on domestic violence had been adopted in 2003 and its amendment, currently tabled in Parliament, had strengthened the protection measures. As a matter of example, under the new law on domestic violence it would be easier to expel the perpetrator from home. Moreover a new programme to identify children in vulnerable situations had been launched to provide social assistance and training to families in risk.

Finally, an exception to the regular procedure of placement of children into institutional settings had been made possible in case of emergency. More precisely, in order to accelerate the procedure, a child could be removed from the family upon a temporary administrative decision (the latter would be *a posteriori* followed up by a judicial one).

Family Environment and Alternative Care

De-institutionalization

The Committee asked the delegation to provide more information on measures taken to prevent widespread and systematic institutionalization of children. It was particularly concerned about a large number of institutionalized children due to socioeconomic factors and asked whether families were provided with assistance to prevent such situations.

The delegation noted that the government had been implementing the Social Protection Development Strategy (2012-2014) with an aim to increase access of low-income families with children to State social benefits and guaranteed social services oriented towards providing children with a family environment. The DFCS was entitled to identify families in risk and provide legal and social protection at a local level.

Children deprived of a family environment

The Committee requested more information about the process of institutionalization as well as about living conditions in residential institutions. The delegation explained that in accordance with Article 37 of the Children's Code, only Courts had been entitled to deprive parents of their parental rights and to order a placement of a child into residential settings. In case of emergency a child could be placed into an institution upon a temporary administrative decision, yet only for a delimited period of six months. The administrative decision would be then followed by a re-examination by a Court. The delegation noted that children had been provided with a complete and balanced diet (food allocations increased from 50 to 100 soms/day) and with medical care free of charge. It had also noted that the large soviet-type residential facilities had been closing down and the State had been establishing smaller and personalized facilities for children. Moreover, Regulations on foster families, approved by the Government Decision (No. 670 of 1 October 2012) had been adopted with an objective to guarantee the right of children without parental care to live in a family environment.

Basic Health and Welfare

Children with disabilities

The Committee enquired about the situation of children with disabilities and was concerned about their excessive placement to institutional facilities geographically far away from parents. It also enquired about access to education within these facilities. The delegation noted a number of measures had been adopted in order provide children with an appropriate medical and social diagnosis, social and medical services as well as education. As a matter of example the monthly allowance increased to 300 soms and quality assistance had been provided depending on the category of disability. The delegation also noted that the number of abandoned children by parents on account of their disabilities or behavioural disorders decreased, thanks to the preventative work conducted with parents. As to education of children with special needs, 15 residential schools within the education system for children with special needs had been currently operating within the State party. The delegation noted that training of teachers specialized in teaching children with disabilities remained a

challenge. In addition, the delegation noted that the Ministry of Construction had been working on the elimination of physical barriers in urban settings. As a matter of example, most of pharmacies, clinics, cinemas etc. in Bishkek had a barrier-free access. Moreover the Ombudsman had been requested to prepare a special report on persons with disabilities.

Health services

The Committee asked what had been done to improve access to health services. The delegation answered that all children, including migrant children were entitled to medical services, including dentist care. Moreover the Ministry of Health had set up various categories of persons who enjoy benefits or even health services free of charge. The delegation also noted that a number of challenges remained, such as lack of qualified child psychiatrists (there had been only 13 child psychiatrists operating in the area of Bishkek). Regarding early detection, the Ministry of Health had developed a project with UNICEF assisting with early identification and provision of necessary services. As to adolescent health, a confidential clinic has been established in Bishkek and additional clinics would be developed.

HIV/AIDS

The Committee enquired about State party's activities related to HIV/AIDS prevention and asked whether there was any financial support to families with HIV/AIDS positive children. The delegation responded that progress had been made, in awareness-raising, thanks to the implementation of the Safety Route programmes in educational setting, under which information related to reproductive health and prevention of HIV/AIDS had been disseminated. The delegation also noted that HIV/AIDS children had not been discriminated against; however special benefits to families with HIV/AIDS children were not provided.

Education, Leisure and Cultural Activities Education

Corruption in educational settings

The Committee enquired about measures taken to combat corruption in educational establishments, especially in primary schools that reportedly charged extra fees for the enrolment to schools. The government adopted a programme of action to counter corruption for the period 2012-2014 and anti-corruption councils had been established to promote transparency and accountability. Moreover a number of administrative prosecutions related to the extraction of illegal took place. In 2013: the Ombudsman received 202 complaints on the issue, 75 persons were accused of violating the law and regulations on access to free education, and 29 disciplinary proceedings took place.

Education and language acquisition

The Committee enquired whether classes were available in Uzbek language for children belonging to the Uzbek minority. The delegation responded that along with general schools, where classes had been taught in Kyrgyz and Russian, 91 schools had been established, where classes were available in Uzbek language. Under the Article 10 of the Constitution, the representatives of all ethnicities have the right to preserve their native language. The State party had also the obligation to create conditions for its learning and development.

Special Protection Measures

Juvenile justice

Concerning juvenile justice, the Committee asked whether detention of minor could be decided by an administrative decision or whether detention required a Court decision. It also asked for more information concerning rehabilitation programmes for children in conflict with law. In addition it also enquired whether alternative dispute resolutions had been developed in order to prevent placement of children into penitentiary settings. The delegation emphasized that in 2012 the Children's Code had been amended to include a new chapter on juvenile justice. The Article 47 of the Code defined the term "juvenile justice" as the set of procedures applicable to children aged from 14 to 18 who are in conflict with the law, including issues such as the administration of justice and social rehabilitation. A Court decision had been required to place children to penitentiary settings. Moreover, the State party had been working on regulations related to reduction of the lengthy procedures. As to the rehabilitation, the delegation noted that there was a lack of rehabilitation centres for children released from penitentiary settings. Facing such a reality, the State party piloted a project providing for alternative dispute resolutions.

Child Labor

The Committee enquired about legal safeguards established to protect children from the worst forms of child labor. The delegation responded that the Constitution, the Labor Code and the Children's Code prohibited the use of children in harmful and/or dangerous working conditions, as well as in forms of employment that could damage their health or moral development. The State party also ratified both ILO Conventions related to child labor (No. 138 on the minimum age for work and No. 182 on the prohibition and immediate measures to eradicate the worst forms of child labor). In addition, the Prosecutor Office carried out 116 inspections in 2013 to investigate cases of child exploitation and child labor. 85 warnings were admitted, 76 persons were accused of exploitation and 26 disciplinary proceedings took place. Concerning rehabilitation of exploited children, 121 children, working in Bishkek were provided medical services and over 200 reported cases had been monitored. Finally, the delegation noted that inspections remained a challenge, since the law on Business inspections stipulated that a notification to entrepreneurs was required before inspections.

Children, Child Prostitution and Child Pornography (OPSC)

General Measures of Implementation

The Committee enquired about measures taken to protect and combat sexual violence. The delegation responded that the State party had undertaken legislative, administrative, social and educational measures to protect children from all forms of sexual exploitation, sexual abuse and child pornography, while in the care of parents, legal guardians or any other person. It explained that the Criminal Code established criminal liability for all sexual offences under the OPSC. The national statistical office had developed a comprehensive and disaggregated database related to sexual violence in order to collect comprehensive data. The delegation however explained numerous victims did not report cases of sexual abuse due to the fear of stigmatization. In addition the delegation noted that the government had been drafting a new clinical protocol targeting judges and law enforcement officers on how to deal with victims of sexual violence.

Children in Armed Conflicts (OPAC)

2010 South Kyrgyzstan ethnic clashes

The committee asked for more information regarding ethnic violence which erupted in 2010 in the region of Osh. A number of children aged between the ages of 15 to 24 died in the violent events, and two children were missing. There were allegations that these violations had not been properly investigated. The delegation responded that these events had been investigated, cases were referred to the Court and a number of individuals had been sentenced on charges of murder.

Concluding Remarks

Ms. Olga Khazova, the Coordinator of the Task Force thanked the delegation for a constructive discussion. She recalled that in April 2014, the third Optional Protocol to the CRC on a communications procedure entered into force, which had allowed submission of complaints by children to the Committee, upon exhaustion of domestic remedies. She further emphasized that it would be an effective way to protect rights of the child at a national and international level. In conclusion, she hoped that the State party would consider the possibility of signing and ratifying the third Optional Protocol.

Mr. Bazarbaev Kudaibergen, the Head of the delegation thanked the Committee for the many interesting questions as well as for the constructive support of NGOs and UNICEF in implementing the rights of the child.