



KINDOM OF CAMBODIA
Nation Religion King

Royal Government of Cambodia

Responses to

The Question Raised by the United Nations High

Commissioner for Human Rights

Regarding

Sale of Organs of Children

Adopted by Council Minister in the meeting on April 13, 2007

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INTRODUCTION

Sale of Children for various purposes and kidnapping them for worship offering (Bochea Yanh) have happened in the world since slavery era. These activities have been gradually eliminated due to society evolution, especially conceptual and legal developments such as the United Nations Convention on the Rights of the Child. Despite the developments, the sale of human being, disappearance and kidnapping, particularly the sale of children for the purpose of sexual or labor exploitation do still clandestinely exist. There are also the sales of organs through medical operation with a view to transplant those organs into bodies of sick persons. There are not such instances in the Kingdom of Cambodia.

Between 1975-1979, the period during which Cambodia was under the regime of Democratic Kampuchea, children did not have rights; they were violently forced to work hard, suffered from severe torture and killed together with their families. After the collapse of the regime, children have been secured, and provided with supports by government; they are cared of and raised by their parents, guardians and communities. Orphans without any support have been raised in State or private orphanages.

The Supreme Council of Cambodia, after the conclusion of the Paris Peace Agreement on 23 October 1991, signed the Convention on the Rights of the Child on 22 September 1992, and on 15 October 1992, this convention was ratified by Cambodia. The Royal Government of Cambodia paid more and more attention to the rights of the child. National policies, plans and programs have been designed to ensure the survival, protection, development and participation of children. The 1993 Constitution recognized the rights of the child in its Articles 31 and 48.

PART I: SALE OF ORGANS **Legal Context and Practical Standards**

Question 1: Is your country is a party to multilateral instruments on prevention and elimination of the sale of children; for example, the 1956 Supplementary Convention of the Abolition of Slavery, the 1990 Convention on the Rights of the Child and other Optional Protocol thereto as well as other legal instruments of the International Labor Organization (ILO)?

Answer: Cambodia is a party to the multilateral instrument on the prevention and elimination of Sale of Children. It also ratified a number of other international instruments, such as:

- The Supplementary Convention of the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (ratified on 12 June, 1957);
- The International Covenant on Civil and Political Rights (ratified on 20 April, 1992);
- The Convention on the Rights of the Child (ratified on 15 October 1992)
- The ILO Convention No. 138 on Minimum Age (ratified on 23 August, 1999);
- The Optional Protocol on Sale, Prostitution and Pornography of Children (ratified on 2 January, 2002);
- The Rome Statute on International Criminal Court (entered into force for Cambodia in 2002);

- The ILO Convention No. 182 on the Worst Forms of Child Labor (ratified on 30 August, 2005);
- The Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Particularly regarding Women and Children (ratified on 25 November, 2005); and
- The Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption (ratified on 29 November, 2006).

Question 2: Did your country enter regional or bilateral agreements with other States for Prevention and Elimination of Sale of Children in the context of Transplantation of Organs of Children? If so, please describe.

Answer: Cambodia has yet to enter any particular bilateral or regional agreement on the Elimination of Sale of Children in the context of Organ Transplantation; however, cutting off organs falls within the definition of the term “ exploitation” used in the Memorandum of Understanding between the Royal Government of Cambodia and the Royal Government of Thailand on Bilateral Cooperation to Eliminate Trafficking of Women and Children and to Protect Victims of Trafficking (Part II, Clause 2, Point A) as well as in the 2005 Agreement concluded with the Socialist Republic of Vietnam on Bilateral Cooperation to Eliminate Trafficking of Women and Children and Protect Victims of Trafficking (Part I, Clause 1).

Cambodia is already committed to enter agreements with other countries in future with a view to working together to suppress, prevent trafficking in persons, and prevention of sale of children in the context of organ transplantation.

Question 3: Please describe regional, provincial or national legislations, if there are any, applicable to prevent, combat and eliminate sale of organs of children.

Answer: human rights and the rights of the child are protected by domestic laws; all measures as required in the Constitution, legal instruments and other key procedures of the Kingdom of Cambodia have given effect to the prevention, combat and elimination of sale of children. Cambodia has not domestic laws yet, especially ones providing the prevention, combat and elimination of sale of organs of children; however, a number of Cambodian laws are applicable:

- The Constitution:

Article 31 provides the recognition and respect for human rights, women’s rights and the rights of the child as stipulated in the Constitution, Universal Declaration of Human Rights, covenants and conventions of the United Nations.

Article 38(1): Laws guarantee of non-physical abuses.

Article 48(2): State supports the combat against labors which are harmful to education of children or impact health or welfare of children.

- Law on Suppression of Kidnapping and Sale of Persons and Exploitation of Persons was adopted by the National Assembly in 1996. The law has purposes of suppression of kidnap of persons for sale and exploitation, rehabilitation, saving good traditional practices, and protection of human dignity, health and welfare of people.

- The Provisions relating to the Judiciary and Criminal Law and Procedure applicable in Cambodia during the Transitional Period (UNTAC Law) of 10 September, 1992:

Article 35: Illegal detention of persons

Article 41: Voluntarily injured act

- The Law on Press promulgated on 18 July, 1995:

Article 14: Media shall not publish what affects good tradition of the nation, namely:

+ Impolite words, such as *A* or *Moeung*, and so on

+ Words directly expressing sexual intercourse

+ Pictures or photos showing sex organ or pornography, except for educational purpose

+ Pictures showing disrespect, comparing persons with savage animals

- The Law on Aggravating Circumstances for Felonies adopted on 19 December, 2001:

Article 3: Voluntary manslaughter

Article 4: Deliberate murder

- The Law on the Prevention of Domestic Violence and Protection of Victims was promulgated on 24 October, 2005. Domestic violence includes acts:

+ Act endangering life

+ Act endangering physical integrity

+ Torture and cruel acts

+ Sexual abuses

- The Sub-decree on Code Conduct of Medical Personnel of 28 August, 2003:

Article 16: Taking blood as well as cutting off cells or other parts of the body of living person or dead shall be allowed as prescribed in laws.

Article 34: In all cases, examination or taking care of, shall obtain consent from sick person. In the event that the sick person with normal memory objected to carrying out research or treatment intended upon his or her body, the medical personnel concerned shall respect for the objection following the explanation given to the sick person on effect of such an objection. If sick person is unable to express (objection), the medical personnel shall not intervene without the presence of family members of the sick person except for an urgent case or that he or she could not communicate with the family of the sick person.

The Ministry of Justice is currently under the process of preparing a new Law on Suppression of Human Trafficking and Sexual Exploitation, which will be more detailed than the previous one, and the Ministry of Women's Affairs has proposed to insert the prohibition of sale of human organs into this new law.

Cambodia has conducted the review of all legal instruments in force and drafted new laws with a view to change their format or textual contents so that their provisions would be consistent with international and ASEAN instruments.

Question 4: Please point out public institutions which are responsible for prevention, combat and elimination of sale of organs of children, including their roles and actions.

Answer: In Cambodia, there are three different and independent powers: the Executive, the Legislative and the Judiciary. These institutions have following respective functions:

1. Legislative

The National Assembly and Senate have their own Commission on Human Rights Protection and Receipt of Complaints. The Commission has duties to solve all complaints or send those to other competent authorities upon the request made by citizens whose rights or freedom has allegedly been violated.

2. Executive

The Royal Government created ministries or specialized institutions with responsibilities and duties dealing with health affairs, developments, promotion of awareness of and protection of the rights of the child. The ministries and institutions are:

A. The Ministry of Interior has two departments: Criminal Department has duties to research, investigate and suppress all types of crimes, and the Anti-Trafficking and Juvenile Protection Department with specific responsibilities of prevention, suppression of all trafficking activities and sexual exploitation of children. The latter department adopted a plan (023 P.K) covering tasks: collation of information on crimes of trafficking in persons, preventive and suppressive measures against trafficking in persons, pornography or debauchery; cooperation with relevant ministries, departments and NGOs to exchange information relevant to human trafficking; creation of immediate intervention system and the operation of one telephone line for receiving complaints or urgent reports so that any intervention would be done.

B. The Ministry of Social Affairs, Veterans and Youth Rehabilitation created Child Welfare Department with duties to establish and strengthen a network providing service to children who need special protection at communities, and the provision of protection, prevention and combating service against all forms of exploitation of children. Child Adoption Office of this department implements inter-country adoption with the purpose of seeking a foreign parent for orphan without support, and protects those children from being exploited or cut off organs. With the support of UNICEF, the department created child protection network in communities in six provinces.

C. The Ministries of Health controls all State and private hospitals/clinics. Hospitals provide medical treatments and conduct operation basing on medical techniques and guidelines issued by the Ministry as well as the respect for the Sub-decree on the Code of Conduct of Medical Personnel which provides that taking blood as well as cutting off organs, cells or other parts of the body of living person or dead, can be done on the condition set forth in laws, and in all cases, examination or taking care of, shall obtain consent from sick person.

D. The Ministry of Women's affairs created a program educating people on trafficking in persons and leads implementation of the Agreement between the Royal Government of Cambodia and the Socialist Republic of Vietnam.

E. The Ministry of Labor and Vocational Training created a department in charge of children's affairs which has duties and responsibilities of children's affairs and working on

trafficking of children, labor exploitation of children, protection of vulnerable children against the worst forms of child labor; dissemination of laws, conventions and international treaties regarding children.

F. The Ministry of Justice incorporated the principles of the rights of the child into draft laws, and prepared draft law on the Suppression of Human Trafficking and Sexual Exploitation.

G. CNCC is an inter-ministerial institution with Samdech Hun Sen, Prime Minister of the Royal Government of Cambodia, as the Honorary Chairperson. CNCC has duties to coordinate, monitor and evaluate policies and programs concerning survival, development, protection and promotion of welfare, and child participation, and to draw support; prepare draft policy, laws, plans concerning children and make report to the Royal Government of Cambodia.

So far, CNCC has promoted the awareness on the rights of the child through seminars for public servants, educational programs through media, organized Children's Day event on 1st of June participated by the Head of the Royal Government, members of the National Assembly and Senate, leaders of ministries, organizations and children. CNCC also participated in solving issue of child trafficking, coordinated and led the preparation of the five-year National Plan which was implemented by the ministries concerned.

H. Cambodian Human Rights Committee with responsibilities of the implementation of International Covenant on Civil and Political Rights, International Covenant on Economic, Cultural and Social Rights and the Convention on the Rights of the Child, prohibition of torture or other cruel, inhuman or degrading treatment or punishment, elimination of all forms of discrimination against women and elimination of all forms of racial discrimination.

3. Judiciary

Any person committed crimes, when there are sufficient facts and evidences for substantiating those crimes, shall be punished basing upon the laws, extent and effect of crimes- infractions or felonies, and shall passed through proceeding levels:

1. Lower courts: municipal or provincial courts located in provinces or municipalities.
2. High courts: there are an Appellate Court and one Supreme Court located in Phnom Penh capital. Offence or crimes concerning children or minors fall within jurisdictions of all levels of the courts.

Besides national institutions at all levels, there are many international organizations and NGOs located in Phnom Penh and provinces/ municipalities. There are also organizations with duties of monitoring, investigations, regular vigilance and immediately reporting in case of witness of crimes by themselves or receiving report on violation of the rights of the child as well as providing securing service and legal representation necessarily helping victims.

Factual Context

Question 5: Are there reports on instances of sale or trafficking of organs? If there are, please specify.

Question 6: Are there reports on instances of sale or trafficking of organs of children? If there are any, please specify.

Answers 5 and 6: there is no report of sale or trafficking of organs of children or adults.

Question 7: In the event of sale or trafficking of organs of children, are there any measures undertaken to deal with it? Are there any complaints? If there are any, how would be the complaints proceeded?

Answer

- A.** General and Actual Measures: There is not a case of sale or trafficking of organ of children in Cambodia. If there is such a case, competent authorities shall take legal measures to suppress and punish offenders in accordance with laws.
- B.** Complaints: if there is such a complaint, competent authorities shall monitor, investigate, collect evidences; receives all pieces of information, reports; and solve all complaints through the court system.

Law on Criminal Procedure, Article 9 provides that: “ a person consider himself or herself a victim of offence is entitled to file a complaint, accompanied by charge by prosecutors, in order to get compensation.”

Question 8: Are there events that kidnapped or disappeared children have been found alive or dead lost organs? If lost or cut off, what are lost or cut organs? What are measures undertaken in this case?

Answer: There have never been report or complaint on incidents which disappeared or kidnapped children have been found loss of any organs.

Question 9: Are there any reports on incidents of religious worship or magic causing cutting off organs? If there are such cases, please describe.

Answer: There have never been official report on incidents concerning religious worship or magic causing cutting off organs in Cambodia.

PART II. Program on Immediate Solution in Case of Kidnapping and Disappearance of Children

Legal Context and Practical Standards

Question 10: Does your country take measures in order to prevent kidnapping or disappearance of children? Please describe measures implemented at national, regional, provincial level?

Answer: In Cambodia, there are a number of legal and administrative measures in order to prevent kidnapping or disappearance of children. The measures are as follows:

A. Legal measures: (please read Answer 3).

B. Administrative measures: if children or adults disappeared beyond 24 hours, parents or guardians shall report to competent authorities nearby so that they help seek for

disappeared children or adults. The Royal Government of Cambodia issued *Prakas* No. 01/SBr.K on 6 April, 2000 on measures implementing a Five-Year National Plan on Anti-Trafficking and Sexual Exploitation of Children; *Prakas* instructs: Public servant, officials and armed forces to avoid absolutely any involvement in or working as supporter of a person trafficking and exploiting children sexually. Those who committed such an act shall be punished pursuant to laws. Parents, guardians have to pay attention to all activities of their children and regularly instruct children not to fall within indecent acts that make it easy for dishonest person to persuade them to serve objectives of crimes.

Question 11: Does your country adopt legal or administrative measures allowing proclamation to people in case of kidnapping or disappearance of children? Please describe measures which were implemented and targeted the public at region, geographies, and the categories of the public.

Answer: In Cambodia, there have never been an urgent proclamation to people in case of kidnapping or disappearance of children. In case of kidnapping or disappearance of children, parent or guardians or competent authorities can disseminate the information on radio, TV or newspapers, especially they shall immediately report to other competent institutions.

Factual Context

Question 12: Since the implementation of measure of urgent proclamation, does the rate of successful cases of finding out kidnapped or disappeared children increase? What are the main grounds of success? If there are not, what are additional measures would be undertaken?

Answer: In Cambodia, there is no instance of sale of organs of children.

Question 13: Are there any cases that the found children are still alive and offenders were arrested after the implementation of measure of urgent proclamation? Please provide backgrounds of such instances and how does the program on immediate solution participate in finalization of kidnapping or disappearance?

Answer: In Cambodia, there is no case of kidnapping or disappearance of children for operating organs.

CONCLUSION

The Royal Government of Cambodia has paid much attention to all questions raised above although some of incidents do not happen yet in Cambodia. With much attention of the United Nations, Cambodia expects that the United Nations would share experiences as well as means so that Cambodia is able to strengthen capacity of prevention, suppression of indecent acts effectively.
