



ngo group for the crc

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

**59TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
16 JANUARY – 3 FEBRUARY 2012**

Contents

Opening Comments	1
General Measures of Implementation.....	2
Prevention.....	2
Prohibition and Related Matters.....	3
Protection of the Rights of Victims.....	4
International Assistance and Cooperation	5
Concluding Remarks	6

Thailand ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 11 Jan 2006. On 25 January 2012, the Committee on the Rights of the Child (the Committee) examined the initial report of Thailand.

Opening Comments

The delegation of Thailand was led by H.E. Mr Santi Promphat, Minister of Social Development and Human Security. He was supported by a delegation consisting of representatives of the Permanent Mission of Thailand to the United Nations Office in Geneva, the Ministry of Foreign Affairs, the Committee on Child and Youth Development Promotion, the Ministry of Education, the Ministry of Public Health, the Ministry of Labour, the Attorney General Office, the Royal Thai Police, the Ministry of Defence, the Internal Security Operations Command of the Fourth Army Region, the Office of the National Security Council, the Rights and Liberties Protection Department, the Security Officer, and a Law Professor from Chulalongkorn University and two Youth Representatives.

Ms.Nores, the Country Rapporteur for the OPSC, congratulated the State for its attempts to bring its legislation into line with the OPSC, especially through its Anti-Human Trafficking Act issued in 2008. She pointed out that a clarification of the definition of sale of children, child prostitution and child pornography was needed. She regretted the rise of sale and prostitution of children in Thailand was needed, due to the increase of sex tourism and underlined the negative impact of corruption of authorities and police on children's rights.

General Measures of Implementation

Legislation

The Committee asked the delegation whether there was a clear definition of the child as well as a definition of pornography and sale of children. The delegation answered that there was no direct definition of the child but asserted that a child was a person under the age of 18 according to the law on trafficking. It also indicated that section six of the 2008 Anti-Human Trafficking Act contained a definition of trafficking and considered that this definition could be used to implement some provisions of the OPSC since the two definitions were very similar.

The Committee pointed out that the subject matter of the OPSC was not trafficking but rather the sale of children, child prostitution and child pornography and recalled that domestic laws should implement precisely these three offences as defined in articles 3 and 4 of the OPSC. The Committee added that it was important to cover trafficking but underlined that the State should be able to prosecute perpetrators of other offences and needed clear definitions to be able to do so. The delegation indicated that a draft Anti-Provocative Material law was currently under review and contained definitions of child pornography among other relevant terms.

The Committee also observed that the domestic text implementing the OPSC was a ministerial decree issued in 2005. It indicated that the text implementing the OPSC should be a law and not only a ministerial decision or decree. It asked why the implementation had not resulted in a law. The delegation was not sure whether there was a specific law containing the exact same definitions as the OPSC and admitted that little had been done on the issue of pornography itself. It added that a new law was currently being discussed by the Cabinet and that there was still time to change the content of this draft to include precise definitions of the offences. It recognised that the integration of all provisions under the OPSC in the legal framework was needed. The Committee confirmed that it was an obligation when ratifying the OPSC.

Prevention

Human trafficking

The delegation indicated that a national plan of action (2003 to 2010) had been set up to prevent trafficking in children and women. It explained that this plan consisted of legal and prevention measures and specified that the legal measures mainly consisted of the Anti-Trafficking in Persons law of 2008 and of the Prevention and Suppression of Prostitution Act of 1997. The delegation also indicated that a Commission on anti-trafficking had been set up with several sections to work on these matters.

The delegation added that the prevention of human trafficking had three dimensions. It stated that the first aspect for prevention had consisted of a nationwide awareness campaign against human trafficking, including one Anti-Human Trafficking Day, as well as media articles and broadcastings. The second aspect of the prevention strategy aimed support at-risk by developing careers for women and children in low-income areas and by providing

scholarships to fund children's education. The third aspect presented by the delegation was the cooperation among organisations and networks to monitor children's rights.

Sex tourism

The Committee asked about measures taken to prevent sex tourism in Thailand. The delegation reported that the Ministry of Social Development, the police and non-governmental organisations had worked jointly on this issue. It indicated that the tourist police assisted children who had been in some way drawn into prostitution with or without their consent. It also assured that foreigners who entered the country for illegal activities could be arrested and reported that some of them had actually been arrested.

The Committee asked whether the tourism industry was bound by a code of conduct to respect norms and standards in order to curb sexual tourism, especially involving children. The delegation informed the Committee that a project to develop a code of conduct was underway, in cooperation with travel and tourism industries. This would be available for signature by tourist groups and hotels. It added that the State was working with the UNICEF to protect children from poverty and exploitation of all forms and to develop appropriate measures and guidelines, especially for children at risk.

Data collection

The Committee asked how the State gathered data, especially on child prostitution. It was surprised that, according to the State's data, there were only sixty cases of child prostitution in Thailand. The Committee recalled the importance of data gathering so that the State could have a good knowledge of the extent of the situation on the ground and establish appropriate policies. The delegation reported that the data collection on anti-trafficking was in the process of being established. It added that the State was attempting to integrate information from all the institutions concerned including police departments and the Ministry of Social Development. It added that the system was under the responsibility of an anti-trafficking commission. It also reported that data collected had been organised in two categories, data about victim children and data about prosecutions of offences.

The delegation stated that the data was still fragmented and could produce inaccurate results due to human error. It also recognised that there was a problem with data gathering and hoped that next time the State would be able to provide the Committee with more systematic data.

Helplines

The Committee pointed out that the State should implement better helplines since the existing ones were not available 24 hours per day. It added that information collected by these helplines should be used for data and follow-up on reported cases.

Prohibition and Related Matters

Prosecution of legal entities

The Committee asked whether legal entities could be held criminally liable in Thailand. The delegation answered that companies could be prosecuted for crimes, adding that they would be fined and managers could be sentenced to prison. The Committee asked whether the State could also confiscate the companies' equipment, freeze its assets and close the firm. The delegation answered that these sentences could also be taken according to the penal code.

Cyber crime

The Committee asked whether individuals could be prosecuted for disseminating child pornography online. The delegation indicated that the fight against pornography on the internet was a priority for the government and reported that dissemination of child pornography was an offence under the Cyber Crime Act of 2007. It added that the production, detention, sale or export of child pornographic materials were also prohibited under the Criminal Code. It explained that when dissemination or information about pornography was discovered, it was referred to the courts so that appropriate measures could be taken. It added that there was a good communication between ministries on cybercrime issues. The delegation indicated that the new law on provocation would play a role in the arrest of people involved and reaffirmed that the goal was to prevent and eradicate the dissemination of pornography through the use of computers. The Committee specifically asked whether ‘cyber grooming’ with a child, or attempting to meet a child, was categorised as a crime under the new law. The delegation answered that cyber grooming was illegal and that a simple invitation to a child was also considered illegal.

Protection of the Rights of Victims, Recovery and Reintegration

Protection of the child victim during the trial

The Committee observed that, even though a law existed to protect child victims within the judicial process, including video recording of their testimony and the possibility for them to talk to social workers, some judges were reluctant to apply these rules and required the physical testimony of the child in court. It therefore asked what measures would be taken to train judges on children’s rights and appropriate practices for judicial processes involving children. The delegation answered that the Ministry of Justice was responsible for victims and witness protection programmes. It added that during the trial measures were taken to avoid re-victimisation and specified that these measures applied from the police investigation to the end of the trial. It explained that judges, attorneys, police officers and social workers were trained to avoid a child’s re-victimisation.

The delegation stressed that the goal was to create a suitable atmosphere for the child, and specified that the child’s emotions and its family environment were taken into consideration when he or she was asked questions. It added that appropriate steps were taken to ensure that the child would not see its perpetrator. It admitted that the judge could decide to question the child himself or to do it in another room and that video recording could be used if direct questions would harm the child. The delegation indicated that if the child could not go to court, the recording could be used as evidence. It also stated that if the child victim had to be sent back to his or her country of origin, steps were taken to question him or her before return through the law on early deposition, which was included in the human trafficking law and the procedure code.

The Committee asked whether there was a limit to the number of times that a child could be heard in communicating his or her testimony. The delegation answered that the child was heard only once, since the aim was to avoid repetition of the testimony. It explained that the first hearing could then be used in the whole procedure. It admitted that the judge sometimes preferred to interview the child witness directly and not to go through the social worker or the psychologist.

The Committee asked whether the judge could refuse the perpetrator’s request to meet directly with the child. The delegation stated that the judge would not allow the child to

confront its perpetrator and would be put in a separate room. The Committee also asked whether the child could, during the proceedings, be supported by a lawyer or by a person of trust. The delegation answered that a psychologist or a social worker would be with the child, passing the question from the judge to the child. It added that the child could hire a lawyer.

Victims assistance and compensation

The Committee asked whether there was a fund to compensate victims and asked whether the State would compensate the child if the author of the crime could not afford it. The delegation reported that there was a fund for compensation dedicated to victims if the court decided to compensate the damage financially.

The delegation added that, according to the law on anti-trafficking of 2008, a fund to compensate victims existed to assist Thai children and other children, even outside Thailand, to enable them to return to Thailand if they had been exploited abroad. It specified that the budget allocated to this fund was 30 million US dollars.

The delegation also provided information about the One-Stop Crisis Centre, which had helped almost 10,000 children in 2011, including 600 migrant children coming mainly from the Laos People's Democratic Republic. It indicated that only 10 per cent of these cases had been related to prostitution.

The Committee asked about concrete measures of assistance provided to victims, especially to children coming from Myanmar or Laos. It asked whether priority was given to care or return of these children, once they reached their country of origin.

The delegation reported that child victims were received in temporary shelters or in houses by receiving families, which were situated throughout the country. It added that children received medical care, mainly for communicable diseases or mental health problems and were also provided with rehabilitation programmes, trained for jobs and prepared for reintegration. The delegation insisted on the State's willingness to provide child victims with holistic care. It reaffirmed that social counselling and physical assistance were provided in the shelters as well as legal aid and vocational training for the children who would stay longer in Thailand. The delegation indicated that there were some repatriation programmes to send them back to their homeland through contacts with their embassies and families so that they would know their place of origin and to ensure that they would receive care. The delegation stressed that children were accompanied to the capital of their country and not to the closest province from the Thai border. It indicated that the repatriation process involved the ambassador of the given country and that in some cases the authorities of their countries came to Thailand to bring them back home.

International Assistance and Cooperation

The Committee asked whether the State had any bilateral agreements with neighbouring countries to combat sale, prostitution and pornography of children along the borders of Thailand. The delegation indicated that these children had to report to Thai authorities but added that the issue had never been raised. It reported that the government was working with the United Nations High Commissioner for Refugees and UNICEF to protect those children and added that there were adequate safeguards on the Thai side of the border. It stated that if there actually were some cases of sale, prostitution and pornography of children along the

borders, it meant that children were not reporting to the Thai authorities and admitted that the government would pay more attention to this issue.

Extraterritorial jurisdiction

The Committee asked for clarification on the extraterritorial jurisdiction provisions in Thai legislation and specifically asked whether an offence committed by a Thai national or resident outside Thailand could be prosecuted in Thailand. It asked whether the offence needed to be punishable in both countries to be prosecuted by Thai courts. The delegation answered that the OPSC was applied without the condition of dual criminality. It indicated that this process required the scrutiny of the relevant domestic and international laws and added that perpetrators remained liable in Thailand if they had committed a crime abroad.

The delegation reported that the Extradition Act issued in 2008 stated that the offence committed should be recognised as a criminal offence in both countries including the country requesting extradition and sentenced by death punishment or deprivation of liberty during a minimum period of one year, whether the offence was criminalised under the same name in both legislations or not. The delegation added that the State had between 10 and 15 bilateral agreements in this regard and would consider requests on the reciprocity principle. The Committee indicated that the OPSC could itself be used as a treaty of reciprocity and could be used as a legal basis for extradition according to article 5(2). It stated that Thailand had, in effect, an agreement with 160 countries. The Committee recalled that a precise definition of the offences was therefore essential since these definitions would lead to the extradition process.

Concluding Remarks

Ms Nores thanked the delegation for this informative discussion with the Committee and considered that the delegation showed the willingness of the country to work with the Committee and improve the implementation of the OPSC. She acknowledged the many improvements achieved in the country but noted that the need to distinguish between laws on trafficking and laws on the sale of children, child prostitution and child pornography and stated that an amendment of the criminal code was needed to ensure maximum protection for all children. She also underlined the need to revise all the provisions on jurisdiction so that Thai children could be protected by law outside of Thailand.

Ms Nores indicated that laws must be applied in practice, citing as an example the fact that to date there had been no cases of sanctions for companies involved in child labour practices. She emphasised the need for strong political will to ensure that no more children would work in fisheries or domestic labour.

Ms Nores concluded that the development of plans of action should be accompanied by set timelines for implementation, as well as the allocation of adequate resources, to ensure that issues related to the Convention and the OPSC were addressed in a timely manner.