

Committee on Rights of Child examines reports of India under the Convention and Protocols on Children in armed conflict, Sale of Children

Committee on the Rights of the Child

3 June 2014

The Committee on the Rights of the Child today completed its consideration of the combined third and fourth periodic report of India on its implementation of the provisions of the Convention on the Rights of the Child, and the initial reports of India on how the country is implementing the Optional Protocol to the Convention on children involved in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography.

Presenting the report, Shankar Aggarwal, Secretary of the Ministry of Women and Child Development and Head of Delegation, said India was a home to 472 million children, which was 20 per cent of the world's child population. Child rights were lead indicators of national development at all levels. The establishment of the National Commission for the Protection of Child Rights in 2007 was a landmark initiative, followed by the adoption of the National Policy for Children in 2013, which viewed children as individuals with rights and responsibilities. The Government welcomed and encouraged the work of voluntary organizations and individuals in the area of child welfare, development and protection. The vision was for India's children to be well-nurtured with full opportunities for growth and development in a safe and protective environment.

In the interactive dialogue, Committee Experts highlighted the size of India's child population, 41 per cent of the total population and 20 per cent of the world's child population, and commended the many initiatives and pieces of legislation taken. Questions were raised on a wide array of subjects; key issues were child marriage and violence against children, in particular sexual abuse and gang rapes of girls. Juvenile justice was also discussed, as were actions to tackle under-nutrition, child poverty, maternal health and the under-five mortality rate. The effectiveness of India's anti-discrimination campaigns was considered, as well as alternatives to institutional children's homes.

Under the Optional Protocol on children in armed conflict, Committee Experts asked for clarification of the minimum age that children could join the military, about military schools and the reported recruitment of children by non-State armed groups.

On the Optional Protocol on the sale of children, child prostitution and child pornography, Committee Experts asked questions about legislation and cooperative measures to combat trafficking in persons, as well as the sale of children through surrogacy and adoption.

In concluding remarks, Bernard Gastaud, Committee Member acting as Country Rapporteur for India, said given the crucial context of the enormous size of India, the Government's clear commitment to children's rights was commendable. Challenges included coordination and effective use of funds. The Committee was deeply concerned about discrimination, and emerging issues such as surrogacy, adoption and alternative care. Implementation of legislation was key.

Vivek Joshi, Joint Secretary at the Ministry of Women and Child Development, in concluding remarks, said India was determined to promote and protect human rights for its people, in particular its children, and would continue to involve all stakeholders, including civil society and the private sector.

The delegation of India included representatives from the Ministry of Women and Child Development, Ministry of External Affairs, Ministry of Home Affairs, Ministry of Human Resource Development, Ministry of Labour and the Permanent Mission of India to the United Nations Office at Geneva.

The Committee will meet in private on Wednesday, 4 June. Its next public meeting will take place at 10 a.m. on Thursday, 5 June, when the Committee will consider the combined third and fourth periodic report of Indonesia (CRC/C/IDN/3-4:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/IDN/3-4&Lang=en).

Reports

The Committee is reviewing the combined third and fourth periodic report of India under the Convention on the Rights of the Child (CRC/C/IND/3-4:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/IND/3-4&Lang=en) and India's initial reports under the Optional Protocol on the involvement of

children in armed conflict (CRC/OPAC/C/IND/1:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/OPAC/C/IND/1&Lang=en) and the Optional Protocol on the sale of children child prostitution

and child pornography (CRC/C/OPSC/IND/1:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/OPSC/IND/1&Lang=en).

The reports are available in other languages, along with annexes and addendums, the lists of issues, and written replies by the State party, and can be found on the Committee's webpage:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=843&Lang=en.

Presentation of the Report

SHANKAR AGGARWAL, Secretary of the Ministry of Women and Child Development and Head of Delegation, said that the combined third and fourth report of India under the Convention on the Rights of the Child had been prepared in consultation with all stakeholders, including members of civil society. India was home to 472 million children, which was 20 per cent of the world's child population. Child rights were taken as lead indicators of national development at all levels of governance. Efforts were being made to improve transparency and efficiency in governance, leading to a rights-based approach.

A major landmark initiative had been the establishment of the National Commission for the Protection of Child Rights in 2007. In 2013, the Government had adopted a new National Policy for Children, which viewed children as individuals with rights and responsibilities appropriate to their age and level of maturity. The National Food Security Act, also adopted in 2013, was a historic initiative to ensure nutritional security to identified eligible

households, with specific provisions for children. It would cover up to 75 per cent of the rural population and up to 50 per cent of the urban population.

A new multi-sectoral programme on maternal and child under-nutrition had been introduced in a phased manner in 200 selected districts. An innovative Mother and Child Tracking System ensured delivery of the full spectrum of healthcare services to pregnant women and immunization services to children up to five years of age. Cash incentives were provided for improved health and nutrition to children and pregnant and lactating women. A particular scheme had been launched to address the needs of adolescent girls in the age group of 11 to 18; the goal was to make the girls more self-reliant by improving their health and nutrition status and facilitating access to learning and public services.

Regarding child protection in India, Mr. Aggarwal informed that in 2012, a special law titled the Protection of Children from Sexual Offences Act had been enacted. It had shifted the burden of proof on the accused in case of serious offences. A recent criminal law amendment prescribed stringent punishment of life imprisonment in case of offences involving trafficking of children. India did not face any international or non-international armed conflict situations, and measures were being taken to develop and protect children affected by incidents of violence by fringe groups.

The Integrated Child Protection Scheme from 2009 provided for dedicated delivery structures at various levels and thus created a safety net for children. Integrated anti-human trafficking units had been set up to prevent and combat human trafficking, including the sale of children. Financing for child protection services had increased three times compared to 2009. That included funding for the “Childline”, India’s first 24/7 free emergency phone outreach service for children in need of care and protection; efforts were being made to expand the Childline services to all the districts.

The Government recognized that there was an acute shortage of data, for which reason a nationwide website called TrackChild had been developed for tracking of missing children and their ultimate repatriation and rehabilitation.

More focus was being placed on providing universal and equitable access to early childhood care and education. An amendment had been proposed to prohibit the working of children in the age group of 14 to 18 years in hazardous occupations.

The Government of India welcomed and encouraged the work of voluntary organizations and individuals in the area of child welfare, development and protection; the President honoured such individuals and groups every year. The Government was committed and resolved to continue working towards realizing the rights of all children. Its vision was that India’s children were well-nurtured with full opportunities for growth and development in a safe and protective environment.

Questions by Experts

BERNARD GASTAUD, Member of the Committee and Country Rapporteur for the report of India, said that children represented 41 per cent of India’s population. The Committee ought to underscore all the initiatives taken by the Government. The Expert said that it was regretful that India had not withdrawn its reservation to Article 32 of the Convention, and asked what the reason was.

Where did the Convention stand in India's legal system and could it be directly invoked in the courts? Did India plan to ratify the Third Optional Protocol on individual communications?

What measures were being taken to ensure that all the provisions of the Convention would be applied across India, regardless of the state?

The Expert noted that there were several problems at the legislative level, particularly with application, mostly due to the lack of trained legal staff in those aspects. He asked what was the intention of the Government when it came to the uniform application of India's child-related legislation. A question was asked about perceived inconsistencies among various legal texts.

Was the Ministry of Women and Child Development a proper ministry, or rather an arbitration body? How were the members of the national human rights institution nominated? Was it independent, and could it receive complaints directly from children?

Five percent of the national budget of India was earmarked for children, which was a low figure, given the high number of children. Were steps being taken to increase the allocation for children? Who decided how that budget would be divided?

With regard to data collection, it seemed that the data was not desegregated enough, the Expert noted.

Had the Convention been translated to some of the vernacular languages of India, and was it taught in schools? Who was responsible for the dissemination of the Convention?

On the issue of cooperation with civil society, its large and active role was an encouraging sign, but its position seemed not to be adequately reflected in some documents presented to the Committee. Was the work of some non-governmental organizations curtailed for criticizing the Government?

There seemed to be inconsistencies and discrepancies when it came to defining a child – would efforts be made to bring various legal texts in line with Article 1 of the Convention? Was there one clear definition of the child in India?

Were there indicators in place to measure the success of programmes fighting discrimination against children belonging to vulnerable groups? Minority children seemed not to have full access to the services they were entitled to. Did children have the right to choose their own religious affiliation? What was being done in schools, hospitals or at the level of the family to ensure that child voices were heard?

Regarding nationality and statelessness, serious problems existed when children were not registered at birth. Were concerted efforts being made to register all children at birth?

The Expert asked if steps had been taken to ensure the respect of private life, and could that be done directly, and not through a parent or a guardian?

Another Expert raised the issue of violence against children. There seemed to be increasing sexual abuse of girls. Was there a database on the extent of that problem, and did girl victims

have access to rehabilitation services?

Violence against children in all settings was an important issue for the Committee. There was information that the majority of children in India were exposed to corporal punishment – was anything being done to promote non-violent forms of discipline? What actions were being taken to prevent and deal with bullying in schools?

Response by the Delegation

Answering questions on child labour, the delegation explained that the employment of children in 18 hazardous occupations was prohibited. An amendment was in the Parliament which would prohibit the employment of children under the age of 14, and the employment of adolescents between the age of 14 and 18 in fields such as mining. The Ministry of Labour was hoping that the amendment would be approved in its proposed form.

On the issue of hierarchy of the Convention with domestic legislation, a delegate explained that India followed a dualist approach. Adopted international treaties did not automatically become the law of the land. Gap analysis was performed first to decide whether there was a need for new legislation once an international treaty had been adopted. If there was a conflict between domestic legislation and accepted international treaties, the domestic legislation prevailed. India was making every effort to ensure that there was no contradiction between the two systems. The delegation would check whether the Supreme Court had ever directly applied the Convention.

India was not a party to the Third Optional Protocol. The Constitution of India provided individuals with the right of direct access to high courts, including the Supreme Court. Children had full liberty to approach any of the courts or national human rights bodies.

The federalist structure of India had never been a problem when it came to the implementation of legislation. The federal state was not able to intervene on subjects which had been delegated to states.

Regarding the possibility of having a single child court to implement the Convention, a delegate explained that, following detailed debates on the issue, it was realized that it would be impossible to get the consensus of all stakeholders on having a unified court. Different laws and institutions were providing for children's rights in India.

The Ministry of Women and Child Development was a ministry under the Government of India and was responsible for all subjects related to women and children. It was also coordinating activities of all departments and offices across the Government related to those issues. The Ministry had a final say on all matters under its prerogatives; the Cabinet Secretary would decide on issues on which a compromise could not be found.

As for the hierarchy of legal texts, laws were placed above policies, plans of actions and strategies.

With regard to the composition of the National Commission for the Protection of Child Rights, it was explained that it had six members (half women, half men) and a chairperson – an esteemed individual who had worked for the well-being of children. Members of the

Commission were appointed by the Government, and were fully autonomous after their appointment. Every year, the Commission presented a report to the Government; the report was shared among all relevant ministries to ensure its recommendations were implemented. The report was then sent to the Parliament of India for its consideration. Children could directly approach the Commission without their parents or guardians.

On the question of coordination at the national, regional and local levels, a delegate explained that the Government had a holistic approach to the issue. The Government had recently upgraded the grade of the Minister of Women and Child Development to the status of a cabinet minister, which was the highest policy-making position. High representatives of any relevant or affected ministries could be called on and reached whenever there was an issue pertinent to them.

All ministries had equal footing at the Government of India, both in theory and in practical terms, the Head of Delegation stressed.

Every year, when a union (federal) budget was passed, it involved parts for the welfare of children, which amounted to some five per cent in 2013 and 2014. A planning commission was in place and it decided on the allocation of financial resources, based on their availability, and requests made by individual ministries. On what could be done to increase the current low percentage, the Head of Delegation said that indeed five per cent might not be sufficient, and efforts were being continuously made to increase funding for protection schemes. Salaries of protection staff had been recently increased, and it was hoped that they would be able to recruit more staff.

Currently, data collection was being conducted by different agencies and bodies, which was why there was an acute need to have further coordination on data related to children. The census, which was an important source of information, came once every 10 years. All the families across the country were supposed to put all the information related to children in their households on the TrackChild portal; the portal also included information on missing children. Civil society organizations were involved in that process as well.

The Head of Delegation explained that there was further scope for improvement when it came to the dissemination of information on the Convention. India was using the internet, social media and new technologies to inform the population at large of relevant texts. A huge campaign was being conducted by the media division of the Ministry, which also involved radio and newspaper promotion. There was no doubt that efforts in that respect were increasing every year.

Children were being taught about the Convention in their own languages, but the Convention itself had not yet been translated to local languages.

On the question of whether some civil society organizations had been threatened for their work, it was stressed that those organizations played an important role in designing policies and programmes. They were regularly consulted in defining those key documents. Some were working on the ground level implementing policies, and others on advocacy measures, mostly in New Delhi.

Regarding the definition of the child, a delegate explained that it was provided in a contextual

nature. Under the juvenile justice act, it was defined at 18. For the purpose of the prohibition of labour, the age was 14. Children under 14 could not work in hazardous occupations, and efforts were being made to ban all employment under 14. In 2013, the Government had adopted a guiding principle to have children defined as anyone under the age of 18.

The delegation stressed that anyone violating legislation against discrimination, on any ground, would be prosecuted.

The Head of Delegation stated that each and every child had to be protected under all circumstances, and all comments from the experts would be taken into consideration.

Questions by Experts

An Expert noted that very limited support was provided to families to improve parenting. Children often ran away from home for fear of corporal punishment, and large numbers of children ended up on the streets and were quite vulnerable. Was there any data on how the Government at different levels had tackled that problem?

While the Early Childhood Education and Care Policy was welcomed, the Expert inquired what steps had been taken to implement it. Were there strategies and concrete plans in place? What was happening with children between six and 14, who were not covered by that policy?

Concerning adoption, the Expert welcomed the prohibition of private adoptions based on donations to institutions. A databank would ideally be available to detect all procedures. How was such data gathering taking place and was there a monitoring system in place? Were there safeguards to ensure that children were not at risk of harm when adopted?

The Expert wanted to know more about the so-called “baby cradle reception centres”. Thousands of children had been left in such cradles. Was anything being done to protect such children and prevent their trafficking?

Was there an accurate figure on kinds of disabilities affecting children, another Expert asked. Did children with disabilities have access to education and were provisions being made to ensure their right to schooling? Were there schemes and programmes in place to prevent disability?

Some 20 per cent of global child deaths occurred in India – were there any programmes or interventions to deal with that? Rates of child deaths in the first month of life were particularly high, which was in direct correlation with antenatal care.

The Expert said that 19 per cent of global maternal deaths occurred in India. The loss of a mother presented an irreplaceable loss to a child. Were there plans and efforts to respond to such a great tragedy?

What was being done about under-nutrition, which was, *inter alia*, affecting children’s learning capacities? There seemed to have been a decline in breastfeeding in recent years – were there any programmes in place to remedy this situation?

A question was asked on the provision of adequate access to sanitation at schools, which

affected girls in particular.

Another Expert asked what the State was doing to address the problem of corruption, especially when it came to education. What was being done to improve the performance of public schools, especially when compared to private schools?

The Expert asked for further clarifications on how the law on the prohibition of child labour was being applied. What practical measures were put in place by the State to bring about prosecutions and convictions for those breaking the law?

Was India planning to withdraw its reservation to Article 32?

What steps had been taken to distribute medical legal protocols around the country? Was there a protocol in place for the treatment of victims of sexual assault?

A question was asked about how many states had established child courts.

Why were rules applicable to child rape not applicable to children who were sexually exploited, the Expert inquired?

Response by the Delegation

India had multiple mechanisms and measures in place which addressed discrimination. The first was the National Human Rights Commission, but there were also other human rights bodies, including the National Commission for Minorities. There were special courts designed to deal with caste-based discrimination established in 31 States, for example. To give special focus to the needs of persons with disabilities, in 2012 the Department of Disability Affairs was established within the Ministry of Social Justice and Empowerment. Schemes were in place to provide for rehabilitation services, including special schools for children with disabilities and the provision of aids and appliances, and the law on persons with disabilities was being revised in order to be fully harmonized with the United Nations Convention on the Rights of Persons with Disabilities and recent technical advancements in the field of disabilities.

On access to healthcare and reproductive services for adolescent girls, a delegate said as India was one of the youngest countries in the world with a large adolescent population, addressing adolescent health challenges was a major priority. Schemes for the empowerment of adolescent girls had been implemented in many districts, and targeted girls aged 11 to 18 years. The *Indira Gandhi Matritva Sahyog Yojana* scheme, launched in 2010 on a pilot basis, provided age-appropriate knowledge on the reproductive cycle, early marriage and childbirth, as well as information on infant and child feeding and nutrition, childcare and related issues. The *Rashtriya Kishore Swasthya Karyakram* scheme covered mental health, nutrition, substance abuse, gender-based violence and non-communicable diseases. Anaemia was a major problem in India, and every child was given a folic acid supplement, he added.

Active use of new technologies and social media platforms played an integral part in reaching adolescents in their own spaces, as well as through strategic partnerships with community groups and peers. Health clinics were installed in villages.

Regarding the right of the child to be heard, the new National Policy for Children, adopted in

April 2013, marked a significant shift in the way children were viewed, emphasizing respect for their views. Children were viewed as individuals with rights and responsibilities appropriate to their age and level of maturity. Furthermore, the Juvenile Justice Act provided for every child to express his or her views freely at all stages of the justice process. Children's views were given importance at every stage, and in fact children had been consulted in the drafting of the new national policy, with the help of non-governmental organizations working for child rights.

Follow-Up Questions by the Delegation

Had India evaluated the effectiveness of its anti-discrimination awareness-raising programmes, an Expert asked, as there were many reports from the ground of serious discrimination faced by castes and tribes, against children with HIV and against women and girls.

India had a good policy in place for health care for adolescent girls, an Expert said, but asked how the Government reached out to all adolescents in such a large country – what was their coverage? Furthermore, did the scheme include counselling and psychological health services for girls?

An Expert asked about the role of school councils, and whether complaints boxes were available in schools. There was quite a comprehensive programme to reach out to children in schools, an Expert said, but the Committee was concerned about the children who did not go to school, who were the most vulnerable, and often illiterate. There were a large number of those children in India – street children, child workers, children who were not in the system. How did the Government reach them with its information campaigns?

What support was given to children in care institutions, who often ran away, not only from the abuse they might be subject to at home, but also the abuse they reportedly suffered in the care institutions themselves. What alternatives were there to institutional care?

Response by the Delegation to Follow-up Questions

A delegate said there was no evaluation of programmes that he was aware of, but he would check and come back to the Committee. The Government was committed to eradicating discrimination, and had, for example, created separate ministries for minorities and socially disadvantaged groups. It had also established the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes and other bodies.

The adolescent health programme covered 10 million girls, a delegate confirmed. Adolescent health clinics were available at the village level, if a girl needed more services than those clinics could provide then she would be referred to a larger clinic, which was usually located no more than 10 miles away from her village.

Schools that were affiliated to State Boards, which were the examination bodies, had to comply with their guidelines which included a compulsory and anonymous complaint box. The majority of schools were affiliated, he noted. Student Councils were elected bodies of school children, often led by the Head Boy or Head Girl, that took part in opinion-making schemes within the school. It was a good way to develop leadership skills, she added, noting that children took part in Youth Parliaments.

A delegate replied that it was difficult to reach children who were not in the education system, but the Government sought to do so with assistance from non-governmental organizations. India would welcome good examples from other countries and the suggestions and advice of the Committee in that regard.

India's goal was to reach universal birth registration. On the results of the 2003 programme, a delegate said that since the 1969 Registration of Births and Deaths Act, which was revised in 2003 to include the registration of marriages, substantial progress had been made. The former figure of around of 50 per cent of births registered had increased to 83.67 per cent of child births registered nationally, and some States had even achieved 100 per cent.

Freedom of conscience and religion was provided for in the Indian Constitution, a delegate said, adding that he had no knowledge of cases where children had complained about having to adopt the religion of their parents. The law prohibited children from changing their religion before the age of 18, just as it was forbidden to marry before that age, he added.

The Integrated Child Protection Scheme which was founded in 2009 had two bodies which respectively helped children in need of care of protection and unaccompanied children, and also children in conflict with the law. Any person who found an unaccompanied child was meant to produce the child to the Child Welfare Committee, which would first try to return the child to his or her parents. If that was not possible or not in the best interests of the child, then the child could be referred to a Short Stay Home, which was for children whose parents could be traced within one or two months. Children whose parents could not be traced, or it was not safe for them to be returned, would be referred to a Children's Home where they could stay until 18 years of age.

Every children's home had to be registered with the State, and received regular inspections from district officers. There were approximately 1,500 children's homes funded by the State under the Integrated Child Protection Scheme. There were many more children's homes that did not function within the parameters of the Scheme, the delegate conceded, but said although India was such a huge country, even just five years into the Scheme a huge amount of children had been touched by it so far – some 75,000 – and work continued to reach yet more children still.

One alternative to the institutionalized childcare was the Sponsorship Programme, which was aimed to assist financially or socially weak parents who may otherwise have sought to place their child into a home so at least he or she had some education and food. Instead, the Child Welfare Committee could intervene and agree to pay the parents a monthly grant, in order that they could afford to keep their child with them. Another alternative was the Foster Care programme aimed to cover at least 50 children per district, of the 660 districts of India.

The Juvenile Justice Amendment Act 2006 established the need for specialized adoption agencies to facilitate the adoption of orphaned, abandoned or surrendered children which adhered to national guidelines and rules. Specialized adoption agencies provided quality childcare facilities for children during the adoption process, including family-based care. The agencies also managed a database of prospective parents and provided pre and post adoption counselling for prospective parents, and post-adoption follow-up. Adoption in India was treated as a matter of personal law, a delegate added. Therefore only Hindus could adopt Hindu children, and the personal law of many communities, including Muslims, did not allow

for adoption at all. However a recent challenge in the Supreme Court of India held that the Juvenile Justice Amendment Act was only an enabling act and did not place any restrictions on who could adopt, regardless of their personal law.

‘Cradle Baby’ reception centres had been set up in many villages, to rescue abandoned infants and look after them with due care and attention until an adoptive home could be found for them. Once a Cradle Baby reception centre received a baby from a drop-off ‘baby box’ its staff reported its arrival to the Child Welfare Committee, registered its birth with the competent authority, provided for all its needs, and explored the possibilities of rehoming the baby.

On commercial surrogacy and legal provisions for it, a delegate explained that the Ministry of Health and Family Welfare was currently working on a draft bill which took all concerns of civil society on the issue into account. The bill would regulate assisted reproductive technology clinics in order to prevent the misuse of reproductive technology, including surrogacy. It would also protect the best interests of the child and ensure that every child had the inherent right to lead a healthy life. A woman would not be able to be surrogate more than twice in her lifetime. Commissioning parents seeking to benefit from surrogacy had to complete paperwork stating that surrogacy was legally recognized in their own country, and meet other stringent legal and visa conditions, including that they had been married for at least two years. The law also set out the right of the Indian surrogate mother to give the baby to an adoption agency if the commissioning parents would not take it. It also held many provisions to ensure the surrogate mother was not cheated.

Concerning internet security and measures to protect children from cyber-crimes, a delegate said legislation was in place to prohibit cyber stalking and cyber bullying, as well as identity theft, hacking of emails and exposure to illicit or non-appropriate online content. Another piece of legislation criminalized online child pornography. Internet safety tips were issued to children, and teachers in schools taught cyber security.

Regarding protection from sexual abuse, a delegate said a 2007 study revealed that nearly 50 per cent of children had experienced some form of sexual abuse. That led to the enactment of the Protection of Children from Sexual Offences Act in 2012. The Act was a major paradigm shift in Indian criminal law as it placed the burden of proof onto the accused, not the victim, in the case of serious offences. Key features of the act were that it defined a child as a person below 18 years. Crimes defined in it included both penetrative and non-penetrative forms of sexual assault, as well as sexual assault, sexual harassment and the use of a child for pornography. Offences were treated as aggravated when they were perpetrated by a trusted adult or a person in a position of authority, if it was a gang assault, communal attacks, if the child was less than 12 years or was disabled, or if the assault led to the child becoming disabled or suffering a grievous assault. The media could not expose the identity of the child, or anything that may risk the child’s anonymity, unless exposure of the child’s identity was deemed to be in his or her best interest. The Act also provided for several child-friendly procedures during the pre-trial and trial stages.

A delegate referred to the tragic rape and murder of two girls in Uttar Pradesh last week, which was widely covered by the international media. He spoke about other very serious cases of sexual violence that did not receive a high media profile, and said the Government cared very deeply about all cases. A new draft law would apply the gravest penalty for gang rapes, and other most serious crimes, which would be the death penalty. That penalty would

demonstrate that crimes of sexual violence would not be tolerated. The challenge was not in bringing about a change in law, but to bring a change in attitude, for people to take crimes of sexual violence seriously. All types of leaders had to be involved in doing that, including but not limited to political, community, minority, youth and religious leaders.

The Right of Children to Free and Compulsory Education Act 2009 had a provision on corporal punishment, a delegate said, which applied to schools countrywide. An advisory dealt with situations which led to the use of corporal punishment and suggested alternatives for teachers and authorities. The Government took the issue very seriously, she added.

Concerning corporal punishment in non-school settings, the law was slightly weak on that. India was working to amend the law to include corporal punishment in domestic settings as an offence. It would define corporal punishment as intentional subjection of a child to a physical penalty which caused hurt or bodily harm, or verbal abuse causing severe emotional distress or trauma for disciplinary purposes. Furthermore, the National Commission on Child Rights had recently issued public guidelines on corporal punishment.

Non-governmental organizations played a crucial role in the implementation of most public welfare programmes, a delegate said, including the promotion and protection of the rights of the child. Civil society organizations were required to adhere to some minimum standards, for instance to register with the tax bureau, and with the Ministry of Foreign Affairs regarding any overseas funding they received. The Right to Information Act of 2005 had really helped civil society in receiving Government accountability on many fronts, he added.

A priority area was supporting children with disabilities. Around six per cent of births in India were babies with birth defects, and around 10 per cent of children were born with a development delay. The early detection of disabilities was preferred by the Indian authorities, and thousands of mobile teams had been created for that purpose. In 2013, over 44 million children were screened.

Under the legislation in force since 2009, the right to free and compulsory education was guaranteed to all children for a period of eight years – including for children with disabilities. The legislation emphasized the need for schools to take necessary measures to ensure the inclusion of children with disabilities. Each child with disabilities attending school was allocated 3,000 Rupees to ensure their proper integration. A draft bill on disabilities was planned which would address all issues through a rights-based approach.

The mortality rate for children under five in India was 52 per 1,000 live births. A main contributor to child mortality was the neo-natal mortality rate, which stood at 52 per cent of the under-five mortality rate. The under-five mortality rate had been reduced, and a huge milestone was the number of States in India that had reached the Millennium Development Goals. The vaccination programme had also been strengthened, and it was foreseen that measles would be eradicated in the near future.

India had a large number of children suffering from under-nutrition, around 40 per cent, which was a well-known fact. Furthermore, some 60 per cent of children were anaemic. Measures in place to tackle those serious problems including the provision of a folic acid/iron supplement by an incentivized health worker. The Midday Meal in Schools scheme was well-known and was helping under-nourished children, while regular health checks for children was also a key initiative.

The breastfeeding rate in India was around 40 per cent, which was not bad and compared favourably to other countries. Through its strong institutional delivery – 78 per cent of mothers gave birth in a health facility – India had a great opportunity to counsel new mothers, promote breastfeeding and support them in doing so. That would hopefully lead to an increase in the breastfeeding rate. India had been slow to implement the World Health Organization's International Code of Marketing of Breastmilk Substitutes, a delegate said, but district health officers were becoming aware of the marketing code, and were hopefully becoming empowered to address it.

There had been a sea change in institutional delivery to address the under-five mortality rate. Programmes included cash-transfer schemes and provisions to counter out-of-pocket expenditure, as previously many mothers were unable to pay for maternal, post-maternal and neo-natal services. Many of those services were now free. The Essential Newborn Care programme had been implemented nationwide, which provided that trained midwives or health workers were present at every birth in a health institution, as well as appropriate equipment. Special Newborn Care clinics had been established.

Although the Government did not promote home births as a concept, often health facilities were a journey away or people did not want to go to them. Some 22 per cent of births took place at home. In those cases a trained home-birth delivery worker attended, and so far 12 per cent of home-births were attended by a health worker. For post-natal care for mother and child, the Home-Based Newborn Care initiative was launched. Through it a dedicated and trained health worker was appointed to every village, the health worker was expected to visit each newborn baby six times, and was incentivized to do so, receiving extra rupees for every baby she visited.

Efforts were ongoing to improve maternal and post-maternal care and reduce the maternal mortality rate, which was around 178 per 1,000 live births – around 38,000 maternal deaths every year. In 1990 the global maternal mortality rate was 600 per 1,000 births, so there had been a considerable and impressive reduction of 70 per cent, the delegate noted.

A delegate spoke about India's support for refugees, who enjoyed the full legal protection and the same rights as Indian nationals. Refugees came to India from countries including Pakistan, Sri Lanka and Afghanistan. India was not a signatory to the United Nations Convention Relating to the Status of Refugees, as it was not designed for large developing countries that could be subject to a mass influx of people or provide for the difference between refugees and economic migrants. Furthermore, India practised *non refoulement* to an impeccable level. Nevertheless, the Government was currently holding consultations on having a law on refugees, and worked closely with the High Commissioner for Refugees both on the naturalization of refugees in India and on the repatriation and support of refugees in returning home.

India had no intention of reducing the age of criminal responsibility, as enshrined in the Juvenile Justice Act, a delegate said. He spoke about serious gang rape cases, such as the terrible Delhi case of 2012, in which juveniles aged between 16 and 18 years of age were involved. The way the law was applied to young offenders aged 16 to 18 depending on the seriousness of their crime needed to be examined, there had to be a balance between the treatment of juveniles accused of committing heinous crimes such as rape, sexual assault or gang rape, murder, and those accused of less serious crimes. India sought to provide

reformatory rehabilitation irrespective of the seriousness of the crime. A proposed amendment would give discretion to a judicial board to make decisions on how to try a case on a case-by-case basis, taking into account all mitigating circumstances.

Questions from the Experts under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

GEHAD MADI, Committee Member acting as Country Rapporteur for the report of India under the Optional Protocol on the involvement of children in armed conflict, said at the stage of its initial report the Committee did not expect India to be fully in compliance with the Optional Protocol, and the purpose of the dialogue was for the State party to address the Committee's concerns by the time of its second report.

At the time of ratification India stated that the age of recruitment to its military forces would remain at 16 years of age. The Committee urged it to withdraw that reservation and raise the age to 18 years, as in many other countries. The Committee understood that the age on a birth certificate was not accurate, and the pre-deployment screening system to ensure that people sent into military operations were over the age of 18 years were not watertight, Mr. Madi said. Furthermore, there was reportedly no uniformity for the minimum age of recruitment into the police forces across the states; the Committee had been informed that boys had been recruited into Village Defence Committees and the Police.

There were non-State armed groups active in several parts of the country that recruited children to take part in hostilities. The political motivation of those groups was not of concern to the Committee, whose only focus was the protection of children, and it wanted to know whether India would consider enacting domestic legislation which specifically criminalized the recruitment of children under the age of 18 by non-State armed groups.

In 2012 the Jammu and Kashmir Government amended their public security act to prevent the legal administrative detention of children, but the Committee heard that the authorities there continued to detain children by falsely recording their age as being over 18 years. Could the delegation please comment?

The 2006 Juvenile Justice Act was implemented nationwide, but did every region have child courts, as per the Supreme Court ruling? What were the extradition procedures for children? Did India have any legislation to prevent the export of small arms to countries where children were allegedly recruited for hostile military purposes?

An Expert raised the case of seven children who were being investigated for being involved in armed action against Indian forces, after being recruited as child soldiers. She also mentioned cases of missing children after their recruitment. Had any children been detained because of their involvement with armed groups? Were there any demobilization programmes, including psycho-social support, reintegration and rehabilitation, for child victims of forcible recruitment by armed groups or military forces?

Response by the Delegation to questions on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

A child had to be at least 17 years of age before he was eligible to apply for admission into a Defence Academy, and it was compulsory he had the consent of his parent or

guardian. Given the eligibility requirements, there was no way a person could complete their training in a Defence Academy before he was 18 years of age, hence any pre-deployment screening was taken care of by the admission requirements.

The minimum recruitment age into the armed forces or the police force was 18 years of age, and no soldier less than 18 years was deployed, the delegation confirmed. Regarding allegations of children less than 18 joining the Village Defence Committees or the Police, a delegate said there were occasions when if a police officer was killed on duty, an honorary title may be given to his child, as a form of recognition and compensation, although it was only in name and not in practice.

Regarding the question about non-State armed groups, the Government was aware from various non-governmental organization and media reports that left-wing extremists had resorted to the recruitment of children from the age of six years old. There was no way to ascertain the number of children recruited as the activities of those groups were clandestine in nature. No instances of armed groups recruiting children in Jammu and Kashmir State had been reported, she added. There were unconfirmed reports from other States that children under the age of 11 years were used as informers, asked to fight with non-lethal weapons and used as human shields, and that children above 11 years were used as soldiers. Non-State armed groups also sought to destroy schools, in order to make children more vulnerable to being recruited by them.

Any child found to be involved with an armed group and incidents of violence was treated as a victim, as a child in need of care and protection. There was a scheme to help rehabilitate and reintegrate children who had been in difficult circumstances. The recruitment of a child into armed groups was treated not only as an offence of exploitation of a child but also as a form of abuse and carried a strong penalty under the Penal Code. No child under the age of 18 had been detained under the Public Security Act of Jammu and Kashmir. Extradition was carried out through bilateral agreements, a delegate confirmed.

Questions from the Experts under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

HIRANTHI WIJEMANNE, Committee Member acting as Country Rapporteur for the report of India under the Optional Protocol on the sale of children, child prostitution and child pornography, asked initially what data collection systems were in place for children who had been victims of the offences listed in the Optional Protocol. Reports said India was known as a source, transit and destination country for trafficking in persons. Was that correct?

Children were said to be trafficked in India for prostitution, pornography, labour, organ trade, sexual exploitation through marriage or adoption, entertainment and other purposes. Furthermore, boys were trafficked for labour into industries such as gem polishing, diamond cutting and sweatshops in the garment industry.

The Committee commended India for its 2013 amendments to the Criminal Law which recognized a range of criminal activities that exploited children, in particular girls, and also listed new offences. She asked what complaints mechanisms were in place for child victims to make a report when the offender was a trusted adult, and what measures were in place to help the recovery and rehabilitation of victims? What reparations and opportunities for reintegration were available?

Surrogacy was a serious concern to the Committee, and in India there were traditional and gestational forms of surrogacy. The former amounted to nothing less than the sale of children, an Expert said. What was being done to tackle it?

What preventative measures was India taking to prevent all of the offences listed in the Optional Protocol, an Expert asked. The report focused on trafficking and neglected the areas of child prostitution and child pornography; did the State party consider its anti-trafficking act to be comprehensive enough to cover all offences listed in the Optional Protocol? To what extent did India collaborate with neighbouring countries, particularly Nepal and Bangladesh and other regional countries, to tackle those offences? Could it claim extra-territorial jurisdiction on the offences in the Optional Protocol, including for the extradition of offenders?

An Expert credited the State party for its 2009 advisory which gave advice to all stakeholders on ensuring a victim-friendly focus during prosecutions and court cases, which was highly commendable. What impact did the advisory have? The baby box scheme launched in 1992 had been quite successful in recent years, perhaps receiving almost as many as 3,000 babies. What really happened to those children? Were they reunited with their families, were they adopted, or did something illicit happen to them?

Child marriage was very common in India, the figure was said to be 33 million child brides, an Expert said. Child marriage was a harmful practice and denied girls education and caused them serious health risks through early pregnancy. The 2006 Act to Prohibit Child Marriage was known, and the Committee would like to know how it was enforced and how effective it was.

Response from the Delegation to questions on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Trafficking in persons was defined in the law as the forced recruitment, harbouring or transport of a person. If the person was a child the offence carried a minimum penalty of 10 years imprisonment extending to life imprisonment. There was a compensation scheme for victims of trafficking and sexual abuse.

Data had only recently been collected on the offence of child pornography, but data was collected for some years on the offence of 'sale of children' and trafficking, a delegate said, noting that in 2012, 108 children were found to have been bought. Statistics were included in the report. The sale of children, missing children and trafficking in children were closely linked, and from a crime perspective a coordinated response was required. Therefore Ministries took a multi stakeholder approach. For example the Ministry of Woman and Child had developed a Missing Child Portal, which kept updated data on both missing and found children.

Missing children often became trafficked children, and a new portal 'Stop Human Trafficking' was established to coordinate Government work and be a repository for all international conventions and domestic legislation. Preventing trafficking was also an issue of awareness, and on Human Rights Day 2011 a sensitization programme described as an anti-trafficking certificate course was launched for police officers and members of civil

society. So far over 1,000 police officers had taken the course.

Regarding regional cooperation to tackle trafficking in persons, a delegate said India had signed and ratified the Optional Protocol to the United Nations Convention against Transnational Organized Crime on the suppression of trafficking. India was also a party to the Trafficking Convention of the South Asia Association for Regional Cooperation, which was very active. In fact India had hosted three meetings of the regional taskforce, and Afghanistan in particular worked closely on its provisions. A Memorandum of Agreement was recently signed with Myanmar, and another with Nepal was in the pipeline, and while India had some border disagreements with Bangladesh, the two countries cooperated on a joint taskforce which in particular sought to repatriate girls trafficked from Bangladesh to India.

There was a child-line which functioned 24 hours, seven days a week, using the number 1098. It was fully funded by the Government and was operated in partnership with a non-governmental organization. The child-line was currently functioning in 26 States and it was hoped to roll it out to more States. It provided an opportunity to respond to the needs of children in difficult and emergency situations. Other support and care services included 619 Child Welfare Committees, as well as Juvenile Justice boards in 608 districts of India.

A major factor in the vulnerability of children to exploitation was poverty, said a delegate, and most of the population of India lived below the National Poverty Line. The Government was doing all it could to improve that situation, for example making affordable food available to poor families, and providing free of charge essential services.

A delegate returned to the issue of surrogacy. There was no specific law to prohibit traditional surrogacy, but if it was found to amount to the sale of children, then the sale of children was an offence under the Criminal Code and so it could be prosecuted.

The Government was concerned about child marriage, and as the Committee noted, a very progressive law, the Prohibition of Child Marriage Act, was adopted in 2006 which punished those who enabled, promoted and performed child marriage, including the parents, although not the innocent children. Systematic interventions, including conditional cash transfer schemes, were implemented by regional authorities to try to delay child marriage until at least 18 years. The cash transfer was pledged to parents upon the birth of a baby girl with conditions that she attended school for so many years, sat exams and did not get married until the age of 18. There were plans to expand the cash transfer scheme as far as possible. Various religious communities had their own personal law, and India took a non-interference stance without the initiative and consent of those communities. However, those personal laws did not stand in the way of tackling inequalities and discrimination faced by girls.

Child marriage was a multi-dimensional problem that needed to be addressed on many fronts, including through food security, employment, education and most of all awareness-raising.

Legislation on the right to education applied to children aged six to 14 years of age. For children from zero to six years there was a policy to provide early childhood care and education, especially for the most deprived children, to enable their smooth transition into primary school. The Government was also working to increase the number of girls in secondary education. In 2003 around 170 million children were enrolled at secondary level

education, which had increased to 194 million in 2013. Furthermore, the school drop-out rate at primary level had decreased from 9.1 per cent in 2010 to 5.6 per cent in 2013.

The Right to Education Act also lay down rights and responsibilities of teachers, with the aim of reducing corruption in schools. Teachers were now allowed to take up alternative work while being a teacher, with some minor exceptions. Parent-teacher associations monitored the attendance of teachers to ensure there was no absenteeism or ‘ghost teaching’. Teaching academies provided training, not only on general educational subjects but also on teaching children with special educational needs and disabilities. There was still a long way to go in that regard, but the will was there.

Regarding resources for education, 4.6 per cent of the Gross Domestic Product of India was spent on education, but increasing the level of funding to the recommended six per cent was not necessarily the problem, rather the capacity of the people who spent the money and the focused spending of it.

In response to a comment from a delegate that some eight million children were out of school, which was basically the population of Switzerland, a delegate said the law was there, the programme was there, the funds were there, all especially focused upon the girl child. Creative solutions were also in place, such as some districts which provided bicycles to girls to get to school so they did not drop out, while sanitation was in 84 per cent of schools, and every school had separate toilets for boys and girls. The Midday Meal Scheme also helped, as had the increase of clean drinking water to reach 95 per cent of schools. Every school had assigned a teacher to motivate parents of children who had dropped out to return their child to school.

Follow-Up Question from the Expert

Had the fact that the age of marriage was set at 18 for girls and 21 for boys had any impact? The National Plan of Action to Prevent Child Marriage was positive, but maybe indicated that the legislation on child marriage was not comprehensive enough.

Response by the Delegation

The minimum age was indeed 18 years for girls and 21 for boys, a delegate confirmed, but the average of marriage in India was 17.1 years for both girls and boys. So close to 18, but not there yet.

Concluding Remarks

BERNARD GASTAUD, Committee Member acting as Country Rapporteur for India, said given the crucial context of the enormous size of India, he commended the Government’s clear commitment to children’s rights. Challenges included coordination issues, particularly between different ministries and regional governments, and funding, but the delegation clearly acknowledged those and recognized that the effective use of funding and tackling of mismanagement and corruption were key. There had to be a move away from being reactive, especially in light of recent high-profile cases, and instead to be proactive. The Committee was deeply concerned about areas such as discrimination, and emerging issues such as inter-country adoption, surrogacy and alternative care – seemingly small issues that really impacted upon children’s rights. Implementation was key. The Committee looked forward to saying to

India, a few years down the line, 'well done' rather than 'well said', in regard to laws that were well implemented.

VIVEK JOSHI, Joint Secretary at the Ministry of Women and Child Development, thanked the Committee for a productive and fruitful dialogue. He said India was a country proud of its strengths while willing to acknowledge and address weaknesses, a sensitive and a humane country, without being weak or apologetic. India was determined to promote and protect human rights for its people, in particular its children, in its secular democratic polity, and would seek to advance its normative framework as well as ensure an effective implementation of policies and programmes. India would continue to involve all stakeholders, including civil society and the private sector, in order to achieve its objectives and commitments under the Convention and Optional Protocols. India took careful note of the critical gaps and shortcomings pointed out by the Committee and looked forward to receiving its recommendations and to reflecting actions taken in the next periodic report.

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