

Child's Right to Identity in Cambodia

Factsheet for the UN Committee on the Rights of the Child

90 Session (09 May 2022 - 27 May 2022) of the CRC/ State periodic report 4-6

1 Creation of identity

- In 2014, 73,30% of children under 5 were registered.¹ Civil registration system is regulated by Sub-Decree No. 103 on Civil Registration (effective as of August 1, 2002).²
- Around 25% of all children under 5 years of age in Cambodia do not have a valid birth certificate. Communes used to run out of the documents required to register newborns and there was no routine system in place to request them. UNICEF Cambodia together with General Department of Identification (GDI) set up a pilot Interactive Voice Recognition platform using a combination of RapidPro and the cloud communication channels Twilio and Nexmo – which no longer is operational. This solution ensures communes would never be out of stock and babies could be registered as soon as possible.³
- Cambodia should be able to achieve universal birth registration by 2025, the rate of increase since 2010 is already faster than the average rate achieved over the nine-year period from 2005 to 2014.⁴
- According to Sub Decree 103, an abandoned baby or orphan may be brought to the chief of commune where the baby or the orphan is found. The chief must write a report, register the child in the birth registry, give the child a name, and consult with health officials with respect to the child's date of birth and note unknown parents. If the child is not adopted, the chief of commune must bring the child to an orphan center.⁵ Giving the village chief this responsibility to write the report and record identity information, presents a number of challenges. Due to the lack of qualifications of commune staff, prevention services are inadequate. "The commune staff's understanding of child protection is very limited. They should theoretically prevent placements into the RCIs, but in effect they facilitate this practice. For example, I often come across village chiefs who sign letters to send children to other provinces to live in RCIs even though there is no CP concern."⁶
- The process for developing the Child Protection Law and standard operating procedures for child protection services and referrals has started. Primero, a digital case management system, was launched in July 2020. Diversion guidelines and child-friendly justice guidelines were developed, and capacity development activities targeting law enforcement professionals and social agents were implemented.⁷
- Cambodia banned surrogacy in 2016. It seems that the authorities were able to provide birth certificates to the great majority of children, with an exception of a few, as the surrogate mothers left the country and whose residence is unknown.⁸ Children should not be discriminated due to the circumstances of their birth and be afforded birth registration documentation as any other child. A draft law on surrogacy is currently in the pipeline and should reflect the safeguards of the CRC and its optional protocols. Article 14 of the draft law on surrogacy provides birth registration for the child by referring to Article 985 of the Civil Code.

The draft law was developed by inter-ministerial technical working group under the technical lead of MoJ but there was limited consultations with UN agencies and CSOs. Such a law should be in line with the Verona Principles, especially in relation to the prevention of sale and trafficking of children, as well as preservation and access to their origins?

Potential consideration(s)

- How is the State planning to ensure the universal birth registration, including through training of the local commune?
- How is the State planning to ensure birth registration for all children born through surrogacy, including access to information about genetic and gestational origins?

2 Modification of identity

- It seems that there may be a lack of family support that led to unnecessary family separations. In 2015, MoSVY conducted a mapping of residential care facilities nationwide, and identified 16,579 children (47 per cent girls) living in 406 residential care institutions (RCIs)⁹.
- When families are unduly separated, the child's identity is unduly modified.
- MoSVY extended the Action Plan for Improving Child Care with the Target of Safely Returning 30% of Children in Residential Care to their families (2016-2018) until the end of 2020, which is important for restoring the child's identity in family relations¹⁰. "The results of the action plan implementation from 2016 to December 2019 show a reduction in the number of RCIs across the country to 232, accommodating 6,778 children (3,313 girls). Compared to 2015, the number of RCIs across the country decreased by 174 (43 per cent) and the number of children living in RCIs decreased by 9,801 (59 per cent). These results reflect efforts made by management and technical officials of MoSVY and relevant provincial Departments of Social Affairs, Veterans and Youth Rehabilitation, commune committees for women and children, local authorities and development partners who collaborated and implemented the Action Plan for Improving Child Care and the safe return of 30 per cent of children from residential care to their families until these desired results are achieved. However, there are a number of challenges and these require more efforts from all relevant stakeholders to ensure that each of them is discussed to identify effective and efficient solutions for child well-being and safety"¹¹. Prakas on kinship care and foster care have been finalised and released in May 2021, which facilitate the child's right to identity in family relations.¹²
- Cambodia is concerned by migration at two levels: Children left behind by migrant parents and children migrating with their parents.

“Following the 2014 expulsion of Cambodian migrant workers by the Thai army, the Royal Government of Cambodia made efforts to provide legal documentation services to cross-border migrant workers so they could go back to work in Thailand. Domestically, there are no special government services for migrants and their families at any stage of the migration process.”¹³

Potential consideration(s)

- How is the State planning to improve family support and reintegration programs to promote the maintenance of family relations – a component of the child’s identity?
- How is the State working to ensure that children in the context of migration have access to legal identity documents?

3

Falsification of identity

- Intercountry adoption has been stopped since 2012, due to issues of fraud and irregularities¹⁴. Birth documents were unduly modified, which modifies the child’s identity and his/her possibility of accessing his/her origins.
- A study of 2017 shows that “there was also evidence that some foster parents were informally ‘adopting’ a child, by changing the child’s birth certificate¹⁵.”
- Despite the 2016 ban, surrogacy continues resulting in incomplete birth certificates and/or falsification of birth certificates¹⁶.
- Marriage between 16 and 18 is legal in Cambodia with parental consent. «If the rate of progress in reducing child marriage observed over the last 25 years continues, the proportion of women aged 20–24 who were married as children may continue to drop – from 28% in 1989 to 19% in 2014 to 14% in 2030. However, if the rate of decline doubles, the prevalence of child marriage could fall to as low as 11% by 2030. But this would still mean that around 1 in 10 women are married during childhood”¹⁷. In either case, this percentage reflects that a significant number of girls’ identities are continuing to be unduly modified.
- “While sexual trafficking has declined, labour trafficking remains a significant and growing concern in Cambodia, according to the International Justice Mission. The 2015 Walk Free Survey sought to identify instances of both forced marriage and forced labour within the general population. It estimated that as many as 256,800 Cambodians (or 1.65% of the total population) live in conditions of modern slavery, and that over 75% of them were victims of labour trafficking”¹⁸. Unfortunately, “the pandemic reduced livelihoods for many families, there was an increase in children being pushed into labour and particularly online child sexual exploitation”¹⁹.

These children, cut from all family environment, suffer from a lack of identity related to their family relations.

Potential consideration(s)

- What efforts are being made to prevent the falsification of identities in alternative care placements, such as foster care and surrogacy?
- What efforts are being made to prevent child marriage and increase in child labour, which results in the removal of the child from their family of origin?

4

Preservation of identity and access to origins

- It seems that little information is available about the General Data Protection Rules in Cambodia and how they apply to children in terms of protection of privacy, ensuring access to personal information in perpetuity and also support services available in accessing this information.
- In terms of data protection, Cambodia does not generally have a specific law/policy solely for data protection, including for children. It is covered in an ad-hoc manner different laws such as civil code (e.g., article 10), penal code (articles 301-302), E-commerce law, which prohibits the breach of professional information which are confidential in nature, recording private conversation or image without consent unless authorised by legal. The E-Commerce law provides basic requirements for service providers such as requirement to obtain consumer consent for gathering and storing personal data and prohibit unauthorized disclosure of personal data unless by legal authorities or with the consents of the person whose data is being shared. As the professional social service workforce is new so there is no code of ethic in place for the profession in regard to this issue - UNICEF is currently working with MoSVY to develop a code of ethics.
- For example, through through Primero, all parties' users including MoSVY and NGOs (NGOs interoperable through OSCaR) and UNICEF are required to sign Terms of Use (MoSVY & UNICEF) and Data Protection and Information Sharing Protocol (three parties) to ensure safe and ethical data protection and information sharing. The protocol provides guidance for storing, sharing, archiving, destroying information related to children and families linked to child protection case management services.

Potential consideration(s)

- What efforts are being made to ensure that the CRC Committee’s General Comment 24 will be followed? What efforts are being made to ensure that all vital information related to the child’s name, nationality and family relations is being preserved?



5

Restoration of identity

- To facilitate the implementation of a 2004 birth registration campaign, Cambodia amended some provisions of the Sub-Decree on Civil Registration to remove the requirement of a court judgment for late birth registration. Sub-Decree No. 17 of 2004 permits 'Khmer citizen[s]' who do not have birth certificates after 31 August 2005 to apply for civil registration letters that certify their birth. Non-citizens who wish to prove their birth on Cambodian territory implicitly are not included in this provision, raising questions as to whether foreign nationals who have had long-term, legal residence in Cambodia can apply retroactively for civil registration letters²⁰.
- Many irregularities took place in adoption procedures in Cambodia. Adopted Cambodian children may search for origins: ICAA and the Court of first instance of Phnom Penh is responsible of preserving the child's identity information. The information is kept 60 years since the Court ruling. Children of sufficient maturity may ask MoSVY to access the file. Proper Counselling is mentioned by the law²¹.

Potential consideration(s)

- What is the State doing to restore children's identities, in cases of illicit adoption practices, surrogacy arrangements, child labour and child marriage?

¹UNICEF statistics,

https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=KHM.PT_CHLD_Y0_T4_REG.&startPeriod=1970&endPeriod=2021

²Consortium for street children, Cambodia, 2019,

<https://www.streetchildren.org/legal-atlas/map/cambodia/legal-identity/can-a-child-obtain-retroactive-or-replacement-birth-registration-documents/>

³ Harnessing mobile technology to improve birth registration systems in Cambodia, February 2017,

<https://blogs.unicef.org/east-asia-pacific/harnessing-mobile-technology-improve-birth-registration-systems-cambodia/>

⁴ A statistical profile of child protection in Cambodia, UNICEF, 2018, <https://www.unicef.org/cambodia/media/711/file>

⁵ Consortium for street children, Cambodia, 2019,

<https://www.streetchildren.org/legal-atlas/map/cambodia/legal-identity/can-a-child-obtain-retroactive-or-replacement-birth-registration-documents/>

⁶ Study on alternative care community practices for children in Cambodia, C. Hamilton, K. Apland, M. Dunaiski, E. Yarrow, 2017,

https://www.iss-ssi.org/images/Publications_ISS/ENG/Study_ACCP_ChildrenCambodia.pdf

⁷ UNICEF country office annual report, Cambodia, 2020,

<https://www.unicef.org/media/100546/file/Cambodia-2020-COAR.pdf>

⁸ <https://medicalxpress.com/news/2017-04-cambodia-foreigners-surrogate-babies.html>

⁹ Report on the Implementation of Action Plan for Improving Child Care and Reintegration
<http://mosvy.gov.kh/wp-content/uploads/2021/06/30-Action-Plan-Improving-Child-Care-Progress-Report-Eng-1-1.pdf>

¹⁰ ECPAT, country overview, 2018, <https://www.ecpat.org/wp-content/uploads/2018/04/ECPAT-Country-Overview-Cambodia.pdf>

¹¹ Report on the Implementation of Action Plan for Improving Child Care and Reintegration

<http://mosvy.gov.kh/wp-content/uploads/2021/06/30-Action-Plan-Improving-Child-Care-Progress-Report-Eng-1-1.pdf>

¹² Prakas on procedures to implement Kinship Care and Foster Care

<http://mosvy.gov.kh/wp-content/uploads/2021/06/Final-Prakas-on-Kinship-and-Foster-Care-English-1-1.pdf>

¹³ Executive summary on the impact of migration on children in the capital and target provinces, Cambodia, UNICEF, 2017, https://www.unicef.org/cambodia/media/1446/file/Study%20on%20The%20Impact%20of%20Migration%20on%20Children%20in%20The%20Capital%20and%20Target%20Provinces_Eng.pdf.pdf

¹⁴ Cambodia's stolen children, fraud and corruption in the intercountry adoption system, March 2018,

https://www.licadho-cambodia.org/reports/files/226LICADHOAdoptionReport29March2018_ENG%20fin.pdf

¹⁵ Study on alternative care community practices for children in Cambodia, C. Hamilton, K. Apland, M. Dunaiski, E. Yarrow, 2017,

https://www.iss-ssi.org/images/Publications_ISS/ENG/Study_ACCP_ChildrenCambodia.pdf

¹⁶ <https://www.abc.net.au/news/2019-05-12/cambodian-surrogates-forced-to-be-mothers-or-face-prison-time/11086640>

¹⁷ A statistical profile of child protection in Cambodia, UNICEF, 2018, <https://www.unicef.org/cambodia/media/711/file>

¹⁸ A statistical profile of child protection in Cambodia, UNICEF, 2018, <https://www.unicef.org/cambodia/media/711/file>

¹⁹ <https://www.ecpat.org/news/how-has-the-pandemic-affected-our-members-and-the-children-they-support/>

²⁰ Consortium for street children, Cambodia, 2019,

<https://www.streetchildren.org/legal-atlas/map/cambodia/legal-identity/can-a-child-obtain-retroactive-or-replacement-birth-registration-documents/>

²¹ Country profile Hcch, October 2020:

<https://assets.hcch.net/docs/e6baabc2-64af-4bc5-84b7-7d04adf93895.pdf>

