Country Cambodia

Submission

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# **Introduction**

This paper responds to “Call for Inputs - Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material”, and answers are noted according to the Questionnaire provided by UNOHCHR.

**Surrogacy situation in Cambodia:**

Surrogacy was banded in Cambodia in November 2016 by the decision from Ministry of Health (prakas, signed October 24, 2016). Article 12 of the prakas reads: “Surrogacy, one of a set of services to have a baby by Assisted Reproductive Technology, is banned completely”.[[1]](#footnote-1) Available data shows that there were in total 66 children born out of surrogacy, and 5 children have left Cambodia already while 32 children became legal children of surrogate mothers, and whereabouts of other 29 children are unknown. The Royal Government of Cambodia is in the process of the drafting of the law on surrogacy but the contents are not accessible to the public.

# **Part 1. Identity, origins and parentage**

## **Describe safeguards protecting identity rights (CRC art. 7 and 8) that are currently being implemented in your State.**

1. **National legal framework**
2. Constitution of Cambodia has stated on the Chapter III which are about “the rights and duties of Khmer Citizens”.

* Art. 31 and Art. 48 explicitly refers to the CRC and Art. 48 states, “The State shall assure the protection of children’s rights as enshrined in the Convention on Children, especially, the right to life, the right to education, the right to protection during wartime and the right to protection from economic or sexual exploitation.”

1. Law on Nationality:

* Art. 4 states: “shall obtain Khmer nationality/citizenship, by having been born in the Kingdom of Cambodia: any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia.” Thus, the child that was born out of surrogacy would consider gaining rights the same as normal Cambodian citizens, including the rights to protect to know and protect their origins and cultural heritages.

1. Law on Inter-Country Adoption:

* Article 46, it states “An adopted child who has reached a sufficient age and level of maturity to understand the consequences of knowing his/her identity ***may be allowed*** access to his/her dossier, including the identity of his/her biological parents, upon written application with the Central Authority of the Kingdom of Cambodia, if it is in the adopted child’s best interests. An adopted child who has reached the age of majority shall be entitled to access his/her own dossier, and other records concerning his/her identity. The ICAA shall ensure that the adopted child receives appropriate counselling before accessing information in his/her dossier. ” Therefore, although there has been no legal interpretation of “may be allowed”, technically speaking, any child may not be allowed to access to their identity.

1. Prakas on Minimum Standards on Residential Care for Children

* In Article 3, on Social and Cultural Development section, it states that residential care institutions shall provide children "The right to know and assert their identity including name, ethnicity, nationality, religion and languages, and full right to choose their own religion without any discrimination, and the children are not forced to profess any religion in exchange for care" and “Permission to contact their family, even when the child is at risk of harm by the family, if it is the wish of the child, if it is in his/her best interests and if the visit takes place under the supervision of the staff.”

1. **International framework**
2. Convention on the rights of child (CRC), ratified by Cambodia in 1992, article 7 and 8 and its optional protocol (OPSC)
3. Cambodia has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children.

## **Describe how the right to access origins is balanced with the right to privacy of parents and gamete donors. Indicate specifically how the best interests of the child are factored in.**

There has been no case on this matter, therefore no legal interpretation is possible.

However, as above noted, Article 46 of ICA law states “An adopted child who has reached a sufficient age and level of maturity to understand the consequences of knowing his/her identity ***may be allowed*** access to his/her dossier, including the identity of his/her biological parents, upon written application with the Central Authority of the Kingdom of Cambodia, if it is in the adopted child’s best interests.” Therefore, it can be possible that for the best interest of a child, parents may keep secret about a child’s identify from him/her.

According to the opinions of the university students, mostly, Cambodian parents do not disclose their children about the adoption if he/she was adopted. Or, if a child is born out of gemmate, parents may not inform their children about their donor information. There is a biased perception towards adoption, and parents may tell a lie to their children about their origins. Commonly, Cambodian parents may not have ideas about how to tell the true origin, therefore even when they may decide to tell the truth, the process of telling the origins is not easy and often require much time. Cambodian parents would commonly consider that keeping secrete is the best interest of a child.

## **Describe safeguards protecting the family environment (CRC art. 7, 8, 9, 10, 20) that are currently being implemented in your State.**

1. National Legal framework

* The Constitution law in article 31, article 33, article 47 and article 48 had stipulated the right and obligations of Khmer citizen and it related to human rights.
* Civil code, article 985, article 987 and article 988.

## **Specify how the establishment of parentage occurs in the context of surrogacy arrangements. Indicate specifically how the best interests of the child are factored in.**

The Phnom Penh municipal court made a decision that when the intended (biological parents) can send their DNA to Cambodia and it is proved that a child born out of surrogacy is their child, then a child can leave Cambodia to his/her parents country.

However, this decision was not applied for later two cases, therefore, it could be understood that this decision is not applicable to any further cases. There is no law to establish parentage in the context of surrogacy.

# **Part 2. Sale of children**

## **Provide information on the laws prohibiting the sale and trafficking of children.**

1. National Law and Policy:
2. Law on Suppression of Human Trafficking and Sexual Exploitation (2008)
3. Policy on Protection of the Rights of Victims of Human Trafficking and Prakas on the Implementation of that Policy (2009)
4. Prakas on Minimum Standards for Protection of the Rights of Victims of Human Trafficking (2009)
5. National Plan of Action 2014-2018 to combat trafficking in person
6. Labor Law (1997)
7. Criminal Law (2009)
8. Bilateral Agreement with other Countries:

*China*

1. Agreement b on Strengthen cooperation of Counter Trafficking in Persons (2016)

*Vietnam*

1. Agreement on Bilateral Cooperation Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking (2005)
2. Cooperation Agreement on Standard Operating Procedures (SOPs) for the Identification and Repatriation of Trafficked Victims (2009)

*Thailand*

1. Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014)
2. Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (2003)
3. Strengthening the management of the repatriation and reintegration of human trafficking victims (2019)

## **Describe any safeguards against the sale of children and child trafficking specifically created for surrogacy arrangements.**

Surrogacy is understood as “child trafficking”. There are several safeguards against the sale of children and child trafficking in Cambodia, but there is none specially in the context of surrogacy arrangements. Therefore, any transfer of a child can be understood as “child trafficking” regardless of how the transfer is arranged.

Applicable laws for the above interpretation is (1) Law on Suppression of Human Trafficking and Sexual Exploitation and Criminal Code. The Law on Suppression of Human Trafficking and Sexual Exploitation consists of some articles that describe crimes related children trafficking and selling such as: Article 8: Definition of Unlawful Removal, Article 9: Unlawful Removal, inter alia, of Minor, Article 10: Unlawful Removal with Purpose, Article 11: Unlawful Removal for Cross-border Transfer, and Article 42 and 43 which talk about sexual intercourse and incident act with and against minor under fifteen years old. Additionally, the Criminal code also states certain crime related action such as article 332-Intermediary between an adoptive parents and pregnant women. These existing two laws create basis to deal with the issue of surrogacy. However, no specific law has been adopted that intends to solve any problem around the surrogacy arrangement.

1. **Comment on the adequacy of current safeguards against the sale of children and child trafficking in the context of surrogacy arrangements.**

Despite the fact that law-making process requires great amount of time, the current response for safeguarding children’s rights is far from satisfactory.

We have witnessed inhuman treatment for surrogate mothers.At least 32 surrogate mothers who were arrested in June 2018 were all forced to accept those children born out of surrogate and raise them. This is inhuman treatment for both mothers and children who did not intend to fall into such a situation. The state should allow biological parents to receive their own children as of 5 cases in 2016 arrests.

## **Note situations and provide data, if any, where a lack of safeguards have allowed or unduly risked violations of these norms in the context of surrogacy arrangements.**

In total, 66 children were born out of surrogacy, and only 5 children were known to have left Cambodia to be raised by their own biological parents.

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| Year | Number of surrogate mothers | Children’s whereabouts |
| Nov. 2016 (regulation of surrogacy was not effective yet) | 23 (18 were pregnant at the time of arrest of the offenders) | 5 children were brought to their intended parents, other 18 babies unknown |
| Nov 2018  (surrogacy was banned by the ministerial order) | 11 mothers were arrested | 11 children’s whereabouts are unknown |
| June 2016 | 32 mothers were arrested | All 32 children became the Cambodian surrogate mothers’ children (otherwise any mother who refused to take a baby would be punished by law; 20 years imprisonment) |

In June 2018, 32 surrogate mothers were arrested under the violation of the ministerial order to ban surrogacy and they were given two options; (1) to accept a child as their own child or (2) to face 20-year imprisonment according to the criminal code. All 32 mothers agreed to take a baby with them and raise them as their own babies and all children were provided Cambodian nationality. However, provided the fact that most surrogate mothers were from the very poor families desperately needed money, there is a huge potential that they may not be able to raise those “foreign” children as their own. They may sell a child, they may exploit a child, they may neglect a child, or they may abandon a child. With an absence of a clear regulation, it is unclear how those children are informed about their birth.

## **Note the number and types of cases where safeguards against the sale of children have been used in criminal cases in the context of surrogacy arrangements.**

There were three cases as above, and agencies/intermediaries were arrested, not surrogate mothers. 32 surrogate mothers arrested in June 2018 were all released after they agreed with the authority that they would take those babies as their children and raise them.

# **Part 3. Data**

1. **For countries where surrogacy is prohibited, please indicate the number of cases, on an annual basis, where nationals have made a surrogacy arrangement abroad and have returned to their country of origin with the surrogate-born child.**

There is no record on this accessible to the public.

1. **Indicate under which circumstances authorities have allowed their nationals to bring the child born from a surrogacy arrangement back into their country of origin and if so please indicate which ones (e.g. domestic parenting orders, judgements, best interests of the child determinations, etc.), and how often they have been used.**

There is no record on this accessible to the public. According to the law on nationality, any child born from Cambodian parents will be given a Cambodian nationality, therefore, it depends how Cambodia Embassy in foreign land deals with this. Legally, Cambodian parents may need to adopt their child born out of surrogacy, however, there has been no case on this, therefore, it depends how the court applies the law.

1. **Lastly, in the same context, please indicate how many cases have led to the non-recognition of parentage orders established in the State where the surrogacy arrangement occurred.**

As above section reported, out of 66 children who were born out of surrogacy arrangement, only 5 children were allowed to leave Cambodia and received by their own biological parents, and other 61 children were denied the biological parentage. At least 32 children became surrogates’ legal children.

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# **Name list of students who participated in this submission**

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| MON Meng Ean | REAM Ranny |
| NEAM Sreyleak |

1. There has been an legal argument that this decision was not based on the law. This prakas must be consistent with the law, but there is currently no law outlawing surrogacy. [↑](#footnote-ref-1)