

Children's India

INDIA CITIZENS' COLLECTIVE CHILD RIGHTS REVIEW, AUDIT & REPORTING

INITIAL ALTERNATIVE COUNTRY REPORT & UPDATE
ON THE

**OPTIONAL PROTOCOL TO THE UN CRC ON SALE OF
CHILDREN, CHILD PROSTITUTION AND CHILD
PORNOGRAPHY**

2005 – 2013



Submitted by the India Alliance for Child Rights

on behalf of a country-wide participatory review, audit & reporting process uniting NGOs, networks, institutions, issue-based forums, working in coalition, and in consultation with national platforms on human rights and development

July 2013

OPTIONAL PROTOCOL TO THE CRC ON SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

INITIAL ALTERNATIVE COUNTRY REPORT 2005-2011 WITH UPDATE 2013

Introductory Note on the Review and Reporting Process

This report is a response to the first formal opportunity that has been offered to the voluntary and non-governmental constituencies in India to report on the Optional Protocol to the UN CRC on Sale of Children, Child Pornography and Child Prostitution (OPSC). The Government of India ratified the Protocol in September 2005.

Following its ratification, India should have made its first OP official report by late 2007. In the resulting delay in this process, it actually had over five years to work on implementation.

The OP report prepared by the Government is descriptive, with information on problems detected. But it has little to say about actual implementation measures for change. It presents an overall picture of many children confronting many risks and vulnerabilities, without any real safeguards. The three issues of sale, prostitution and pornography stand out as genuine dangers.

Tracking of the Protocol has run alongside a large part of the shadow reporting process on the Government's 3rd and 4th official Periodic Report on the UN CRC. Slated to cover the 2002-2007 period for CRC implementation, the official exercise ran behind schedule, and was submitted in August 2011. By Government decision, the official Initial Country Reports on this Protocol and the one on Children in Armed Conflict were all submitted together with it. Initial country reports are supposed to be made two years following ratification.

India's submitting of its Initial Report so much later has actually extended the reporting period and the time window for some actual implementation. However, information on actual measures is scant, and without reference to impact.

The citizens' collective initiative to report on the CRC and the Optional Protocols took a conscious decision to use the State's own official and published information and data as its primary source. In seeking to report on this Optional Protocol, this has proved difficult. Official statements and a general absence of hard facts and figures have raised added questions. This is of concern, since published official data is available on the 2005-2010/11 period, and could have been provided.

This report draws on the many concerns and assessments on children's safety rights that emerged from the citizens' collective process of reviewing, discussing, auditing and deriving insights, also from dialogue opportunities offered by the Government of India in its 2007 inter-state consultations on CRC reporting, and its 2010 consultations on looking at CRC and human rights obligations in the context of national policy. It inevitably links its assessment with larger issues

and contexts of rights. The NGO policy review process of 2010¹ brought special value to the assessment of protection issues (i) because it positioned CRC provisions as policy-level rights issues, and (ii) because of the interest and involvement of NGOs, institutions, professionals and activists.

The findings and conclusions bring together the thinking and contribution emerging from the entire participatory process, as well as insights provided by the wider NGO discourse on human rights and development with justice.

The opportunities provided by many for this long exercise are acknowledged with deep appreciation, and the wide interest and attention it has generated in many parts of India and on many platforms is gratefully acknowledged, and deserves celebration.

This report really belongs to all those who helped to compose it.

Submitted on behalf of country-wide participatory review, audit & reporting, connecting and uniting NGOs, networks, institutions, issue-based forums, working in coalition, and in consultation with national human rights and development platforms, and 2000 children.

India Alliance for Child Rights (IACR)

8th July 2013



¹ Commissioned by NCPCR to review the 1974 National Policy for Children, and point out CRC-based priorities for a new policy, IACR effort to mobilise NGO attention generated debate and recommendations from 583 NGO, CBOs networks, forums and groups across 20 states and UTs.

Optional Protocol to the UNCRC on Sale of Children, Child Prostitution and Child Pornography

Initial Alternative Country Report

This independent alternative report draws primarily on published official information sources and government data -- and reflects a citizens' audit, and questions arising. NGO reports where mentioned or quoted, are cited as deserving attention. **The report contains updates up to mid-2013.**

- I. This initial alternative report addresses the initial country reporting period 2005/06 to 2007/08, plus the subsequent 2008/13 period, reflecting the prolonged time of 2008/11 that the government took to submit the report, and the added period of 2011/mid-2013 reviewed for the update sought by the UN Committee.
- II. The reporting guidelines for the state governments by the Committee on the rights of the child detail a number of Paras that the report fails to incorporate. The report describes a number of problems, but has virtually no data on incidence and trends, progress of laws or programmes and any other firm statistics. Analysis is limited and inadequate.
- III. An attempt to make an objective audit of what India has said comes up against some questions about the OP's specific implementation requirements.
 - III.a. In citing eight of the CRC Articles, the OP cites the concerns of illicit transfer, illegal adoption, risks to adequate standards of living, dangers of substance abuse, sexual exploitation and unlawful sexual activity, abduction, sale and trafficking. But the OP implementation provisions do not invoke this range of concerns.
 - III.b. One question arises about emphasis: does the OP itself call more for a country focus on halting inter-country situations than on those within its borders? A related question is whether OP implementation is about children of the country being sent out of it, or equally about children brought into the country, or also about children transiting through the country towards some other destination. The OP preamble speaks of 'international traffic in children for the purpose of sale, prostitution and /or pornography.' The 3rd/4th CRC Periodic Report has a single-sentence mention of 'repatriation to provide support to cross-border victims for their safe repatriation to their country of origin.'² In all three contexts, India's official report speaks of India's "emergence as a source, destination and transit country for varied purposes." But it also points out that within country trafficking accounts for the bulk of trafficked victims.
 - III.c. The OP itself also has an apparent insufficiency in that it does not make a clear enough distinction between 'sale' and 'trafficking.'³ Children are sold due to a variety of factors, and sold into a variety of risks, without trafficking necessarily being the actual, declared or perceived purpose or reason, and without sexual

² India 3rd/4th CRC Periodic Report 2011: Chapter 8: 8C.5.2, 8C.5.5/Para 190(v).Reference to the Ujjawala scheme, started in 2007.

³ See 1st, 3rd, 6th and 7th paragraphs of the OP preamble.

exploitation being the reason at all. India's initial report has little to say about the wider range of factors. It also does not report whether sale is a second step after abduction, by allurements or kidnapping of the child, or cheating of the family or community. The OP does not reflect these points of concern. This deserves attention, because the OP report tends to use the term 'trafficking.'

- III.d. The 2002 'World fit for Children' objectives on child protection also have this definitional flaw on 'sale' and 'trafficking,' but at least use the word "sale" separately.
- III.e. Two other 'grey' Paras in the OP are of concern in shadow auditing of the official report: (i) The OP implementation obligations do not clearly give equal weightage to within-country sale and exploitation as a specific risk and implementation issue, as against inter-country incidence and tasks. Article 2 merely defines sale.
- III.f. Article 3 lists three reasons for sale, refers to illegal adoption transactions as a fourth contingency, and does not provide for "any other reason." In the 2002 World fit for Children objectives, Paragraphs 40 and 45 under strategies for General Protection⁴ refer to sale. Para 45 also refers to 'any other form of exploitation.' Article 36 of the CRC calls for children to be protected against "all other forms of exploitation prejudicial to any aspects of the child's welfare." But citation of a right and a duty in a preamble does not equal an implementation obligation. Implementation reporting can stay within the letter of each stated obligation. India's OP report lists seven reasons for sale.
 - i. It does call for coverage under criminal or penal law, and does say 'whether such offences are committed domestically or internationally.' On whom? It does not classify either victim or 'saved' child. Article 4 refers to jurisdiction and territory; its fourth Para only says the OP 'does not exclude any criminal jurisdiction exercised in accordance with internal law.'
 - ii. Several Articles for action refer to inter-country trafficking, and inter-country cooperation to stop it. The prevalence of cross-border movement of children, notable from Nepal and Bangladesh, for labour and for the sex trade is real and serious. But the sale and movement of children from one area or state to another within India is a grave internal reality. Beyond one descriptive listing, the OP report does not give any details or even estimated figures. That listing is also about seven years old.
 - iii. **The issue of bondage, against debts or for obtaining a loan, is not mentioned.** Is this not sale? Of course it is outlawed, but it continues.

A deficit in setting out the country situation on sale of children may be due to the OP's identification of only three reasons, and a fourth possibility. This could have narrowed the State Party's interpretation of its reporting obligations.

Has this lack of clarity in the OP provisions affected the clarity of the official initial report? [In reporting on the OP on armed conflict, India has reproduced Para-wise reporting guidelines (without naming them as such), and answered some of them. In reporting on this Protocol, there is no such quotation].

⁴ UN GA/2002: World fit for Children: Section3: Protecting against abuse, exploitation and violence.'

- IV. There is a question about why the OP report remains basically a recitation of various official laws, provisions, rules and regulations, some welcome recitation of perceived problems, but has virtually nothing to communicate of implementation following ratification, or even application of existing laws before that.
- V. What India did in the implementation time provided by the delay in initial reporting is not stated.⁵, India actually accumulated 5 to 6 years of possible implementation time, to get moving on addressing the obligations.
- i. The OP addresses the three challenges of sale, prostitution and pornography. The report does not adequately indicate what was done in practical terms, and with what impact, on any of them in the period since ratification.
 - ii. As an initial reflection of country realities and concerns, and a first assessment of challenges and priorities, the report could and should have offered not just a summary of situations and concerns, but facts, and more information and analysis. The absence of this kind of implementation information is itself a default in the reporting. A text on general measures of implementation should give at least some indication of such action.
- VI. The report disregards the UN Committee's basic guideline to not use the term "trafficking" as a synonym for sale of children.
- i.a. The OP defines 'Sale of Children.' It quotes remuneration or any other consideration as any transaction or act whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. The report lacks a proper definition of trafficking that distinguishes it from sale of children. 'Sale' could have been un-packed.
 - i.b. The report lacks statistical data and trend information. One single table, based on 2001 - 2007 figures from the National Crime Records Bureau, gives data on five categories of crimes against children. It lists procurement of minor girls, buying of girls for prostitution, selling of girls for prostitution, child rape and importation of girls. It is silent on boy victims.
- VII. The official review and reporting does not appear to recognise transgender cases. Yet there are children who belong to the shadowy and socially condemned categories. They are innocent children who become -- willingly or otherwise -- part of the trans-sexual (or hermaphrodite) groups, those who are the eunuch community, and those known as 'Hijras.' The recruitment of children into eunuch groups can be by abduction, or allurements of children or youth who have uncertainties about their own physicality. Some children born with physical characteristics of both sexes grow up without knowing where they fit. That such children are among those who fall into prostitution, and may be sold or trafficked -- and might be victims of child pornography -- finds no mention in the report.
- VIII. As the first focus assessment asked of India, the report should have given a reference to context on each of the three issues. It could have said what the previous CRC effort had faced and addressed, and mentioned any results, and it could cross-reference to the 3rd/4th CRC Periodic Report. It has not done this. The PR on its part devotes 48 pages to special

⁵ Since India ratified the OP in September 2005, its initial country report was due in 2007/08. The prolonged time taken could have been used for implementation. The report fails to tell whether this happened.

protection measures, but does not cross-reference the different risks and their settings, and leaves much unsaid or un-interpreted. Some of the obvious situations -- such as being refugees, caught in conflict or troubled conditions, on the fringes of conflict with law, in institutions or some form of custody, on the street, toiling as child workers, migration, any state of displacement, being disabled -- these are not reported as the cobweb of risks and vulnerability that they are. Displacement and unsafe migration are just listed in ‘Challenges.’

- IX. The entire chapter on General Measures of Implementation focuses primarily on sexual exploitation and trafficking. It should have provided information and insight on sale and pornography; even on child prostitution it could be more specific.
- X. In providing a list of policy commitments, along with laws, the report fails to do more than describe provisions. Given the gravity of the issues, it should have reported on implementation, and it should have given an objective assessment of outcomes and impact of programme implementation and law enforcement. The report does not do this.
- XI. India’s 2005 Official Country Report on Violence against Children reflected the official view of trafficking, sale and prostitution at the time. It offered no assessment on child pornography.
- Formulated in response to the UN Secretary-General’s worldwide study on Violence against Children, this report gave the 2005 official view of child labour, street children, trafficking, violence in schools & institutions and children in conflict situations.
 - The chapter on trafficking offered some information and official opinion on commercial sexual exploitation as well. It provided some 2003 data, from national crime records (Table 1).
 - This NCRB data in the 2005 country report includes statistics on sale of children. This information, or at least relevant parts of it, should have been in the OP initial country report, along with NCRB’s annual updates of crime data from subsequent years -- at least up to the year the OP report was finalised (2010/11).

Table 1: Trafficking Related Cases of Kidnapping and Abduction: 2003 (NCRB)

Sl. No.	Purpose	Total No. of Cases Reported	Sex-Wise/Age Group Wise							
			Upto 10 Years		10 – 15 Years		15 - 18 Years		18-30 Years	
			M	F	M	F	M	F	M	F
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	For Adoption	60	6	5	0	1	0	9	14	18
2.	For Begging	7	2	4	0	0	0	0	0	1
3.	For Camel Racing	0	0	0	0	0	0	0	0	0
4.	For Illicit Intercourse	1618	1	8	1	163	1	209	27	1020
5.	For Marriage	8448	2	8	9	343	12	995	213	5959
6.	For Prostitution	172	0	1	0	15	0	42	0	96
7.	For Ransom	1129	51	13	52	6	47	4	519	56
8.	For Revenge	740	5	7	10	4	33	5	340	92
9.	For Sale	18	2	7	0	1	0	3	0	9
10.	For Selling Body Parts	0	0	0	0	0	0	0	0	0

11.	For Slavery									
12.	For Unlawful Activity	707	10	5	25	20	20	29	260	149
13.	Others	7028	147	84	116	111	137	233	2388	1893
14.	TOTAL	19992	226	142	214	666	253	1529	3802	9311

Source: Crime in India 2003, NCRB/Published in Country Report on Violence against Children 2005.Govt. of India.

UPDATE: The NCRB's 2010 report again provides statistics on sale, and indicates a big increase in procurement of minor girls, buying and selling of girls for prostitution between 2009 and 2010. This data would have been available to the Government for the initial OP report.

Sl. No.	Crime Head	YEAR			% Variation 2010 over 2009
		2008	2009	2010	
(1)	(2)	(3)	(4)	(5)	(6)
1.	Murder	1,296	1,488	1,408	-5.4
2.	Infanticide	140	63	100	58.7
3.	Rape	5,446	5,368	5,484	2.2
4.	Kidnapping & Abduction	7,650	8,945	10,670	19.3
5.	Foeticide	73	123	111	-9.8
6.	Abetment of Suicide	29	46	56	21.7
7.	Exposure & Abandonment	864	857	725	-15.4
8.	Procurement of Minor Girls	224	237	679	186.5
9.	Buying of Girls for Prostitution	30	32	78	143.8
10.	Selling of Girls for Prostitution	49	57	130	128.1
11.	Other Crimes (including Prohibition of Child Marriage Act 2006)	6,699	6,985	7,253	3.8
	Total	22,500	24,201	26,694	10.3

Source: Crime in India 2010, NCRB

XII. While it is not clear what the NCRB includes under 'other crimes,' it is notable that trafficking by name is not in the records. In its 2005 country report on violence against children, the Ministry of Women and Child Development had a section on trafficking. There has also been an incidence where Punjabi children have been sold off by their families to agents to be smuggled of to France and be abandoned there (see international assistance and cooperation). The OP report does not cite the 2005 country report. This smuggling was not sale, but purchased illegal movement for deliberate 'export' of children. There was no information on whether all the children smuggled reached the safe shelter of French state homes. The country report said nothing about any official action considered or taken.

Both this and the recent Uzbek girls' case (See section on international assistance and cooperation) point to possible preventive and remedial cooperation with other countries. The report section on international cooperation has no information of this kind.

The Ministry reports having advertised in leading newspapers and on its website, inviting inputs from individuals and other stakeholders.

Comment: If this is really so, it is sad that the report says so very little about anything really done.

The MWCD served as the Secretariat for collating inputs from the decentralised processes and coordinating the preparation of the reports.

Comment: There is no mention of the information given by state governments whose were asked to respond to the MWCD questionnaire.

XIII. It is necessary to ask whether child prostitutes fall under the category of child in conflict with the law or child in need of care and protection under the JJ Act. It is not clear as what will be their status in such a situation.

UPDATE: POCSO⁶ has been enacted to protect children against sexual offence. The question comes up as to how it applies to child prostitution situations. Theoretically child prostitution is the use of children for forced or ‘paid’ sex. POCSO defines the ‘child’ as any person below the age of 18 years. In definitions, it only names 3 settings: domestic relationship, religious institutions, and shared households, but it also identifies other settings such as jail, remand home, protection home, observation home, or ‘other place of custody or care.’ Is a brothel in which children are virtually imprisoned a place of custody, and are they not just victims of sexual offence but rape victims? Is a child who is pushed into such prostitution even from a household setting a rape victim? The maximum penalty under POCSO is 10 years, and could extend to life imprisonment,⁷ while the ‘rape law, (Indian Penal Code Sections 375 and 376)’, can impose up to 7 to 10 years, and 20 if the victim dies or becomes vegetative.

XIV. There is a question of sexual assault that needs to be asked in terms of child prostitution as well. Would not any sort of sexual assault qualify as rape regardless of whether or not the child in question is in the sex trade? Should such a child not be considered a victim? The situation of children in prostitution essentially exposes them to multiple rapes as they are passive victims of an activity into which they have been coerced or trapped.

Overall comment: The report fails to incorporate the results of any implementation action taken either from 2005/06 to 2007/08, or thereafter.

The Process of Formulation of the OP Report

1. The OP report says that the task of preparing the CRC Periodic Report and the two initial reports on the two OPs was assigned to a High Powered Committee, comprising representatives of different Ministries, 18 State Governments, representatives of NGOs and academic institutions and international agencies. This is so, but the committee met just twice, once for its formation in 2007, and then once again in August 2009 for a one-day review and discussion of an interim draft of each of the three reports in preparation. The final text of this published OP report became known only after its official submission to the UN.

⁶ The Protection of Children from Sexual Offences Act 2012.

⁷ A life sentence in India is generally 14 years.

2. In 2007, the focal Ministry issued an official questionnaire to all state and union territory governments in 2007. The Ministry also convened five inter-state consultations of state government officials, NGOs and subject specialists, using the same questionnaire. This OP was listed for discussion,⁸ with 39 specific questions on the issues. The given period of assessment for review and reporting was 2004-2007. Thus responses from state governments could have provided information on measures in place, and even some results. The OP report cites some state inputs, but has no results information.
3. The Government of India had itself submitted a national report on World fit for Children action to the UN in early 2007, which it specifically said was a preview of its CRC periodic report. In it, there is a mention of the ratification of the two OP's as well as the signing of the two SAARC Conventions to combat trafficking in the region and on child welfare. As a preview report it should have mentioned the plans, policies or programmes that relates to the OP as well as highlight the current situation. However, the WFFC report only makes a cursory reference to the questions of sale, child prostitution and child pornography.
4. The Central Budget allocation of funds for programmes and measures specifically undertaken for children has always been unjustifiably low. The fund provision for child protection is the worst and smallest. The OP report admits that the budget share available for “child trafficking, child prostitution and child pornography is a small proportion of the total budget on child protection fund”. This budget has only gotten smaller with the latest budget. Child protection is only 0.04%.of the entire child budget for 2013-14, which itself is only 4.64% of the total Union budget.
5. The government has chosen not to make any comment on the OP preamble which provides the framing context of the protocol, and makes cross-references to the UNCRC. The report also fails to acknowledge the various conventions that it has ratified that should apply and work in conjunction with the OP and are in fact cited in the preamble of the OP.
6. The Juvenile Justice Act (JJ Act) provisions remain unstated, although the Act with its amendments has provisions to address both ‘children in need of care and protection’ and ‘children in conflict with the law’. A child engaged in the sex trade falls into both areas of JJ application, as a victim and as a person in violation of laws.

7. *National Plan of Action, 2005(NPAC)*

The NPAC was released only a month before India’s ratification of the OPSC. It covered the duration of the reporting and implementation period. Under child protection, its objective, amongst others, was to ‘protect all children against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, pornography, corporal punishment, torture, exploitation, violence and degrading treatment’. The OP report cites the NPAC, and lists nine of 11 strategies of the 11 that the NPAC actually set out.⁹

⁸ The other OP was not visibly listed for attention, although relevant questions were posed.

⁹ See annexure : Annexure 2

The strategies listed under the NPAC by the OPSC report are:

- a. Research to identify the nature and magnitude of all forms of child sexual abuse and exploitation.
- b. Setting up crisis-intervention services and centres.
- c. Reviewing, revising and enacting laws for prohibition and prevention of child abuse and punishment of offenders.
- d. Sensitising police, judiciary and medical authorities towards victims.
- e. Sensitising media to accept social responsibility in reporting cases of child sexual abuse.
- f. Creating quality foster care and other alternative services.
- g. Protecting the identity and respecting the privacy of child victims.
- h. Ensuring assistance to child victims for their full physical and psychological recovery, development and social re-integration.
- i. Promoting public awareness on the harmful effects of such offences; and building public, private and non-governmental organisation (NGO) partnerships to address the social challenge.

The NPAC made a strong point for developing a system of identification, investigation, reporting, follow-up and referral of children at risk within and outside homes/institutions. However, such a system has not been successfully developed and the plan's implementation period, with its deadline of 2010, has already lapsed. No assessment report is available on what the NPAC aimed at, and how far it's reached its protection aims in particular.

UPDATE:

In the run-up to formulation of India's 11th Five-Year Plan for national development (2007-2012), an appointed working group of the focal Ministry and the National Planning Commission undertook a thorough assessment of child protection problems and needs, and brought out a focused set of proposals. The 3rd/4th CRC Periodic report mentions the 11th Plan several times, but does not recall these proposals. The OP report has nothing to say about them, or about whether any of them found place in the final Plan or its implementation.

The NPAC-2005 was not officially amended or changed to include any of the action points stated under the OPSC and continued to be the declared plan for children.

National Policy for Children 2013 (NPC):

The policy frame governing action for children during the reporting period was the 1974 National Policy for Children, a hallmark affirmation of State responsibility and commitment, with the sole weakness of limiting childhood to 14 years.¹⁰ It was officially regarded as outranking the 2003 National Charter for Children.

UPDATE: The new NPC was released on the 26th of April 2013 and is supposed to provide the frame for all actions for children's benefit. The Policy states that 'this Policy is to guide and inform all laws, policies, plans and programmes affecting children. All actions and initiatives of the national, state and local government in all sectors must respect and uphold the principles and provisions of this Policy.'

The policy makes a general statement on defending children's safety. 'The State shall protect all children from all forms of violence and abuse, harm, neglect,

¹⁰ The Constitution of India set the childhood ceiling at 14 years in 1950, and this still stands as the constitutional provision.

stigma, discrimination, deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking for any purpose or in any form, pornography, alcohol and substance abuse, or any other activity that takes undue advantage of them, or harms their personhood or affects their development.’ While some sections of the policy spell out specific aims, and refer to actual measures, there is nothing spelt out on sale or pornography. The closest to a specific commitment on sexual offences or sexual safety is to ‘special protection measures to secure the rights and entitlements of children forced into commercial sexual exploitation.’ The same commitment is made to ‘children in situations of labour.’¹¹

In the context of pornography a joint-NGO recommendation to state a policy position on portrayal of children did not find place in the new NPC.

The only references it makes to them is either a comment on rehabilitating them into the education system so as to guarantee them their ‘right to education’ or in terms of developing ‘special protection measures’. This indicates nothing of the actual intention or plans of the Government for rescuing such children or safeguarding their interests. It also fails to address these issues individually, instead of lumping them in an overall category of ‘vulnerability’.

Reasons for Sale of Children:

The OPSC Report lists the following reasons

- Child Labour
- Body Parts
- Slave Labour
- Marriage
- Adoption
- Prostitution
- Sex Tourism

It does not offer any information, either on status or on actions and efforts.

Observations and Questions on the OP & on the Report:

I. General Measures of Implementation:

Reference to reporting guidelines – While the report sticks to the overall framework identified by the guidelines it fails in the reporting process. The information is mostly descriptive and out of date with no impact or result information.

- (a) The focal Ministry (MWCD) has not published any reporting on the state of sale and prostitution prior to the OP ratification. There is no prior status information on child pornography. A distinction is not made between children’s exposure to pornography and children’s involvement in pornographic portrayal, material or performance. In reality, children are at risk in both. There is no reference made to the borderline portrayals of children performing or taking part on talent shows which appear to have no safeguards against obscenity. What was the situation at the end of 2007, the due initial reporting deadline?

¹¹ The National Policy for Children (2013): Govt of India (MWCD).

❖ Institutional Mechanisms -

Paras 3, 4: The report says commissions like the NCPCR, the NHRC and the NCW have been set up to work on the issue of children. It relates some complaints NCPCR has received. It does not cite any complaints on sale, prostitution or pornography, apart from an unexplained mention of children employed in the 'zari' industry. Have there not been any such complaints?

Para 5: There is no information on whatever SCPCRs have done on the OP issues.

Paras 6, 7: The NHRC -UNIFEM study on trafficking (2003-04) is cited, along with its recommendations (forwarded to all states for compliance). There is no mention of which states complied or what resulted. There is no reference to state commissions' action on the OP issues. What about SCPCRS?

Para 8: The NCW is said to have handled many complaints of "child marriage, female foeticide, etc.," but nothing is said about anything it may have done on the OP issues.

Policy:

Para 9:

- (a) If the Government 'recognises sale of children as an organised crime, and has therefore accorded the highest priority combating sale and trafficking,' what exactly has it done to curb it?
- (b) What is this multi-pronged, multi-stakeholder approach to tackling the perceived multi-dimensional nature of the problem? The report says nothing on anything done, or on results.
- (c) It is welcome that stopping sale of children deserves the highest priority. Where do child pornography and child prostitution figure in priority?

Para 10: The NPAC-2005 was supposed to meet a 2010 deadline to accomplish its goals. Nine strategies are listed, for the rescue of children from trafficking, prostitution, pornography or violence, to "ensure that such children are rescued and immediately placed under appropriate care and protection." Between 2005 and 2010, how far did this succeed? The report is silent.

Para 11: Adoption of 'specific plans' is reported. A 1998 plan is cited. Updating of that plan into an 'integrated' action plan is reported, but this is said to be 'in the process of being finalised.' No further news is given. No information is offered on the status at the time of submitting the report. Children and women rescued from commercial sexual exploitation were to be 'mainstreamed' and reintegrated into the community. A worthy aim. What happened? What about any children rescued from trafficking for any other purpose?

Para 12: How does the National Plan of Action to Combat Trafficking and Sexual Exploitation of Women and Children 1998 deal with Child Pornography? There is also no context given for the updated Integrated Plan of Action

- (a) Why are there no NPAC provisions to deal with Child Pornography specifically? What about Child Prostitution?

Para 13: What are the results of meetings of the Central Advisory Committee on Combating Child Prostitution? The decisions taken by the committee to curb child prostitution are not given. On Para 16: What have been the results of the meeting held by MWCD and UNICEF in June 2007? Is there a target time for finalising the Joint Plan of Action take place? There is no information on what the plan is about, or whether it was to be made more child-specific. .

❖ **Coordination –**

Para 22: The OP Report does not say what efforts various ministries and independent bodies made in order to achieve the commitments made under the OP on its three key objectives.

Para 23: How does ICPS protect these children? There are no provisions in it which deal specifically with sale, child prostitution and pornography though there is a mention to trafficked children under the categories of children that it covers. Since ICPS is in operation in some areas, is there any implementation information? None is offered in the report.

Para 24: The MWCD reports several meetings over the course of the years, as well as the setting up of special bodies and programmes including the National Coordination Group (NCG) established to track and coordinate CRC, and subsequently also assigned to monitor the NPAC. But the NCG only met twice after its reconstitution in 2007, and only on health programming. The report gives no information on results of NCG meetings. NCG action to coordinate or monitor the CRC or NPAC is not on record.¹² It was not visible in the CRC and OPs review and reporting.

❖ **Resources:**

Para 26:

- (a) The total Union Budget share for children has seen only a small increase from a miniscule 2.15% in 2001-02, to 5.08% in 2007-08. The report admits that budget for child trafficking, child prostitution and child pornography is a small proportion of the total budget on child protection which itself was only 0.06 % in 2008-09. It gives no figures on the child budget in 2008-09.
- (b) There is also no explanation for this insufficient budget allocation or what have been the outcomes of whatever has been available and put to use. Actual use has not been detailed.
- (c) The report fails to identify the status of the child budget beyond 2008 despite the report being finally submitted in 2011.
- (d) The ICPS does not have sufficient provisions for action to address the sale of children, child prostitution or child pornography. It also does not deal directly with the problems identified under this OP and it is a scheme, not a law.

¹² Unofficially, the NCG can be regarded as comatose, or a case of starvation death.[IACR is a member since 2007].

UPDATE:
Total Outlays for Child Specific Schemes as Percentage of Total Union Budget

2013-14 Budgeted Estimate: – 4.64%
 2012-13 BE – 4.7%
 2011-12 Revised Estimate – 4.5%
 2010-11 RE – 4.1%
 2009 -10 RE – 3.7%
 2008-09 RE – 3.8%

Sectoral share in 2013-14 Union Budget:
 Child Health – 0.16%. There is a decline of 0.98 % in this budget share.
 Child Development – 1.10%
 Education – 3.34%
Child Protection – 0.04%. There is a decline of 7.67 % in this allocation.

Source: Govt. of India

❖ **Data Collection:**

Para 27: There is little reference to child pornography in the report. As a first statement giving evidence of national commitment to address the challenge, this is not adequate. Even as a starting document, it could have examined concerns on the two aspects, of children portrayed and children affected or exposed to pornography. It could have reviewed and commented on apparent trends, on how pornographic communication is conveyed to children, on whether children get exposed to messaging or portrayal aimed at them or to communication and presentation aimed at adult audiences but accessible to children. It could have looked beyond internet and electronic channels to so many other conduits and sources. It could have set out the problem the way the Government sees it.

Child prostitution too seems to have been subsumed under the category of sexual abuse and/or exploitation.

Para 28: The crimes against children statistics presented are outdated. The Statistical Appraisal¹³ released by the Ministry of Statistics and Programme Implementation has a more detailed breakdown on the crimes committed against children, with more recent data.

The table shows no record of any crimes committed against boys and this is not explained.

UPDATE:					
The crime against children table does not contain the entire data produced by NCRB for either 2010, or 2011. The 2010 data on crime against children by the NCRB is also available.					
Sl. No.	Crime Head	YEAR			% Variation in 2012 over 2011
		2010	2011	2012	
(1)	(2)	(3)	(4)	(5)	(6)
1.	Murder	1,408	1,451	1,597	10.1
2.	Infanticide	100	63	81	28.6
3.	Rape	5,484	7112	8,541	20.1
4.	Kidnapping & Abduction	10,670	15284	18266	19.5
5.	Foeticide	111	132	210	59.1
6.	Abetment of Suicide	56	61	144	136.1
7.	Exposure & Abandonment	725	700	821	17.3

¹³ Children in India 2012 - A Statistical Appraisal, compiled by the Ministry of Statistics and Programme Implementation.

8.	Procuration of Minor Girls	679	862	809	-6.1
9.	Buying of Girls for Prostitution	78	27	15	-44.4
10.	Selling of Girls for Prostitution	130	113	108	-4.4
11.	Other Crimes (including Prohibition of Child Marriage Act 2006)	7,253	7293	7580	3.9
	Total	26,694	33,098	38172	15.3

NCRB has reported big changes in the following:

Procuration of Minor Girls – 679(2010) 862(2011) 809(2012)

Buying of Girls for Prostitution – 78(2010) 27(2011) 15(2012)

Selling of Girls for Prostitution – 130(2010) 113(2011) 108(2012)

The % variation from the previous NCRB report is -5% (the percentage variation of 2010 over 2009 was +10.3%). How has this massive percentage change occurred? Who did what to bring about such a marked positive change? These figures are in the NCRB reports. The OPSC report does not provide any such data, much less does it state any steps taken to curb these actions or refer to results of any programmes that might have contributed to any such change in incidence and trends. The single small table highlights some of the categories presented by the NCRB in its 2012 report; it makes no comment on any actions taken. The report lacks this kind of information, despite its apparent availability. The State should have had more to say on practical efforts, processes and measures -- and what they yielded.

Para 30.

- (a) The report also makes an oddly generalised statement regarding the relationship between child pornography and sex tourism based on a research conducted by the NHRC. The report states that the two crimes are mutually reinforcing and that sex traffickers are often found to be producing and collecting child pornography. While this might be the case, the statement is too simplistic and it presents only one view on child pornography. This is insufficient attention to a growing problem.
- (b) It is important to note, children viewing pornographic material and children used in pornography are two different situations.

Para 32. In spite of acknowledging the fact that trafficking occurs for various reasons the report fails to address these causes focusing instead upon the trafficking of women and children for sexual exploitation.

Para 34.

- (a) The results of Talash have not been identified in the report. There is no reporting on whether or not it has been an effective information system. There has also been no tracking of children despite the setting up of Talash.
- (b) There is no state wise breakdown given of trafficking, child prostitution and child pornography.
- (c) Trafficking has not been broken down into inter, intra state and inter country trafficking.

❖ Partnerships:

Para 36.

- (a) Where are the impact reports of the government and Civil Society Organisations partnerships?
- (b) The report does not clearly identify who the CSOs are.

Para 39.

- (a) Economic empowerment is not an effective method of rehabilitation. How do you economically empower children?
- (b) What about social empowerment? There is no mention in the report about socially empowering women and girls. It is assumed that economic empowerment will lead to social empowerment. Such is not the case.
- (c) There is no mention of rescue homes for boys. Where are they supposed to go?

Para 40. Efforts have only been made to empower the girl child. There is no mention of empowering boys. It is necessary to empower and inform all children in order to develop a gender sensitive society.

❖ Challenges:

Para 47.

- (a) No specific efforts have been made to address traditional mindsets and culturally sanctioned practices which exploit young children.
- (b) There continues to be a dearth of sensitised man-power and the report makes no statements on how it plans to resolve this problem.
- (c) No mention of any mechanism being put in place to address the lack of reliable and systematic data on the State and National level.

II. Prevention:

Article 9 of the OPSC

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, and social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

Reference to reporting guidelines – The guidelines specifically seek information on the impact of social measures. This is not available in the report, or is unclear.

❖ Programmes:

Para 1. Almost all reported schemes and programmes aimed to address trafficking, with the focus being on women/ girls. But there are other situations and types of sale of children, and all children at risk are not girls. Boys are also victims of sale, bondage, pornography, prostitution.

Para 2. Protection mechanisms for young boys who have been trafficked have not been mentioned

Para 3.

- (a) Why are there no schemes to tackle child prostitution and pornography? Are they being subsumed under the question of sexual exploitation? Why is that the case?
- (b) The report does not state how many children have been provided with rehabilitation or how many were repatriated under the Ujjawala scheme.

Para 4.

- (a) Childline's operation is focused on responding to telephone calls for help. It only works to rescue children, to inform the police, and to refer the children to Child Welfare Committees. (CWCs). The other pieces of an essential rescue and follow-up mechanism are missing. The helpline service does not cover the entire country.
- (b) At the time this report was submitted ICPS had been functional for almost 2 years.
- (c) Percentage figures are given for 2005-06 and 2006-07, to indicate a fall in calls about sexual abuse by neighbours and by family. There is no indication whether the reduced number of calls about sexual abuse indicates that sexual abuse has reduced or that fewer cases being reported. No newer data is provided.
- (d) Sexual abuse has not been separated from sexual exploitation as the system of cataloguing calls in Childline does not involve making this distinction.
- (e) The reduction in calls has only been reported till 2007. There has been no data given post that. Why is that? The data should have been available.

Update:

Childline is available in 269 cities as of 2012-13. It has received more than 3.1 million cases as of January, 2013.

Para 5. According to the report, 321,854 street children have been helped through the Integrated Programme for Street Children. But it is not specified how many cases were related to the issues of this OP.

Para 6. There is no impact information given on the Scheme for Welfare of Working Children in Need of Care and Protection.

Para 9. The MWCD had written to the State Governments to accord special attention to economically backward and disaster-prone areas. There is no statement as to when this letter was written or what the response was.

Para 10. The claim that the 'increasing assertiveness of women' of rural self-help groups has reduced crime and social misbehaviour rates and reduced 'trafficking of women and children' not backed by any data or evidence of any sort.

Para 11.

- (a) While the report highlights that children often go from shelter to family without proper intervention there is no indication as to why or how this happens. No explanation is given.

- (b) The notion of ‘care’ has not been clearly explained. Is it truly care or just custody?
- (c) Monitoring needs to be adequate within the institutional setting as well, not just after the children leave shelter care. There is no indication of the kind of monitoring that occurs within the institution.
- (d) The lack of rehabilitation for older boys is highlighted, but no information on efforts for solution has been provided. Whose responsibility is it to remedy this? There is no mention of this.

❖ **Awareness Generation –**

Para 25. It is not clear as to what are the images being portrayed in the media regarding sexual abuse and trafficking of children. The images could just as well propagate stereotypes and stigmatise these children. It is important to critically analyse these images.

Para 27. Awareness generation is only limited to sale and trafficking.

Para 29. Child prostitution is not the same as children of sex workers.

III. Prohibition and Related Matters:

Article 3 of OPSC

Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organised basis:

- (a) In the context of sale of children as defined in Article 2:
 - (a) Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;
 - b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2;
 - (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography

Reference to reporting guidelines – The statute of limitations has not been indicated for any of the offences. There is no mention of age of criminal liability in the OP report, or on its effectiveness on the sale of children, child prostitution or child pornography. The main CRC report identifies 7 years as the age of criminal liability

❖ **Legislations:**

Para 2.(i)

- (a) What does trafficking have to do with sale of obscene books? Whatever the law might say, the assumption that sale affects trafficking or vice versa is not explained.
- (b) The erroneous connection between trafficking and pornography makes no provision for protecting the child from either form of exploitation.

- (c) The report is not differentiating between viewing of pornographic material by children and using children for pornographic videos. The two are not the same. Nor is their effect on the children caught in either. Clearer provisions in law, policy and programme are required to protect children from these abuses.
- (d) What is the status of implementation or effects?

Para 11. The government reports that it has taken several steps to deal with the problem of trafficking. The primary legislation is the **Immoral Traffic (Prevention) Act (ITPA) of 1986** derived from the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation or the Prostitution of Others. The Act however does not punish pimps, brothel keepers, and clients who are the main perpetrators. This is supplemented by provisions of the **Indian Penal Code (IPC)**.

UPDATE:

POCSO was passed on 19th June 2012 and it covers sexual assault both penetrative and aggravated on children. The POCSO also makes a provision for child pornography and sexual harassment of children however its description of child pornography is largely subject to interpretation. A much stronger position needs to be taken on prostitution and trafficking within the Act.

Para 6: NCPCR conducted some fact finding but its results have not been included in the report. The report should have stated as to what were the results of the fact findings on sale of children for labour in different States conducted by NCPCR.

Para 7: The Child Labour (Prohibition and Regulation) Act of 1986 (CLPRA) only prohibits children aged under 14 from working in hazardous conditions. It does not effectively prohibit child labour. It also limits the banned occupations and settings to those officially notified.

Update:

The child labour law (CLPRA) is being reviewed. It is believed that the govt proposes to ban all forms of labour by any child up to the age of 14 years.

A report released by the India Committee of the Netherlands reveals the rampant child labour taking place on various hybrid vegetable seed farming sectors with some children even being sold into the trade. While this may not be government data it is quite possible that the government did have access to this information.

Para 8: The punishments under the above act are weak on penalties and punishments.

Para 10: The act is weak on punishments/ penalties.

List of Legislations Related to OPSC:

Law	Comment/ Status
Indian Penal Code, Section 292	'Obscene' books are not clearly defined nor is any relationship identified with sale, child pornography and prostitution.
Indian Penal Code, Section 293	'Obscene' object not properly defined.
Indian Penal Code, Section 366A	All need examination in the context of the OP
Indian Penal Code, Section 366B	“ “
Indian Penal Code, Section 372	””

Indian Penal Code, Section 373	” ”
Indian Penal Code, Section 339	” ”
Indian Penal Code, Section 340	
The Immoral Traffic Prevention Act, 1956	
Juvenile Justice (Care and Protection of Children) Act, 2000	Not sufficient to deal with OP. As of 2011, 55% JJB’s served only 1 district and only a little more than half have child special services
The Commissions for Protection of Child Rights (CPCR) Act, 2005	
The Child Labour (Prohibition and Regulation) Act, 1986	Currently the act only prohibits labour in hazardous conditions till the age of 14. This poses a serious threat to the rights of several children.
The Bonded Labour System (Abolition) Act, 1976	The Netherlands report of 2012 has found that both national and international companies like Nunhems and Bejo Sheetal have been using child labour for vegetable seed marketing. Percentage of Children (below 14 years) to total workforce are: Nunhems, hot pepper - 1.7% & tomato - 0.0%; Bejo Sheetal, hot pepper - 17.8% & tomato 11.9%; Indian Companies, Hot pepper - 21.0% & tomato - 11.7%. This raises the question regarding the various incidences of child labour in the country and why the government report has failed to address failed to address their situation. The Times of India has also recently reported (20 th July 2013) on the incidence of children being sold/loaned for food grains.
The Information and Technology (Amendment) Act, 2008	
The Young Persons (Harmful Publications) Act, 1956	Definitions/categories not clear.
The Cable Television Network (Regulation) Act, 1995	
The Transplantation of Human Organ Act, 1994	No special protection measures for children, as ‘donors’.
Prevention of Offences against the Child Bill, 2009	Still Not formulated or moved. Govt reports it as work in progress.
Statute of Limitations	Not Stated
Indian Code of Criminal Procedure, 1973	
Extra- Territorial Offences	
Extradition Treaties	
Mutual Legal Assistance	
South Asian Association for Regional Cooperation (SAARC)	A regional convention against trafficking stands. SAARC has also activated a regional agreement to end violence against children, in which sexual abuse and exploitation as well as child trafficking are listed issues.

IV. Protection of the Rights of Victims

Comments on OPSC Report

❖ Best Interests of the Child:

Para 6.

- (a) If the age of criminal responsibility is 7 years, on what basis then is the ‘innocence’ of a child defined? There is no mention of the age of innocence, below which the child cannot be subject to the criminal justice system. The whole issue of culpability is not clear.

- (b) The principle omits any responsibility to institutions like orphanages or other such settings in which children without any parents may be present. There is no mention of who should be responsible for their upbringing in such situations.
- (c) The assumption that the returning of a child to its previous socio-economic situation will remove its vulnerability is problematic. The neglect, abuse and exploitation faced by the child could be the same if not worse than the situation of vulnerability from which s/he has been 'rescued'.

❖ Age Determination –

On Para 7: On what basis will the school certificate serve as an accurate proof of age if the child has no birth certificate to show at the time of enrolment?

❖ **Capacity Building** –

Para 13. The report fails to state what has been the result of this training since April 2008. There is also no mention by when the manuals will be translated into regional languages.

Para 14. The manual was meant to be released in April 2008 well within the reporting period. There is no account of the impact of this manual or if it has been translated into the regional languages.

Para 15.

- (a) There is no reporting on whether any of the actions taken by the government to sensitise government officials and lower level functionaries have yielded results in changed performance.
- (b) What have been the results of the measures? The information has not been provided regarding the Special Police Officers in the report nor does it state when this information had been asked for.

Para 17.

- (a) There is no mention as to when the communication strategy for prevention of trafficking through social mobilisation was developed or by when it is expected to be implemented.
- (b) There is also no indication as to what exactly is meant by social mobilisation or how it is planned to achieve it.

Para 19. What is the present status of this capacity building programme? The report fails to mention when this programme was started, or what it has achieved.

Para 20. Who is responsible, or to be responsible for running this scheme? 'Three years' are flagged: which three years? The report fails to clearly say what the proposed sensitisation is targeted to achieve.

V. International Assistance and Cooperation –

Article 10 of OPSC

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organisations and international organisations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Para 2 :

The report does not provide a clear account of what the Regional Task Force has done or even when it was established. The deadlines for the proposed actions have not been identified.

There are situations and challenges in the OPSC mandate which call for bilateral or multi-lateral Initiatives and interventions to protect children. The report gives no indication of whether any such initiatives have been taken to address actual problems during the reporting period or in the update years.

UPDATE:

For several years, classified advertisements on ‘Health & Physical Fitness’ in big-city newspapers have been offering massage and ‘relaxation’ services from ‘charming,’ ‘young’ female staff’ hailing from Azerbaijan, Afghanistan, Russia and Uzbekistan, at ‘massage parlours,’ ‘health spas,’ and other dubious sites. A few offer the services of charming young males. The actual ‘services’ are unspecified.

Recent police reports of incidents of rape and gang-rape indicate a newer appearance of teenaged girl children among such people. Not all enter India for this purpose; some are reportedly trapped after arrival.

Three rescued Uzbeks, two of them teenaged girls, were reported abducted while visiting India. They were imprisoned and repeatedly raped. Police cases were registered, and people arrested. Put in shelter homes, all three appealed for help in communicating, as they and the shelter staff had no common language. All three appealed about food they could not eat. One was reportedly pregnant and seeking abortion. The law was reportedly taking its course.

The 2005 NPAC specifically provided: “14.3.8: Create regional mechanisms to prevent cross-border trafficking and for promotion of rescue and rehabilitation.” In 2013, is any such mechanism available and operating? Why were the three victims reportedly still languishing in questionable shelter? Was there trauma counseling? In what language? In the OP report, the ‘Significant Jurisprudence’ section under General Measures quotes a 2003 Court direction that any child rescued (from a brothel) under ITPA¹⁴ ‘should only be released after an enquiry has been completed (by the probation officer).’ The abducted Uzbeks were rescued from a private house. What law applies?

Who is responsible for stopping cross-border movement for such exploitative purposes? Who is responsible for dealing with cases like this one, where abduction and its aftermath play out inside India? Does the OPSC address abduction?

News reports say some of such trafficked persons may be routed via India towards other destination countries. The

¹⁴ Immoral Traffic (Prevention) Act (ITPA) 1956.

OP report has recognised this problem.

Some of these situations are said to be border-line infringements of existing laws. But is this true if the exploited persons are aged below 18 years?

UPDATE 2:

There have been reports of the ‘trafficking’ of Indian boy children overseas, by families paying agents to smuggled them out, for the purpose of getting them into Europe (specifically France) where immigration and social welfare laws do not deport an unaccompanied child, but make him a ward of the State until age 18.¹⁵

This is reportedly happening from the Punjab states of both India and Pakistan. The boys are reportedly smuggled out by whatever means of clandestine trafficking are available, including by container trucks, smugglers’ boats and the like, via circuitous routes. The conditions the children endure are not fully known. Whether all of them reach France is not fully known. What has become of the children in France is not fully known here. Whether any of the source families have been questioned or prosecuted is not known, nor whether children have been recovered. The present status of this illegal practice deserves investigation.

Concerns and Questions raised at a joint NGO consultation invited by IACR in the reporting process¹⁶

- The report fails to provide any data on the abuse and exploitation faced by children except for a single data chart on crimes against children which too only displays data till 2007.
- Even though the report is supposed to be on sale of children, child prostitution and child pornography. The latter two have hardly been addressed. There seem to be no laws or schemes in place to deal with them specifically.
- Although not explicitly mentioned, the report seems to be focused on exploitation and trafficking of girls. Where are the boys? What about all the other forms of exploitation that comes with trafficking?
- Boys are conspicuously absent from the reporting while child labour finds only a passing mention. Sale of children for labour is one of the major problems facing the protection rights of children. Yet the report fails to mention it and to that extent completely misses the Para of this reporting process.
- Sexual exploitation is not the only reason for sale of children. There is also the question of what the report means by ‘minor’ girls. None of this has been properly addressed in the report.
- The concepts of sale of children and child prostitution too have been considered as being largely inter-changeable and inter-related. While this may be the case for some, the intersectionalities and specificities of the two have not been addressed on any front. The report has restricted itself to either citing government programs or giving broad descriptions of the problems. Migration of families/children due to socio economic factors leading to increased displacement and vulnerability of children has not been addressed such as that of street children, railway children, children in informal and illegal settlements.

¹⁵ NGO tracking of such cases from India and Pakistan indicated that these children can get citizenship at 18, and then could ‘sponsor’ other members of their families to enter France (and then possibly move elsewhere in Europe). Families reportedly pay for their child to be smuggled, to become ‘keys’ to further and legal emigration.

¹⁶ Children’s India: Country Child Rights Audit, 27th June, 2013

- Little attention is given to the poor and limited infrastructure for care and protection of children. There are inadequate facilities for counselling, health care, education and vocational training.
- The Government provides for training to all relevant professional and para professional groups including law enforcement officers, judges, social workers, teachers and legislators, but these are irregular and insufficient to be effective. Also no systematic effort made to strengthen the capacities of personnel's in distant /remote/source areas.
- The report does not specify if disabled children, transgender and inter-sex children protected under all these laws and schemes?
- There is no mention to them or their specific situations in the report.
- The Swadhar Scheme launched by the MWCD in 2000 states that there are 8,450 women/children beneficiaries. It does not, however, specify how many of these are children. Is this an updated figure (up to when?) or a historical one?
- Monitoring mechanisms are incomplete and defective. No details regarding results are available.
- Legal means of adoption and marriage are used to cloak the buying and selling of children. The report does not make any clear reference to these as means of trafficking.
- The visibility/invisibility issue needs to be highlighted. So many children have not been looked at. Whose job is it to make them visible?
- There is no mapping of vulnerability and for this reason the mention of vulnerable population is not very clear.

Overall Concluding Comment:

The issues addressed by the Optional Protocol are grave risks to children in India, and their incidence and impact are not decreasing. In both this initial country report and the main 3rd/4th CRC Periodic Report, the information and analysis offered could have been both richer and more up to date. Simply listing provisions and paper decisions does not represent a true picture of status and conditions. It is hoped that the new national plan of action for children will actually carry forward the good words of the new national policy for children.

India Alliance for Child Rights
National Secretariat
C-37 (Lower Ground Floor), Gulmohar Park,
New Delhi 110049 India

ANNEXURES

ANNEXURE #1

The 2007 MWCD CRC reporting questionnaire, with questions specifically on OPSC issues.

Questions asked by the Government of India on General Measures of Implementation

1.	Are there districts/areas in the State with specific problems on the sale of children, child prostitution and child pornography? What are the underlying factors contributing to these problems?
2.	What measures have been taken by the State Government for the implementation of the legislation/s preventing the sale, prostitution and pornography of children? Has the State formulated any State-specific rules to the existing legislation? Provide details of all measures.
3.	What monitoring mechanisms have been adopted to ensure effective implementation of the legislations? Provide details. What are the challenges/problems faced in the implementation of these legislations? How are these problems being tackled? Provide details of tackling these problems at various levels. What have been the key achievements and progress of these legislations as far as children are concerned?
4.	What has been the impact of budgetary allocations on the implementation schemes/ programmes related to the prohibition of sale of children, child prostitution and child pornography in the State?
5.	Has the government set up any departments or bodies which have been delegated primary responsibility for the implementation of the Protocol and to ensure coordination between the State and local authorities, civil society, including the business sector, the media and the academia?
6.	What efforts have been made by the civil society/NGOs/private sector to eliminate the sale of children, child prostitution and child pornography
7.	Has the State conducted any study/s on the sale of children, child prostitution and/or child pornography? Provide summary on each and attach copy of the report/s.
8.	Are there any harmful traditional practices affecting such children in the State? Provide details

Questions asked by the Government of India on Statistics.

1.	Provide the incidence of (where appropriate provide inter-state or intra-state breakup):
2.	Sale or transfer of children for the purposes of sexual exploitation
3.	Sale or transfer of children for the purposes of trafficking other than for sexual exploitation.
4.	Transfer of organs of children for profit
5.	Number of children sold due to any traditional practice that involves the transfer of a child
6.	Number of prosecutions and convictions of adults for sale of children
7.	Number of child prostitutes linked to sex tourism in the State
8.	Number of persons under 18 years engaged in prostitution
9.	Number of prosecutions and convictions of adults for engaging children in prostitution
10.	Children engaged in labour/forced labour
11.	Children adopted through the application of methods which are not in the best interests of children
12.	Does the State have any information on exploitation of children for pornography? If yes, provide details
13.	Provide statistics on the following aspects of child pornography : a. photographs and other printed material b. videos, motion pictures and electronically recorded material c. internet sites containing photographs, videos, motion pictures d. or animated productions e. live performances
14.	Number of prosecutions and convictions of adults forcing / engaging children in pornography

Questions asked by the Government of India on Prevention

1)	What methods have been adopted by the State Government to identify children in vulnerable situations-children who are sold off for commercial sexual exploitation, including prostitution and pornography and for use in activity other than sexual exploitation? Provide details.
2)	What measures (administrative and legal) have been adopted by the State Government to prohibit the sale of children, child prostitution and child pornography? Provide details.
3)	Does the State Government have any programmes targeting specific groups such as tourists, transportation and hotel workers, adult sex workers, correctional personnel, etc.? If yes, provide details of these programmes and attach copies of the reports.
4)	Does the State Government organize any public awareness campaigns to promote public awareness on the harmful consequences of the sale of children and child prostitution and pornography/ if yes, provide details of number of such campaigns and their coverage?
5)	What role has been played by the Government, NGOs, media, the private sector and the community in awareness creation among children? Provide details.

Questions asked by the Government of India on Prohibition and Related Matters

1)	What measures have been taken up by the State Government to implement the legislation on sale of children, child prostitution and pornography? Provide details. What monitoring mechanisms does the State have for the effective implementation of the legislation? What specific challenges are faced by the State Government in the implementation of the legislation?
2)	What legal and other measures have been taken by the State Government to prevent illegal adoptions? Does the State Government have systems for regulations and licensing of agencies and individuals acting as intermediaries?
3)	What measures have been put in place to prohibit the production and dissemination of material advertising any of the offences related to sale of children, child prostitution and child pornography? Are these laws effective in preventing such offences? If yes, provide details.
4)	How effective is the implementation of the law in the State with regard to seizure and confiscation of material, assets and / or other goods used to commit or facilitate offences under the Protocol?
5)	What challenges are faced by the State for imposing penalties for offences against sale of children, child prostitution and pornography?

Questions asked by the Government on Protection of the Rights of Victims

1.	What measures have been taken by the State Government to protect the rights of child victims during investigations and procedures? Provide details
2.	What challenges are being faced by the State Government in providing adequate protection to children who have been victims of various forms of exploitation?
3.	What are the various public and private programmes that provide child victims with assistance in social reintegration, family reunification and physical and psychological recovery? Which agencies in the State provide services for victims on these issues? Provide details. Give description of the type of services provided by each of these agencies. Are the services being provided in an institutional or non-institutional setting or both?
4.	What measures have been adopted by the State Government to train all those who work with child victims of such offences in the complete process of justice administration (registration, investigation, review, rehabilitation, reintegration, etc.)? Provide details.
5.	What evaluation/studies have been done on the impact of such programmes/services on children in the State? Give summary of each and attach report/s.

ANNEXURE # 2

NATIONAL PLAN OF ACTION FOR CHILDREN 2005 (Excerpts)

Note: Neither in 2010-11 nor thereafter was there a specific report on the application of NPAC-2005 or the outcomes. The NPAC provisions remain largely as a reminder list.

Section: Child Protection Sexual Exploitation and Child Pornography

13.1 GOAL

- 13.1.1 To protect all children, both girls and boys, from all forms of sexual abuse and exploitation.
- 13.1.2 To prevent use of children for all forms of sexual exploitation, including child pornography.
- 13.1.3 To develop new and strengthen existing legal instruments to prevent sexual abuse and exploitation of children.

13.2 OBJECTIVES

The above goal will be achieved through the following objectives: -

- 13.2.1 To identify and address the root causes leading to sexual abuse and exploitation of children, and exploitation of children.
- 13.2.2 To ensure the safety, protection, and security of victims of sexual exploitation and provide assistance and services to facilitate their recovery and social reintegration.
- 13.2.3 To criminalise, prosecute and penalise effectively, all forms of sexual exploitation and sexual abuse of children and child pornography.
- 13.2.4 To ensure that in the treatment by the criminal justice system of children who are victims, the best interests of the child are a primary consideration.
- 13.2.5 To undertake legislative reform to place burden of proof on exploiters and enhance punishment.
- 13.2.6 To enlist the support of the private sector, including the media, in programmes to prevent and combat sexual exploitation of children.
- 13.2.7 To eradicate harmful, traditional or customary practices that sexually exploit women and children.
- 13.2.8 To take necessary measures to combat the criminal use of information technologies, including the Internet, for purposes of the sale of children, for child prostitution, child pornography, child sex tourism, paedophilia and other forms of violence and abuse against children and adolescents.
- 13.2.9 To recognise that children are sexually abused within homes by members of the family and with the view to penalise the abusers.
- 13.2.10 To recognise that children are also at risk in institutions and services that the children are at risk of being sexually abused and to take corrective and punitive action.

13.2 Strategies

The above objectives will be achieved by the following strategies: -

- 13.3.1 Undertake research to identify the nature and magnitude of all forms of child sexual abuse and exploitation with a view to improve policy and interventions for the safety and protection of children.

- 13.3.2 Set up Crisis Intervention Services and Center's with adequately trained personnel to deal with child victims of abuse.
- 13.3.3 Review, revise and enact laws for prohibition and prevention of child abuse and punishment of offenders.
- 13.3.4 Sensitise police, judiciary and medical authorities towards victims of sexual abuse and sexual abuse.
- 13.3.5 Sensitise media to accept social responsibility in reporting cases of child sexual abuse and to respect the dignity and privacy of the child.
- 13.3.6 Establish sound information systems regarding trafficking routes, networking of NGOs and other agencies engaged in prevention, rescue and rehabilitation of victims of sexual exploitation.
- 13.3.7 Create quality foster care and other alternative services for care and protection of victims who need to be removed from the home/institutions where they are being abused.
- 13.3.8 Protect the identity and respect the privacy of child victims and take measures to prevent publicising information that could lead to their identification.
- 13.3.9 Ensure assistance to child victims for their full physical and psychological recovery, development and social reintegration.
- 13.3.10 Promote public awareness of the dangers and harmful effects of such offences with the view to sensitise parents, caregivers and the community.
- 13.3.11 Build public, private and NGO partnership to address this social challenge.

Child Trafficking

14.1 GOAL

- 14.1.1 To stop sale of children and all forms of child trafficking, including for sexual purposes, marriage, labour, adoption, sports and entertainment and illegal activities, like organ trade, begging and drug peddling.

14.2 OBJECTIVES

The above goal will be achieved through the following objectives: -

- 14.2.1 To identify and address the root causes leading to trafficking of children.
- 14.2.2 To implement preventive, protective and rehabilitative strategies for trafficked children and those at risk.
- 14.2.3 To ensure the safety, protection, and security of victims of trafficking and provide assistance and services to facilitate their recovery and social reintegration.
- 14.2.4 To criminalise, prosecute and penalise effectively, all forms of sale and trafficking of children including for sexual purposes, marriage, labour, adoption, sports and entertainment and illegal activities, like organ trade, begging and drug peddling.
- 14.2.5 To ensure that the best interests of the child shall be a primary consideration in the criminal justice system dealing with child victims.
- 14.2.6 To undertake legislative reform to place burden of proof on traffickers and enhance punishment.
- 14.2.7 To enlist the support of the private sector, including the tourism industry and the media, in programmes to prevent and combat trafficking of children.

- 14.2.8 To eradicate harmful, traditional or customary practices that lead to trafficking of women and children for sexual exploitation.
- 14.2.9 To take necessary measures to combat the abuse of information technologies, including the Internet, for trafficking of children for the purposes of sale, prostitution, pornography, sex tourism, pedophilia and other forms of violence and abuse against children

14.3 STRATEGIES

The above objectives will be achieved by the following strategies: -

- 14.3.1 Implement the Plan of Action to Combat Trafficking and Commercial Sexual Exploitation, 1998.
- 14.3.2 Address the root causes of vulnerability arising out of poverty, especially in chronic supply areas, through female literacy, school attendance, improved economic conditions of women through formation of Self Help Groups (SHGs), skill development, economic enterprise and better livelihood options for adults to prevent women and children from becoming victims of trafficking.
- 14.3.3 Establish facilities for shelter, food, clothing, health care, counseling, education, training, skill development, so as to facilitate social and economic rehabilitation of rescued victims.
- 14.3.4 Provide assistance to voluntary organisations to organise temporary shelters for the victims, to facilitate repatriation to their homes, provide assistance during trial, and for rehabilitation of the victims.
- 14.3.5 Sensitise police, judiciary, media and medical authorities towards trafficked victims, especially during the investigation process and trial of victims of trafficking and improve quality of services.
- 14.3.6 Establish sound information systems regarding trafficking routes and networking of NGOs and other agencies engaged in prevention, rescue and rehabilitation of victims.
- 14.3.7 Establish communication with neighbouring countries and NGOs to prevent cross-border trafficking of children and facilitate repatriation and rehabilitation of victims.
- 14.3.8 Create regional mechanisms to prevent cross-border trafficking and for promotion of rescue and rehabilitation.
- 14.3.9 Prevent trafficking of boys and extend care and protection services to the victims.
- 14.3.10 Capacity building of State Governments and NGOs to facilitate better coordination in prevention, rescue and rehabilitation.
- 14.3.11 Create Central and State Nodal Authorities to exclusively deal with the problem of trafficking.
- 14.3.12 Ratify UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children by 2007.

