



# Convention on the Rights of the Child

Distr.: General  
3 February 2012  
**ADVANCE  
UNEDITED VERSION**

Original: English

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## Committee on the Rights of the Child

Fifty-ninth session

16 January – 3 February 2012

### Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

#### Concluding observations: Togo

1. The Committee considered the initial report of Togo (CRC/C/OPSC/TGO/1) at its 1681<sup>st</sup> meeting (see CRC/SR.168), held on 24 January 2012, and adopted at its 1697<sup>th</sup> meeting, held on 3 February 2012, the following concluding observations.

#### I. Introduction

2. The Committee welcomes the submission of the State party's initial report. The Committee further welcomes its written replies (CRC/C/OPSC/TGO/Q/1/Add.1) to the list of issues. The Committee appreciates the constructive dialogue with the high level and multisectoral State party's delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with the concluding observations adopted on the third and fourth report of the State party under the Convention on the Rights of the Child (CRC/C/TGO/CO/3-4).

#### II. General observations

##### Positive aspects

4. The Committee welcomes the adoption by the State party of:
  - (a) Act No. 2007-017 of 6 July 2007 adopting the Children's Code;
  - (b) Act No. 2006-010/PR of 13 December 2006 on the Labour Code ; and
  - (c) Act No. 2005-009 of 3 August 2005 on the suppression of child trafficking in Togo;
5. The Committee also welcomes the following institutional and policy measures:
  - (a) The establishment of the Child Helpline "Allo 111" on 14 January 2009; and

(b) The National Plan of Action against trafficking in persons, especially of women and children in 2007.

### III. Data

6. While noting that a national data collection system for child protection was set up by the Ministry of Social Affairs, the Committee is however concerned that data collection on offences under the Optional Protocol remains ad hoc, fragmented and seriously limited which greatly limits the State party's capacity to monitor, assess and prevent offences under the Optional Protocol. The Committee also notes with concern that data collection relies heavily on external funding, which compromises national ownership and sustainability.

7. **The Committee recommends that the State party strengthen its efforts to develop and implement a comprehensive and coordinated system of data collection, analysis, monitoring and impact assessment covering all areas covered by the Optional Protocol and ensure that this system is coordinated with the data collection on all areas of the Convention on the Rights of the Child. The data should be disaggregated, inter alia, by sex, age, nationality and ethnic origin, region and socio-economic background, with particular attention to children who are at risk of becoming victims of crimes under the Optional Protocol. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. The Committee recommends that the State party continue seeking technical support from, inter alia, the United Nations Children's Fund (UNICEF) in relation to the recommendation above.**

### IV. General measures of implementation

#### Coordination and evaluation

8. The Committee takes note of the State party's indication that the General Directorate for the Protection of the Child placed under the Ministry of Social Action and National Solidarity is responsible for the coordination of the implementation of the Protocol. The Committee is however concerned about the multiplicity of governmental entities with coordination functions in the implementation of the Optional Protocol and the lack of clear division of responsibilities between such entities.

9. **The Committee recommends that the State party rationalize the work of the various existing child rights bodies and ensure that the coordinative mechanism of the Optional Protocol has a high status, sufficient authority and adequate human, technical and financial resources to effectively coordinate actions among sectors and provinces. The Committee also urges the State to establish clear referral mechanisms and to ensure that all actors involved in child protection are enabled to work in a harmonized fashion to prevent the sale of children, child prostitution and child pornography and to provide a holistic response to children who have been abused or exploited.**

#### Legislation

10. The Committee notes with appreciation that the State party adopted Law No. 2005-009 on child trafficking in Togo on 13 August 2005. The Committee is however concerned that not all the offences under the Optional Protocol are properly defined in the State party's legislation.

11. **The Committee the Committee urges the State party to provide a clear definition and prohibit all cases of sale of children, a concept which is similar to but not identical with trafficking in persons, as defined in article 2 and 3 of the Protocol.**

#### **National plan of action**

12. The Committee notes with concern that the comprehensive strategy to fight against child trafficking, pornography and prostitution and its related 5-year national strategy plan elaborated and validated by all actors in 2008 has not yet been adopted and that in the absence of such a strategy, most of the efforts to prevent and combat offences under the protocol are carried out by civil society organizations.

13. **The Committee urges the State party to speed up the process of adoption of the comprehensive strategy to fight against child trafficking, pornography and prostitution and its related 5-year national strategy plan and ensure that it properly incorporated into National Child Protection Policy. The State party should ensure that its strategy contains mid- and long- term targets to prevent and punish all the offences as defined in the Optional Protocol. The Committee also urges the State party to allocate the necessary human, financial and technical resources for a full and effective implementation of this strategy in cooperation with relevant partners, including civil society. The Committee further recommends that the State party seek international assistance in this respect, including from OHCHR and UNICEF.**

#### **Dissemination and awareness-raising**

14. The Committee welcomes the State party's initiatives to raise awareness about the Optional Protocol through the 2009 national campaign carried out via digital mobile cinema in areas where children are at high risk of being trafficked. The Committee is nevertheless concerned at the lack of systematic and comprehensive dissemination and awareness-raising activities in the State party on the Optional Protocol, which contributes to a low level of understanding and awareness of the offences covered by the Optional Protocol, among the public, children and professional groups working with and for children. The Committee is furthermore concerned in the light of information that the issues of sale of children, child prostitution and child pornography remain largely invisible and unspoken of in view of the socio-cultural sensitivity surrounding these crimes in the State party.

15. **The Committee recommends that the State party:**

(a) **Develop, in close cooperation with the community, children and child victims, information and education programmes on preventive measures and harmful effects of the sale of children, child prostitution and child pornography;**

(b) **Disseminate the Optional Protocol among all relevant professional groups, especially members of the police, judges, prosecutors, representatives of the media and social workers, and members of the Child Protection Committees and of the National Council for Human Rights; and**

(c) **Undertake in-depth studies in different regions and sociocultural groups to identify specific obstacles and opportunities for advocacy and awareness-raising on the offences of the Optional Protocol.**

#### **Training**

16. The Committee notes the acknowledgement by the State party that specialized training for judges, public prosecutors, the police, social workers and health-care providers, members of the media and other professionals is inadequate in both qualitative and

quantitative terms. The Committee is also concerned about the lack of precise information provided by the State party on how to overcome these shortcomings.

17. **The Committee recommends that the State party strengthen its efforts to ensure that all professional groups working for and with children be adequately and systematically trained on the provisions of the Protocol, in particular judges, law enforcement officials, teachers, health and social workers, and personnel working in all forms of alternative care.**

#### **Allocation of resources**

18. While noting the information provided on grants allocated on an annual basis to provide care for child victims of offences under the Protocol, the Committee regrets the lack of information on clearly identifiable budget allocations to activities designated to implement the Optional Protocol by line ministries, in particular the Ministry of Social Action and National Solidarity. The Committee is also concerned that the sharp decrease in the budget allocated to the health and education sectors and the high level of corruption continue to divert the already limited resources available for the implementation of the Optional Protocol.

19. **The Committee reminds the State party of its recommendation to prioritize budgetary allocations to ensure implementation of the economic, social, cultural and other rights of children (CRC/C/15/Add.255 para. 18a) and recommends that the State party take all possible measures to ensure that sufficient resources are allocated notably to the Ministry of Social Action and National Solidarity and in particular its General Directorate for the Protection of the Child, law enforcement agencies and social workers for their activities in respect of the Protocol. The Committee further urges the State party to take concrete and active measures to combat corruption.**

## **V. Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1 and 2)**

#### **Measures adopted to prevent offences referred to in the Optional Protocol**

20. The Committee takes note of the poverty alleviation programmes directed specifically at women and children as well as the outreach activities to sensitize traditional leaders. The Committee is however concerned that administrative measures, social policies and programmes are insufficient to adequately prevent children from becoming victims of these offences. The Committee notes with particular concern that:

(a) Half of the children in the State party are not registered at birth, which greatly exposes them to the risk of becoming victims of sale, prostitution and pornography;

(b) Limited measures have been taken to combat gender-based discrimination and violence which constitute major factors in the sale of children, child prostitution and child pornography. In this regard, the Committee expresses serious concern at the extent of sexual abuse committed against schoolchildren by male teachers throughout the State party;

(c) Only very few specific activities have been conducted targeting children in vulnerable situations, such as children in street situations who are particularly at risk of sexual exploitation, and that most of these activities have been organized by non-governmental organizations;

21. **The Committee recommends that the State party:**

(a) **Take all the necessary measures to ensure that all children are registered at birth to prevent them to becoming victims of sale, prostitution and pornography;**

(b) Carry out research on the nature and extent of sale of children, child prostitution and child pornography, in order to identify the root causes of such phenomena, including poverty, harmful practices, and absence of parental care;

(c) Take effective measures to identify groups of children at risk of being victims of the offences contained in the Protocol, including girls, children living in extreme poverty and children in street situations and provide them with the necessary support and assistance; and

(d) Eradicate gender-based discrimination and violence and in particular repeal laws which discriminate against women which are still in force and criminalize without further delay domestic violence, including marital rape.

#### **Child sex tourism**

22. The Committee is concerned that child sex tourism is developing and that the State party has yet to adopt the necessary measures to prevent and combat this phenomenon.

23. The Committee urges the State party to undertake more concrete actions to prevent child sex tourism within the country and to address child sex tourism cases. In particular, the Committee urges the State party to organize large awareness-raising programs, including campaigns, specifically directed at tourists. The Committee further urges the State party to cooperate closely with travel operators, media, NGOs and civil society organizations and to widely disseminate the WTO Global Code of Ethics for Tourism among travel agents and tourism agencies and encourage that they sign up for the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

## **VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4, paras. 2 and 3; 5; 6; and 7)**

#### **Existing criminal or penal laws and regulations**

24. The Committee expresses concern that the:

(a) The offence of sale of children has not been clearly defined in the Children's Code;

(b) Prostitution of children above 15 years is not considered as a crime;

(c) There are no existing aggravating circumstances for child pornography; and

(d) The burden of the proof is beard by the victim;

25. The Committee urges the State party to review the provisions of its national legislation and ensure that they are in full compliance with the provisions of the Optional Protocol. In particular, the State party should:

(a) Define and criminalize the sale of children in accordance with the Optional Protocol, and in particular the sale of children for the purpose of illegal adoption, for the engagement of the child in forced labour and for the transfer of organs of the child for profit, in conformity with article 3, paragraphs 1 (a)(i) b., 1(a)(i) c., 1(a)(ii) and 5 of the Optional Protocol;

(b) Ensure that prostitution of children is always considered as a crime and is punished with sentences commensurate to this crime;

(c) **Revise and bring its penal provisions on child pornography into full compliance with articles 2 and 3 of the Optional Protocol; and**

(d) **Shift the burden of the proof to perpetrators of offences covered by the Optional Protocol.**

26. The Committee is seriously concerned that child sexual exploitation takes place throughout the State party in various locations, such as brothels and hotels and is on the rise. The Committee is also deeply concerned that there is no system in place to detect and dismantle brothels and other places of prostitution and arrest pimps and their accomplices and no mechanism to properly control the production and dissemination of materials that advertise practices prohibited by the optional protocol such as pornography involving children. The Committee is also concerned about the widespread practices of early and forced marriages, especially child marriages in exchange for a bride price or in lieu of debt, and about the practice of “confiage” which in many cases amount to the sale of children.

27. **The Committee urges the State party to take more active measures to ensure effective enforcement of its legislation prohibiting child prostitution. In particular, the Committee urges the State party to promptly establish an effective system to detect and dismantle brothels and other places where child prostitution takes place and to control the production and dissemination of materials that advertise practices prohibited by the optional protocol such as pornography involving children. To this aim, the State party should allocate the necessary human, technical and financial resources to its police forces. The Committee further urges the State party to take all the necessary measure to eliminate all practices that amount to the sale of children.**

#### **Impunity**

28. The Committee is seriously concerned that no one has yet been prosecuted under the provisions of the Children’s Code prohibiting child prostitution and that legal proceedings against perpetrators of other offences covered by the Optional Protocol are often abandoned due to the corruption of law enforcement officials, including judges. The Committee expresses deep concern that the sense of impunity of perpetrators of child sexual exploitation is so entrenched that hundreds of children aged between nine and fifteen years continue to be openly exploited into prostitution in a place in the capital Lomé which is so well known that it has been called “the child market”.

29. **The Committee urges the State party to take all the necessary measures to combat the impunity that perpetrators of offences under the Optional Protocol enjoy and to this aim, send clear instructions to all prosecutors that they should actively prosecute those cases. The State party should also draw attention of law enforcement authorities on the sanctions which may be pronounced against them in case of inaction and corruption.**

#### **Extraterritorial jurisdiction and extradition**

30. The Committee is concerned that crimes under the Optional Protocol are not specifically mentioned in the legislation concerning crimes committed abroad and that extraterritorial jurisdiction is subject to the existence of double criminality. The Committee is also concerned that the State party does not rely on the Optional Protocol as a legal basis for extradition.

31. **The Committee urges the State party to take the necessary measures to ensure that all the offences referred to in article 3, paragraph 1, of the Protocol are extraditable offences, and that the requirement of double criminality for extradition and/or prosecution of offences committed abroad be repealed. The Committee also**

urges the State party to use, if necessary, the Optional Protocol as a legal basis for extradition in conformity with article 5 of the Protocol.

## **VII. Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)**

### **Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol**

32. While noting as positive the preference given by the State party to foster care arrangements for child victims of offences under the Protocol, the Committee notes with concern that there is no legal provision to ensure the security of the child victims and the individuals or members of civil society organizations who provide them with protection and assistance although they are often threatened. The Committee is also particularly concerned that:

- (a) Medical examinations of child victims are unaffordable and child victims or non governmental organizations supporting them have to pay a high amount of money to obtain a medical certificate to serve as proof before court; children who are involved in criminal proceedings are not properly informed and are not provided with the assistance of a lawyer;
- (b) In some instances information which may lead to the identification of child victims has been disclosed by the judges; and
- (c) Although a compensation fund exists in the State party, effective compensation of child victims of offences under the Optional Protocol is rarely ensured;

33. **The Committee recommends that the State party adopt the necessary legal framework and measures to ensure the protection of child victims of offences prohibited under the Optional Protocol, as well as the security of individuals or organizations providing them with protection and assistance. In particular, the State party should:**

- (a) **Ensure that children victims of sexual exploitation have free access to medical services and that medical certificate are given to them free of charge;**
- (b) **Ensure that all victims of sale of children, child prostitution and child pornography involved in criminal proceedings are provided with adequate information and legal council at every stage of the proceeding;**
- (c) **Take all the necessary measures to ensure that personal information which may lead to the identification of child victims is not disclosed publicly and that child victims are not exposed to stigmatization and social marginalization, including, inter alia, by conducting awareness-raising programs, including campaigns, targeting professionals, including judges, prosecutors, police, social workers, medical staff and other professionals working with child witnesses as well as the society at large;**
- (d) **Replenish the national compensation fund and ensure that child victims who have not obtained compensation from the perpetrators can obtain full compensation from this fund; and**
- (e) **Ensure that all professional receive training on child-friendly interaction with victims and witnesses at all stages of the criminal and judicial processes in accordance with article 8 (1) of the Optional Protocol and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC**

resolution 2005/20), including but not limited to amending the Criminal Procedure Code.

#### **Recovery and reintegration**

34. The Committee is concerned at the lack of a clear procedure or referral services for the protection and care of children victims of sexual exploitation and abuse, and at the consequent unpredictable way in which children victims are being taken care of. The Committee is also concerned that social reintegration and physical and psychological recovery measures are almost exclusively provided by non-governmental organizations.

35. **The Committee recommends that the State party ensure that adequate human, financial and technical resources, as well as high quality services are available for the assistance of all child victims of sexual abuse and exploitation, including for their full social reintegration and their full physical and psychological recovery in accordance with article 9 (3) of the Optional Protocol.**

### **VIII. International assistance and cooperation**

36. **The Committee recommends that the State party strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention and investigation of all offences under the Optional Protocol and the prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. In this respect, the State party is encouraged to implement the ECOWAS Regional Action Plan to address the growing problem of Illicit Drug Trafficking, Organized Crime and Drug Abuse in West Africa (2008-2011).**

37. **The Committee encourages the State party to continue its cooperation with UN agencies and programs and non-governmental organizations in the development and implementation of measures aimed at the effective implementation of the Optional Protocol.**

### **IX. Follow-up and dissemination**

#### **Follow-up**

38. **The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, *inter alia*, by transmitting them to the Head of State, the Supreme Court, Parliament, relevant ministries and local authorities for appropriate consideration and further action.**

#### **Dissemination of concluding observations**

39. **The Committee recommends that the report and written replies submitted by the State party and these concluding observations be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups, and children themselves in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.**

## **X. Next report**

40. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report under the Convention, due on 1<sup>st</sup> September 2017, in accordance with article 44 of the Convention.

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