



ngo group for the crc

STATE PARTY EXAMINATION OF TOGO'S INITIAL REPORT ON THE OPSC

59TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

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Togo ratified the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSC) on 22 June 2004. On 24 January 2012, the Committee on the Rights of the Child (the Committee) examined the initial report of Togo.

Opening Comments

The delegation of Togo was led by Mr Yacoubou Koumadjo Hamadou, Minister of Arts and Culture. He was supported by a delegation consisting of representatives from the Ministry of Social Action and National Solidarity, the Ministry of Justice, the Ministry of Security and Civil Protection, the Ministry of Education, the Ministry for the Protection of Women, the Ministry of Human Rights, the Ministry of Health, the Ministry of Finance and by a representative of the Permanent Mission of Togo to the United Nations Office in Geneva.

General Measures of Implementation

Legislation

The Committee asked whether the State planned to increase sentences for those convicted of indulging in prostitution with a child under the age of 18, in order to better protect children. The delegation replied that although all texts were enacted in co-operation with international experts and reached by consensus with the government, legislation was open to be improved. The Committee highlighted the fact that the Children's Code seemed to be a compilation of issues and that it did not reflect the spirit of the OPSC, particularly in that it lacked a child-centered approach.

The Committee said that not all acts criminalised under the OPSC were present in the national legislation. In particular, the criminal definition of child trade and sale had to be revised, since it was not in line with the OPSC. In light of this, the Committee asked whether the government intended to amend the Children's Code accordingly. The delegation answered

that, as a State party to the OPSC, Togo was ready to make all necessary amendments.

The Committee asked why the 2008 strategy to fight trafficking and prostitution had not been put in place and what the obstacles were to its implementation. The delegation responded that despite the good will, the problem was the lack of resources, both financial and technical expertise, in order to proceed with the implementation of the strategy.

Definition of the Child

The Committee noted that the Children's Code, in the context of prostitution, defined the child as being anyone aged 14 years and under. The Committee was concerned about the protection afforded to children aged 15 to 17 years and asked whether the government would consider changing its legislation to define the child as anyone under the age of 18 years.

Criminal justice

The Committee asked what provisions had been made in the Criminal Code in order to protect child victims of crimes set out in the OPSC during legal proceedings. The delegation said that in the Criminal Code there were provisions for juvenile justice containing specific protection mechanisms. For example, children could consent to speak at the hearings and the deposition could only be made in the presence of their parents. Where necessary, the identity of the child could remain undisclosed through the use of video recordings of testimonies. Children were entitled to free legal assistance and to special protection if after the verdict repercussions on the family were deemed possible. The decision to accord this level of protection to the child was left to the judge, who had powers to ensure that the child and his or her family were protected.

The Committee asked about the limitation of hearings and wanted to know whether the children could be heard again if the public prosecutor deemed it necessary. Also, it asked if the child could decide to accept the perpetrator's request to have a face-to-face meeting. The delegation answered that the child could only be heard once, and that in cases where a face-to-face meeting was requested, the child could decide to do that by camera. However, the delegation assured that the government was trying to lay down more detailed proceedings than those outlined the 2007 Children's Code.

On coordination, the delegation said that all information related to cases were available to relevant professionals at the same time. When asked about the implementation of the Children's Code, the delegation said that it included guidelines for the judicial officers, lawyers and judges explaining how child victims and witnesses should be handled. The government was also considering amending the Code for criminal procedures, raising the age at which the child can bring proceedings, from 5 to 10 years old.

Access to justice

The Committee noted that there were costs involved when a child victim brought a case to court, and that after the complaint a medical certificate could be requested in order to assess the child's health. The Committee was concerned that these obstacles could act as a deterrent for children to report violence. The delegation acknowledged that the person initiating the proceedings had to bear the costs and that they could not be borne by children's organisations since they were often the ones who provided free legal assistance. However, the delegation recognised that the Code had to be amended in light of recent amendments to the national legislation. Concerning the health certificate, the delegation specified that it was a medical report was required only in cases of emergency by judges in order to assess an alleged case of

physical violation. Regarding the cost of initiating a legal proceeding, the delegation recognised that despite the fact that the Children's Code stated that costs should be borne by the State, in practice it was the child that bore them. In some cases, however, costs were paid by procurers or alleged perpetrators.

Dissemination

The Committee asked about the steps taken to disseminate the OPSC. The delegation answered that the government had used the same method as for the CRC, namely that it had disseminated it through civil society, schools, radio programmes, ministries and judicial officers. It added that dissemination was the main preventive measure put in place by the government, since the more that people were aware of their rights, the more they would be willing to protect their rights. The Committee noted that the dissemination of the OPSC among the population was still poor and that further efforts should be made in that regard. The delegation replied that the government was aware of the fact that expectations were high, but recalled that the challenges were considerable.

Implementation and coordination

The Committee said that more efficient co-ordination mechanisms were needed in order to improve co-operation among relevant actors and authorities, both at the national and the local levels, to protect child victims of OPSC-related crimes, and to ensure redress, as well as compensation and rehabilitation where necessary.

Cooperation with civil society

The Committee asked how the government cooperated with NGOs and whether they could participate in decision-making processes. The delegation replied that NGOs were – and would continue to be – involved with the government, since nothing could be done in Togo without their participation. It also underlined that the National Human Rights Commission was composed of members of civil society, elected by the Assembly.

Prevention

Child protection

The Committee asked whether there were national institutions assisting child victims of sale, prostitution and pornography. The delegation answered that protection was provided to child victims from the point when the child reported his or her situation to the authorities. Judicial police had been trained on how to deal appropriately with such cases. The delegation underlined the fact that a child victim was given assistance with respect to infectious diseases contracted through violence. For example, in the interests of the child's health, a law on the protection from HIV/AIDS stated that if an act of violence had been perpetrated, it was possible for the judge to request a medical test to assess whether the offender was HIV-positive. Furthermore, police services, judges and lawyers worked together to devise the proceeding in such a way that the child was not traumatised, and to ensure that appropriate settings were available to protect the moral integrity of the child. Under severe circumstances, and depending on the facts of the case, the judge could order that the child be removed from his or her family as well.

The Committee asked what services were provided to child victims in terms of rehabilitation, psychological care and reintegration. The delegation said that those measures were still being developed.

The Committee asked if abortion was allowed for girls who were victims of rape. The delegation responded that despite being banned by law, in cases of sexual aggression the State permitted abortion, but that the decision to have the procedure was the choice of the victim.

Adoption

The Committee asked whether there were provisions in the adoption application process in order to prevent harmful practices. The delegation answered that the committee that decided cases of adoption had access to information collected by consular authorities about the adopting parents before starting the adoption procedure and assured that the adoption process prioritised the protection of the child.

The Committee asked what the main authority was that handled adoption cases and whether its members were independent and had specialised knowledge in that field. The delegation replied that the Togo National Adoption Committee (CNAET), established in 2008, was the main authority on adoption and that it was composed of experts from administration, appointed by different ministries such as foreign affairs, social welfare and health, in light of technical ability. It also underlined that civil society was consulted at any time and decisions were made by consensus, so that in broad terms it was entirely independent. Members of the CNAET were trained on the CRC and its optional protocols, as well as other relevant regional and international instruments.

The Committee noted that illegal adoptions did not constitute sale of children in national laws and suggested that the government should amend its legislation accordingly.

Vulnerable children

The Committee asked what measures had been taken to protect migrant, undocumented and street children from trafficking, sale and sexual exploitation. The government had established projects for these groups of children after the African Union had called for their protection during its Day of the Child. The delegation said that after having conducted a feasibility study, the relevant professional workers approached the families who would be willing to foster children and provide for their need. The Committee asked whether additional data was available, and how many children had been placed in foster families. The delegation replied that according to a nationwide census, migrant, undocumented and street children were found mostly in Lomé. 305 children were currently placed in foster families and 615 were hosted in open facilities. The delegation added that the government was considering conducting a quantitative study on the situation, as suggested by international partners. The Committee replied that a study investigating the root causes should be carried out as well, in order to address them.

The Committee noted that according to data, in 2009 there were 66,000 orphan children in Togo and asked what kinds of measures had been taken to protect them. The delegation said that 40,000 of those children had been placed in care and a set of guidelines and criteria had been created, ensuring that the care provided met the needs of each child. The Committee noted that the cases of the remaining 26,000 orphan children had not been addressed yet. The delegation replied that the most urgent and vulnerable cases had been prioritised, but that the others had not been forgotten. The government was trying to raise funds both at national and international levels to be able to respond to the remaining 26,000 children awaiting placement in foster care.

The delegation highlighted the fact that the number of children without parental care was falling as a result of the efforts made to eradicate pandemics such as HIV-AIDs, which had

previously been a major contributing factor. The Committee asked whether access to medication, for example for HIV-infected children, had been accounted for in the care guidelines/criteria. The delegation assured the Committee that the document was comprehensive and had been put together with the participation of all stakeholders involved in the alternative care sector and that all issues had been covered.

Data collection

The Committee asked how data was collected on a nationwide scale. The delegation answered that the institutionalisation of a centralised national database was on-going, and noted that the government was unsure how to proceed without infringing on the right of privacy. The delegation added that two databases would be created, one of which would be accessible to NGOs, allowing them to add data as well. Pursuant to the Children's Code, anyone who knew facts related to OPSC-related crimes had the duty to report. The Committee noted that a lack of data on the nature and rate of OPSC-related crimes being committed in Togo made it difficult for the government to be able to respond appropriately and effectively to the needs of child victims of sale, prostitution and pornography.

Prohibition and Related Matters

Sex tourism

The Committee stated that criminal responsibility should cover legal persons and asked how the government ensured the protection of child victims with regard to legal persons involved in offences criminalised in the Children's Code. The Committee also asked for information on how the justice system responded in cases where there was a dispute over jurisdiction for prosecution of a crime.

The Committee was concerned by the presence of some concurrent factors that could contribute to a proliferation of crimes related to sale of children, child prostitution and child pornography, namely the fact that 60 per cent of the population lived below the poverty threshold; 50 per cent of children had no birth certificate; and the growth of the tourism industry. The Committee asked what measures were being taken to make national and international tourism enterprises aware of their responsibilities towards children in the realm of child sale, prostitution and pornography.

Procurement

The Committee asked whether national legislation prohibited the advertisement of places where child prostitution was facilitated and whether there was any criminal responsibility for owners of brothels set up in the capital.

The Committee asked whether the government would close brothels and confiscate assets of those found to be facilitating child prostitution. The delegation replied that procurement was a crime in Togolese law and cited the case of one citizen sentenced to prison for having used a business for pimping. The delegation assured the Committee that punishment was handed down both to individuals and legal entities by shutting down the business that was disguising a brothel or other criminal activity involving children. In these cases, convicted business owners were imprisoned according to the gravity of the act. The Committee expressed concern that there had not been many exemplary punishments and that child prostitution in Togo seemed to be an open market. The delegation replied that the situation was very complex, since perpetrators constantly moved away and that despite awareness of the risks, many children gravitated to these places. The mixture of legal and illegal conduct in this

market made it difficult to prosecute.

Extraterritorial jurisdiction

The Committee asked the delegation to specify the Togolese law on extraterritorial jurisdiction, with reference to cases involving Togolese nationals, both as victims and perpetrators of offenses related to child sale, prostitution and pornography. The delegation answered that Togolese judges had jurisdiction over cases committed by Togolese nationals committed abroad. For example, if a Togolese national committed a crime abroad, he or she could be prosecuted by Togolese authorities. In the case the crime was committed by a foreign national against a Togolese national, the Togolese State would have competence over the case only if the victim submitted a complaint. The delegation underlined that Togolese judges would have competence even if only a part of the crime was committed in Togo. The Committee said that extraterritorial jurisdiction should be in line with the OPSC, asking States to prosecute cases committed by their nationals, and protect Togolese victims even if the crime was committed outside the national territory. The delegation added that the competence of Togolese judges with reference to acts committed through information and communication technologies should be extended to crimes committed outside the national territory as well.

Extradition

The Committee asked the government to further develop laws related to extradition.

Protection of the Rights of Victims

Assistance to victims and compensation

The Committee wanted to know what facilities were provided for the social reintegration of victims. The Committee asked the delegation to comment on whether NGOs had to pay fees to operate in Togo. It answered that no taxes or fees were paid by NGOs to government.

The Committee asked if victims were supported for reintegration into society. The delegation said that it was very difficult to prosecute and to investigate cases of child trafficking for prostitution.

The Committee noted that up to two years' imprisonment could be handed down for the crime of trafficking and commented that this was a very light sentence compared to the seriousness of the crime and encouraged the government to raise the punishment.

The Committee finally stated that compensation seemed to be provided to victims only in very few cases. The delegation responded that compensation was provided to victims. The Committee wanted to know if it was provided by the State or by the perpetrator. The delegation answered that as a general principle, if the perpetrators were unknown or were too poor, it was the State that provided the compensation, since it was automatically responsible for the procedure.

Concluding Remarks

Mr Kotrane, the Country Rapporteur, expressed satisfaction for the rich and fair discussion, taking special note of the good will demonstrated and the open and frank engagement of the delegation. Mr Kotrane noted that some sectors still required greater effort to bring them into line with the OPSC, notably the protection of street children and the dissemination of the OPSC. Identifying root causes of harmful practices and harmonising legislation with the Children's Code were also issues to be addressed.

The head of delegation thanked the Committee for its technical input and expertise and for the constructive and rich discussion. He assured the Committee that recommendations would be transmitted to the government for follow-up.