



Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by Turkmenistan 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*

1. The Committee considered the initial report of Turkmenistan (CRC/C/OPSC/TKM/1) at its 1939th meeting (see CRC/C/SR.1939) held on 14 January 2015, and adopted the following concluding observations at its 1983rd meeting (see CRC/C/SR.1983), held on 30 January 2015.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report (CRC/C/OPSC/TKM/1) providing detailed information regarding the fulfilment of the rights guaranteed by the Optional Protocol, as well as the written replies to the list of issues (CRC/C/OPSC/TKM/Q/1/Add.1). However, it regrets that the report does not follow the established reporting guidelines. The Committee also appreciates the constructive dialogue held with the multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations on the State party's combined second to fourth periodic reports under the Convention on the Rights of the Child (CRC/C/TKM/CO/2-4), adopted on 19 January 2015, as well as those on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/TKM/CO/1), adopted on 30 January 2015.

II. General observations

Positive aspects

4. The Committee welcomes the accession, succession or ratification by the State party of the:

* Adopted by the Committee at its sixty-eighth session (12-30 January 2015).



- (a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in March 2005;
- (b) International Labour Organization (ILO) Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in November 2010, and ILO Convention No. 138 concerning Minimum Age for Admission to Employment, in March 2012;
- (c) 1951 Convention relating to the Status of Refugees and its 1967 Protocol, in March 1998; 1954 Convention relating to the Status of Stateless Persons, in December 2011; and 1961 Convention on the Reduction of Statelessness, in August 2012;
- (d) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in March 2005;
- (e) Convention on the Civil Aspects of International Child Abduction, in November 1997;
- (f) Slavery Convention signed at Geneva on 25 September 1926, amended by its 1953 Protocol, in May 1997.

5. The Committee also welcomes the various measures taken in areas relevant to the implementation of the Optional Protocol, including the:

- (a) Adoption of relevant national legislation to safeguard the rights of the child, including the Law on Guarantees of the Rights of the Child (5 July 2002), the Law on Combating Trafficking in Persons (14 December 2007), the Guarantees of Young People's Right to Work Act (1 February 2005), the Code of Criminal Procedure (18 April 2009), the Criminal Code (10 May 2010), the Labour Code (18 April 2009), the Social Security Code (17 March 2007), and the Legal Status of Foreign Nationals in Turkmenistan Act (26 March 2011);
- (b) 2005 presidential decree that bans child labour in all sectors, specifying that children are not permitted to participate in the cotton harvest.

III. Data

Data collection

6. The Committee regrets the lack of statistical data disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location and socioeconomic status, on issues covered by the Optional Protocol, as well as the absence of a comprehensive data collection system to enable the recording, referral and follow-up of all cases covered by the Protocol.

7. **The Committee urges the State party to improve its data collection system expeditiously in order to cover all areas of the Optional Protocol. The data should be disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location, and socioeconomic status, in order to facilitate analysis on the situation of children at risk and children victims of offences prohibited by the Protocol. Furthermore, the Committee recommends that the data and indicators be shared among the ministries concerned and used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Protocol.**

IV. General measures of implementation

Legislation

8. The Committee welcomes the adoption of the Law on Guarantees of the Rights of the Child in 2002 and the Law on Combating Trafficking in Persons in 2007, and notes as positive that most of the issues covered by the Optional Protocol have been integrated into the national legislation of the State party. However, the Committee regrets that the sale of children, child prostitution and child pornography are not clearly and specifically defined and prohibited in the national legislation, in accordance with articles 2 and 3 of the Protocol. The Committee is also concerned that efforts made by the State party have focused almost exclusively on trafficking and not on the crimes of sale of children as defined by the Protocol.

9. **The Committee recommends that the State party take all necessary measures to ensure the full incorporation of the Optional Protocol into its domestic legislation, especially the Law on Guarantees of the Rights of the Child, which is currently being revised. It also recommends that the State party ensure that the definition of sale of children, which is similar to but not identical to trafficking in persons, is included in the national legislation in order to implement adequately the provision on sale of children contained in the Protocol.**

Comprehensive policy and strategy

10. The Committee is concerned about the lack of a comprehensive strategy for the implementation of the Optional Protocol in the State party.

11. **The Committee recommends that the State party, in consultation with all stakeholders, including children, parents and civil society, develop a comprehensive strategy to implement the provisions of the Optional Protocol, and provide sufficient human, technical and financial resources for the implementation of such strategy.**

Coordination

12. While noting the existence of the Interagency Commission on Enforcing Turkmenistan's International Obligations on Human Rights and International Humanitarian Law, the Committee remains concerned that there is still no specific body responsible for the coordination and the implementation of the State party's obligations under the Optional Protocol.

13. **The Committee urges the State party to establish an efficient body at a high level with sufficient authority and a strong mandate to coordinate all activities relating to the implementation of the Optional Protocol at the cross-sectoral, national, regional and local levels. The State party should ensure that such a coordinating body is provided with the necessary human, technical and financial resources to operate effectively.**

Independent monitoring

14. The Committee expresses its concern at the absence of an independent national institution for the promotion and monitoring of the implementation of the Optional Protocol, with a mandate to receive and investigate complaints by children on violations of their rights under the Protocol.

15. **In the light of its previous recommendations (CRC/C/TKM/CO/1, para. 12), the Committee urges the State party to establish expeditiously an independent mechanism**

for monitoring the implementation of the Optional Protocol, with a mandate to receive and investigate complaints by children of violations of their rights under the Protocol.

Dissemination and awareness-raising

16. The Committee welcomes the efforts made by the State party to increase knowledge and awareness about trafficking, on the one hand, and children's rights in general on the other, through various channels including performances, concerts, seminars, workshops, training sessions, leaflets and brochures. However, the Committee regrets that such activities are not conducted regularly and do not specifically emphasize the right of children to be protected from sale, prostitution and pornography.

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

(a) In close cooperation with civil society, children and child victims, develop and conduct information, awareness-raising and education programmes on preventive measures and the 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.

Training

18. The Committee appreciates the various capacity-building and training activities on human trafficking investigation techniques provided to law enforcement officers by the State party, in collaboration with the International Organization for Migration. The Committee remains concerned, however, that efforts to provide adequate training for professionals working with and/or for children, in particular judges, prosecutors, law enforcement officers, education and health professionals, and social workers, are not systematic and do not include all areas covered by the Optional Protocol.

19. **The Committee recommends that the State party allocate adequate resources for multidisciplinary training programmes developed through a participatory process involving communities and other stakeholders on all areas covered by the Optional Protocol. Such training should be provided to all relevant professional groups, ministries and institutions working with and/or for children. The Committee also recommends that the State party ensure the systematic evaluation of all training programmes on the Protocol with a view to enhancing their impact and relevance.**

Allocation of resources

20. The Committee regrets that the State party has not provided information on the specific allocation of resources for the implementation of the provisions of the Optional Protocol, particularly with regard to resources for research and data collection, prevention of the offences covered by the Protocol, criminal investigations, legal assistance and physical and psychological recovery measures for child victims.

21. **The Committee urges the State party to ensure that sufficient resources are allocated for the implementation of all areas covered by the Optional Protocol, by providing, in particular, the necessary human, technical and financial resources, including for research and data collection, for the development and implementation of programmes aimed at the prevention, protection, physical and psychological recovery and social reintegration of victims, as well as the investigation and prosecution of the offences covered by the Protocol.**

Cooperation with civil society

22. While noting the information that proposals to review the Law on Public Associations are being considered, the Committee remains concerned at reports of restrictions on the work of civil society organizations, including those working on children's rights. The Committee is also concerned that civil society organizations were not adequately consulted in the preparation of the initial report.

23. **The Committee urges the State party to remove restrictions on the functioning of independent civil society organizations, including those working on children's rights, and systematically involve civil society organizations in all matters concerning the implementation of the Optional Protocol, not only by supporting them in their efforts to provide adequate services to child victims, but also by increasing their role in the elaboration, implementation, monitoring and evaluation of laws, policies and programmes relating to child rights, as foreseen in the Protocol.**

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

Measures adopted to prevent offences prohibited under the Optional Protocol

24. The Committee welcomes the measures taken by the State party to prevent offences prohibited under the Optional Protocol, including capacity-building and awareness-raising activities and programmes focusing on the prevention of human trafficking and on border control, as well as the identification of vulnerable groups and potential victims of trafficking, especially children without parental care, children in street situations, children involved in child labour, children who are foreign citizens or who belong to ethnic minorities, and children living in poverty. The Committee also notes as positive the significant increase in birth registration and the extension of compulsory education to 12 years, which are likely to reduce the level of vulnerability of children. The Committee is concerned, however, that targeted preventive measures against the exploitation of children, including their engagement in forced labour, prostitution and pornography, and measures to identify and address the root causes and the incidence of the offences remain limited.

25. **The Committee encourages the State party to:**

(a) **Undertake research on the extent and root causes of the exploitation of children, including forced labour, prostitution and pornography, in order to identify children at risk and assess the extent of the problem;**

(b) **Undertake targeted preventive measures, including against exploitation over the Internet, and cooperate with international intergovernmental and non-governmental organizations concerning the implementation of awareness-raising campaigns in all areas covered by the Optional Protocol;**

(c) **Give further attention to the implementation of social and economic development programmes and poverty reduction strategies, including through the appropriate allocation of financial resources for the prevention of all forms of exploitation as defined in the Optional Protocol.**

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

Existing criminal or penal laws and regulations

26. The Committee welcomes the introduction into the Criminal Code of a provision on human trafficking, including of children, as well as the criminalization of most offences prohibited under the Optional Protocol. The Committee remains concerned, however, that the national legal framework does not criminalize all elements of articles 2 and 3 of the Protocol, in particular:

(a) Article 129 of the Criminal Code does not cover sufficiently the sale of children for the purpose of forced labour, in line with article 3, paragraph 1 (a) (i) c, of the Optional Protocol;

(b) Article 164 of the Criminal Code does not explicitly prohibit possession of child pornography, in line with article 3, paragraph 1 (ii) (c), of the Optional Protocol;

(c) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption is not clearly prohibited under the Criminal Code;

(d) Use of the Internet for the dissemination of child pornography or other forms of sexual exploitation (e.g. recruitment for child prostitution) has not been sufficiently addressed and is not explicitly criminalized.

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

(a) **Review the relevant provisions in the Criminal Code in order to bring them into full compliance with the Optional Protocol, either via amendments or via new provisions;**

(b) **Conduct a thorough study of the use of the Internet for the dissemination of child pornography or other forms of sexual exploitation (e.g. recruitment for prostitution) and introduce specific legal provisions to combat this phenomenon, including the full mandatory cooperation of Internet providers in this regard.**

Impunity

28. The Committee notes the registration of a small number of criminal offences perpetrated against minors in recent years, including the recruitment of minors for prostitution and the production and distribution of child pornographic items. It remains concerned, however, about the lack of information regarding the number of cases duly investigated and of perpetrators prosecuted and sentenced commensurate with the gravity of their crimes.

29. **The Committee recommends that the State party take all necessary measures to ensure that all cases of sale of children, child prostitution and child pornography are investigated effectively and that perpetrators are prosecuted and punished with appropriate sanctions.**

Liability of legal persons

30. The Committee notes as positive that individuals and legal entities involved in crimes of trafficking in persons are held accountable in accordance with article 20 of the Law on Combating Trafficking in Persons. The Committee is concerned, however, that

individuals and legal entities, including corporations, may not be criminally liable under the State party's legislation for all offences covered by the Optional Protocol.

31. The Committee recommends that the State party revise its Criminal Code to ensure the full and direct criminal liability of legal persons for all offences covered by the Optional Protocol.

Extraterritorial jurisdiction

32. The Committee is concerned that, in accordance with article 8 of the Criminal Code, the requirement of double criminality for domestic prosecution of crimes allegedly committed abroad impedes the prosecution of offences outlined in articles 1 and 2 of the Optional Protocol.

33. The Committee recommends that the State party remove the requirement of double criminality for the prosecution of offences committed abroad under the Optional Protocol when exercising its extraterritorial jurisdiction.

Extradition

34. The Committee encourages the State party to consider including all offences referred to in article 3, paragraph 1, of the Optional Protocol as extraditable offences in the national legislation as well as in any existing or subsequent extradition treaty with other State parties. Moreover, the State party may wish to consider this Protocol as a legal basis for extradition to another State party in respect of such offences.

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

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

35. The Committee is concerned that current measures for protecting the rights and interests of child victims of offences prohibited under the Optional Protocol tend to be limited to trafficking and are thus insufficient. The Committee is also concerned that these measures have not been adequately institutionalized.

36. In the light of article 9, paragraph 3, of the Optional Protocol, the Committee recommends that the State party:

(a) Establish mechanisms and procedures for the early detection and identification of child victims of offences prohibited under the Optional Protocol, including by establishing cooperation mechanisms between law enforcement agencies and relevant ministries. It also recommends that personnel responsible for such detection and identification, including judges, prosecutors, the police, social workers, medical staff and other professionals working with and/or for children, are trained on child rights, child protection and interviewing skills;

(b) Issue clear instructions to all prosecutors to actively prosecute cases involving offences under the Optional Protocol

(c) Ensure that complaints mechanisms are available and easily accessible to children whose rights may have been violated.

Criminal justice system protection measures

37. The Committee notes as positive the measures taken by the State party, under the Code of Criminal Procedure, to guarantee the legal protection and confidentiality of child victims and/or witnesses throughout the criminal proceedings. The Committee is concerned, however, that the State party does not have a formal programme to provide protection for victims and/or witnesses of offences covered by the Optional Protocol. Furthermore, the Committee is concerned that the provisions of article 8 of the Protocol have not been adequately integrated into the relevant laws of the State party and, in particular, that legislation fails to provide clear sanctions for the exertion of physical and psychological pressure during interrogations.

38. In accordance with the State party's obligations under article 8 of the Optional Protocol, the Committee recommends that the State party ensure, through adequate legal provisions and regulations, that all child victims and/or witnesses of crimes, for example, child victims of abuse, sexual and economic exploitation, abduction and trafficking, and witnesses of such crimes, are provided with the protection required by the Protocol, and that the State party fully take into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

Recovery and reintegration of victims

39. The Committee notes that girls and boys who have been victims of crimes, including the crimes of sale of children, child prostitution and child pornography, may be referred to local commissions with responsibilities for child protection or guardianship and trusteeship. Notwithstanding these efforts, the Committee is concerned that the State party's recovery and reintegration measures are limited to victims of trafficking and do not adequately take into account the needs of child victims of sale, prostitution and pornography offences covered by the Optional Protocol.

40. The Committee recommends that the State party:

(a) Take all necessary measures to ensure that child victims of the offences covered by the Optional Protocol are provided with appropriate assistance, including for their full social reintegration and physical and psychological recovery, by, inter alia, developing and implementing programmes aimed at providing counselling, shelter, legal assistance and other rehabilitative services to victims of trafficking;

(b) Guarantee that all child victims, including those who are not nationals or residents of the State party, have access to adequate procedures to seek, without discrimination, compensation from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol, and establish a victims' compensation fund for those cases where victims cannot obtain compensation from the perpetrator;

(c) Take measures to ensure that its rehabilitation and safe return programmes are available throughout its territory.

Helpline

41. The Committee is concerned that the State party does not have a helpline covering all offences under the Optional Protocol.

42. The Committee recommends that the State party establish a national helpline for all offences under the Optional Protocol, and ensure that it covers the whole country, is accessible 24 hours a day and has an easy-to-remember three- to four-digit number, adequate financial and technical resources, and personnel trained to respond to children and analyse calls for appropriate action.

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

43. In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures for and mechanisms to coordinate the implementation of such arrangements, with a view to improving prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences covered by the Protocol.

IX. Ratification of the Optional Protocol on a communications procedure

44. The Committee recommends that the State party ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in order to further strengthen the fulfilment of children's rights.

X. Follow-up and dissemination

Follow-up

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

Dissemination of concluding observations

46. The Committee recommends that the initial report and written replies submitted by the State party and the related concluding observations of the Committee 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, in order to generate debate on and awareness of the Optional Protocol, its implementation and monitoring.

XI. Next report

47. In accordance with article 12, paragraph 2, of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Protocol and the present concluding observations in its next periodic report under the Convention on the Rights of the Child, due by 28 January 2018, as stipulated in article 44 of the Convention.
