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| _unlogo | **Convention on the Rights of the Child** | | Distr.: General  4 February 2015  Original: English  **ADVANCE UNEDITED VERSION** |

**Committee on the Rights of the Child**

Concluding observations on the initial report of Turkmenistan submitted under article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, adopted by the Committee at its sixty-eighth session (12 – 30 January 2015)

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 at the 1983rd meeting (see CRC/C/SR.1983), held on 30 January 2015, the following concluding observations.

I. Introduction

1. 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 Protocols, as well as the written replies to the list of issues (CRC/C/OPSC/TKM/Q/1/Add.1). However, it regrets that it does not follow the established reporting guidelines. The Committee also appreciates the constructive dialogue held with the multisectoraldelegation of the State party.
2. The Committee reminds the State party that these 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

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

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in March 2005;

(b) The ILO Conventions No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in November 2010, and No. 138 concerning Minimum Age for Admission to Employment, in March 2012;

(c) The 1951 Convention relating to the Status of Refugees and its 1967 Protocol, in March 1998, to the 1954 Convention relating to the status of Stateless Persons, in December 2011, and to the 1961 Convention on the Reduction of Statelessness, in August 2012;

(d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), in March 2005;

(e) The Convention on the Civil Aspects of International Child Abduction, in November 1997; and,

(f) The Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol, 1953, in May 1997.

1. The Committee further welcomes the various measures taken in areas relevant to the implementation of the Optional Protocol, including:
2. The adoption of relevant national legislation to safeguard the rights of the child, including the Law on the Guarantees of the Rights of the Child (5 July 2002), the Human Trafficking Act (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); and,
3. The 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, inter alia, by 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 expeditiously improve its data collection system in order to cover all areas of the Protocol. The data should be disaggregated, inter alia, by 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 Trafficking in Human Beings 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 Optional 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 Optional Protocol.

1. **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 adequately implement the provision on sale contained in the Optional 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.

1. **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, as well as to provide sufficient human, technical and financial resources for its implementation.**

**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 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 related to the implementation of the Optional Protocol at 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 for its effective operation.**

**Independent monitoring**

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

15. **In the light of its previous recommendations (CRC/C/TKM/CO/1, para. 12), the Committee urges the State party to expeditiously establish an independent mechanism for monitoring the implementation of the Optional Protocol, and with a mandate to receive and investigate complaints by children on violations of their rights under the Optional 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 stress the right of children to be protected from sale, prostitution and pornography.

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

**(a) Develop and conduct, in close cooperation with the civil society, children and child victims, 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; and,**

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.

1. **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 further recommends that the State party ensure the systematic evaluation of all training programmes on the Optional Protocol with a view to enhancing their impact and relevance.**

Allocation of resources

1. 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 Optional Protocol, criminal investigations, legal assistance and physical and psychological recovery measures for child victims.
2. **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 prevention, protection, physical and psychological recovery and social reintegration of victims, as well as the investigation and prosecution of the offences covered by the Optional Protocol.**

Cooperation with civil society

1. While noting information that proposals to review the Law on Public Associations are being considered, the Committee remains concerned at reports of restrictions to the work of civil society organizations, including those working on children’s rights. The Committee is further concerned that civil society organizations have not been adequately consulted in the preparation of the initial report.
2. **The Committee urges the State party to remove restrictions to 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 related to child’s rights as foreseen in the Protocol.**

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

Measures adopted to prevent offences prohibited under the Optional Protocol

24. The Committee welcomes the measures taken by the State to prevent offences prohibited under the Optional Protocol, including capacity-building and awareness-raising activities and programmes focusing on the prevention of human trafficking, 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 twelve years, which are likely to reduce the level of vulnerability of children. However, the Committee is concerned 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 of the offences and extent thereof, 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; and,**

**(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 and 3; 5; 6 and 7)

Existing criminal or penal laws and regulations

26. The Committee welcomes the introduction of a provision on human trafficking, including of children, into the Criminal Code, as well as the criminalization of most offences prohibited under the Optional Protocol. However, the Committee remains concerned 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 art. 3, 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 art. 3 (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; and,

(d) The 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 existing provisions in the Criminal Code in order to bring them into full compliance with the Optional Protocol (either via amendments or via new provisions); and,**

**(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 these phenomena, 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. However, it remains concerned about the lack of information regarding the number of cases duly investigated and of perpetrators prosecuted and sentenced commensurate to 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 effectively investigated and that perpetrators are prosecuted and punished with appropriate sanctions.**

Liability of legal persons

1. 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 Human Trafficking Act. However, the Committee is concerned 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.
2. **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 under the Optional Protocol committed abroad 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 between States 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 and 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. Furthermore, 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 further 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 those cases; and**

**(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. However, the Committee is concerned that the State party does not have a formal programme to provide protection for victims and/or witnesses of offences covered under 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, in particular that legislation fails to provide clear sanctions for physical and psychological pressure during interrogations.

1. **In accordance with the State party’s obligations under article 8 of the Optional Protocol, the Committee further 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 Optional 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

1. 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 of children, child prostitution and pornography offences covered under the Optional Protocol.
2. **The Committee recommends that the State party:**

**(a) Take all necessary measures to ensure that child victims of the offences covered under 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 for damages 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; and,**

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

Helpline

1. The Committee is concerned that the State party does not have a helpline covering all offences under the Optional Protocol.
2. **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 3 to 4 digit number, adequate financial and technical resources, and personnel trained to respond to children and analyse the calls for appropriate action.**

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

1. **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 under the Optional Protocol.**

IX. Ratification of the Optional Protocol on a communications procedure

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

X. Follow-up and dissemination

Follow-up

1. **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 to regional and local authorities, for appropriate consideration and further action.**

Dissemination of concluding observations

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

XI. Next report

1. **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 on the Rights of the Child, due by 28 January 2018, in accordance with article 44 of the Convention.**