



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### **Report submitted by Togo under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, due in 2007\***

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\* The present document is being issued without formal editing.



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## Introduction

1. Togo signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 15 November 2001 and ratified it on 28 November 2005.
2. Since then, laws and measures have been adopted to protect children in the event of hostilities, though the country has not experienced any armed conflict.
3. This report, which was drafted pursuant to article 8 (1) of the above-mentioned Optional Protocol and in keeping with the relevant guidelines, is structured around the following themes:
  - (a) General measures of implementation;
  - (b) Prevention (arts. 1–2, 3 (2) and 6 (2));
  - (c) Prohibition and related matters (arts. 1–2 and 4 (1)–(2));
  - (d) Protection, recovery and reintegration (art. 6 (3));
  - (e) International assistance and cooperation (art. 7 (1));
  - (f) Other legal provisions (art. 5).
4. The report contains information on the tangible steps taken to implement the Convention, including the main legislative, judicial and administrative measures, programmes and other initiatives.

## I. General measures of implementation

### Drafting and participation process

5. The present report was drafted following a multistage participatory, inclusive and transparent process.
6. The first stage consisted in experts from the Ministry of Security gathering information from the relevant departments.
7. The second stage involved technical workshops where the Resource Persons Select Committee drew up a draft report.
8. The third stage consisted of a workshop where the members of the Interministerial Commission for Reporting and Follow-up to Recommendations on Human Rights improved and completed the report.
9. The fourth stage was the national endorsement workshop attended by the members of the Interministerial Commission, the members of the National Framework for Consultations on Child Protection and representatives of the National Human Rights Commission, other State institutions, children's associations and groups, and civil society organizations in the field of human and children's rights.
10. Article 140 of the Constitution of 14 October 1992 states that duly ratified or approved treaties and agreements, once promulgated, have primacy over laws. Article 50 establishes that the rights and obligations enshrined in the international human rights instruments ratified by Togo are an integral part of the Constitution.
11. National legislation does not need to be amended in order for the Optional Protocol to be applied. The Optional Protocol can be invoked by the courts and applied by the national authorities. For example, Act No. 2007-010 of 1 March 2007, the General Armed Forces Regulations Act, takes into account the provisions of the Optional Protocol.

12. In addition, article 276 of the Children's Code (Act No. 2007-017 of 6 July 2007) includes the use of children in armed conflict among the factors or circumstances constituting situations of hardship or risk that may threaten the health, development or physical, emotional or mental integrity of the child. Articles 285 et seq. of the Children's Code provide for the legal protection of children in situations of hardship or risk, including children used in armed conflict.

13. Togo being a unitary State, the Optional Protocol is applied in the entire territory. All branches of the Togolese armed forces and paramilitary forces apply the provisions of the Optional Protocol. Togo also ensures that the provisions are respected and applied in the various theatres of operations where its contingents are active, including in Darfur, Mali, the Central African Republic, the Democratic Republic of the Congo, Haiti and, in the recent past, Côte d'Ivoire and Liberia.

14. Togo has not entered any reservations to the Optional Protocol.

15. In line with article 3 of the Optional Protocol, Togo stated in its declaration that the minimum age for voluntary recruitment to the national armed forces is 18 years for both sexes. There is no national service. Recruitment is voluntary, open to Togolese nationals only and is done either by competition or through a general call, on presentation of a national identification card.

16. The State departments and bodies primarily responsible for the implementation of the Optional Protocol are the Ministry of Defence, the Ministry of Security, the Ministry of Justice, the Ministry of Forest Resources, the Ministry of Finance and the General Staff of the Togolese armed forces, including all main branches of the military, namely, the army, air force, navy, national gendarmerie and military health service.

17. There are also paramilitary bodies, namely, the national police, the prison guard corps, the Waterways and Forest Service and the Customs and Indirect Tax Authority.

18. Coordination among the various departments, as well as with civil society, the media and academia, is ensured by the training and communication divisions of the General Staff of the Togolese armed forces.

19. After ratification, the Optional Protocol was published in the Official Gazette of the Togolese Republic and circulated among all the relevant departments.

20. A campaign to raise awareness of the Optional Protocol among the defence and security forces, parliamentarians, social workers, teachers, judges, civil society and religious organizations, traditional leaders and children's organizations was conducted throughout the country with the support of Plan International Togo in 2006. All participants received a copy of the text of the Optional Protocol.

21. In addition, seminars and training sessions for members of the armed or paramilitary forces have been held with the support of Save the Children International, represented by the Togo chapter of the World Association for Orphans and Abandoned Children, and the International Committee of the Red Cross. Approximately two sessions per year were held between 2006 and 2014 to train members of the defence and security forces in human rights in general and, specifically, the rights and protection of children before, during and after conflict.

22. Each year, training in the protection and rights of children is provided to some 50 trainee officers at the Togolese Officer Training School and to more than 1,000 active military personnel preparing for deployment abroad.

23. In order to make this training a permanent practice, modules on human rights and the protection and rights of children have been incorporated into the initial, basic and in-service training for the defence and security forces. These modules have also been introduced in the training for officers and detectives of the national gendarmerie, the national police and the immigration authority, as well as members of the other paramilitary bodies, including the Waterways and Forest Service, the prison guard corps and the customs authority.

24. The minimum age for voluntary recruitment to the Togolese armed forces being 18 years, there are no children serving in the armed or paramilitary forces. However, the

Togolese Officer Training School and the Lomé Military Health Services School are authorized to admit children from the age of 16 years with written consent from their legal representative (General Armed Forces Regulations, art. 61). To date, only the Lomé Military Health Services School has admitted any minors – a total of five between 2007 and 2018.

25. Togo has not experienced armed conflict, and no armed groups are active in its territory.

26. No children have been convicted of war crimes.

27. Refugees and asylum-seekers, including children with their parents, are present in Togo. In September 2018, 7,318 children up to the age of 17 years, of whom 3,615 were girls and 3,703 were boys, were registered as refugees in the country. None of them were recorded as being the victim of practices banned under the Optional Protocol.

28. The National Human Rights Commission, which was established in 1987 and whose institutional status is defined in the Constitution of 14 October 1992 (arts. 152–153), is an independent national institution for the defence of human rights in Togo. Its general mandate is the protection and promotion of human rights. Pursuant to Organic Act No. 2018-006 of 20 June 2018 on its composition, organization and functioning, the National Human Rights Commission also serves as the national mechanism for the prevention of torture.

29. The Commission includes a division on women, children and other specific groups, which is responsible for promoting and protecting the rights of these groups.

30. The Commission is hampered in its work by a lack of statistical data and difficulties relating to the mobilization of financial resources for reporting.

## II. Prevention (arts. 1–2, 3 (2) and 6 (2))

31. Enlistment is not compulsory in Togo. The various laws that apply to the defence and security forces set the minimum age for voluntary recruitment at 18 years. These texts include:

- The General Armed Forces Regulations
- Act No. 2013-002 of 21 January 2013, the General Civil Service Regulations Act, which concerns members of the Waterways and Forest Service and the customs authority
- Act No. 2015-005 of 28 July 2015, the Special National Police Regulations Act
- Decree No. 2009-005/PR of 14 January 2009 on the Legal Framework Applicable to Prison Guards and their Status

32. There is no compulsory military service in Togo.

33. In accordance with the country's binding declaration, there is no legal provision authorizing the lowering of the age of conscription in exceptional circumstances.

34. Togo does not have compulsory military service.

35. The Government has taken a number of steps to ensure that recruitment is truly voluntary.

36. Recruitment to the military and paramilitary forces is done either by a general call or a competition. General calls are made through a communiqué published in the press and broadcast on radio and television. Candidates submit their applications for consideration; applications that are deemed not to meet the requirements are subsequently rejected.

37. The general eligibility criteria are as follows:

- Being of Togolese nationality
- Being at least 18 years of age and no older than 24 (for non-specialist roles) or 28 (for specialist roles), irrespective of gender
- Being single without children (for non-specialist roles)

- Being at least 1.7 m tall (for men) or at least 1.65 m tall (for women)
- Being declared medically fit by the recruitment board doctors
- Having obtained, at a minimum, a primary school leaving certificate but not a secondary school leaving certificate (for non-commissioned members)

38. The list of the candidates whose applications have been accepted and the recruitment dates in the various prefectures are published in a second communiqué. Two boards are established, one for the south of the country and the other for the north. The boards travel to the prefecture capitals to recruit the young volunteers following a health check. The candidates must show their identification document as proof that they are at least 18 years old.

39. The list of successful recruits and the date of their admission to the national training centre for six months of basic military training are published in a third communiqué. During basic training, recruits are free to change their minds about joining the military. Recruits are integrated into the armed forces upon completion of the training.

40. During the recruitment process, volunteers undergo the following medical checks:

- A physical examination by doctors to check morphology, gait, height, weight, limbs, breathing, teeth and blood pressure
- A vision test
- Blood tests to check sugar and protein levels

41. During basic training and before their integration into the armed forces, recruits undergo another medical examination to check for any diseases that may have presented during training.

42. The following documents are deemed to be reliable proof of a volunteer's age: birth certificate, certificate of nationality, national identification card and passport.

43. Enlisted members of the military may resign at any time unless they have committed to serve for 10 years. Specialists and officer cadets are required to make that commitment. After 15 years of service, any member of the military may request early retirement and receive a pension proportional to the length of service.

44. In the case of the officer cadets at the Togolese Officer Training School and the Lomé Military Health Services School (see para. 24), the commitment to serve for 10 years can be made only once the volunteer has turned 18 years old. As officer training lasts two years for regular cadets and eight years for medical corps cadets, an underage cadet will have turned 18 before serving in the military. Cadets do not take part in hostilities while still in training.

45. Disciplinary measures can be taken (denial of leave, confinement to barracks, guard duty). Cadets are not subjected to any corporal punishment or abuse.

46. No recruit is currently the subject of judicial proceedings or being detained.

47. Article 53 of the new Code of Military Justice (Act No. 2016-008 of 21 April 2016) excludes minors from the scope of the Act, stipulating that the military courts are not competent to hear cases against minors.

48. The offence of desertion and the related penalties are defined in articles 138–148 of the Code of Military Justice, which provide for more lenient treatment of recruits with under three months of service. The applicable penalties range from 3 months' to 20 years' imprisonment depending on whether the desertion occurred in Togo or abroad, in peacetime or in wartime, as part of a conspiracy or in particular circumstances (theft of weapons and munitions), with the use of weapons or in the presence of the enemy or rebels.

49. The communication department of the General Staff of the Togolese armed forces liaises between the armed forces and prospective volunteers or their parents who wish to learn more about military life. The information provided covers the demands and constraints of military life, as well as the rights and duties inherent in it. This information is not disseminated systematically. It is provided on request only.

50. The defence and security forces do, however, hold open houses for the general public to learn about military occupations. Information on the activities and vision of the Togolese armed forces can also be found in the quarterly magazine *Echos des Armées* and on the website <http://www.defense.gouv.tg>.

51. Togo does not resort to incentives, as recruitment is voluntary. Emphasis is placed on fostering a sense of vocation among young candidates with a view to preventing desertion and ensuring greater stability in the management of human resources.

52. The minimum age for admission to schools administered by the Togolese armed forces is 12 years for lower secondary and 16 years for upper secondary.

53. The Eyadéma military college in Tchitchao is the only school administered by the Togolese armed forces. It has the status of a national school with regional responsibilities and admits children from French-speaking West African countries, Chad and the Central African Republic. General education at the college is the same as at all other schools and is taught by an entirely civilian teaching staff. The military personnel assigned to the college are responsible for managing the school and supervising instruction.

54. Military instruction was introduced through Order No. 14-02658/MDAC/CAB14 of 19 September 2014. It happens at the end of each school year after third-term essays, from the first to the penultimate year of secondary education, and it lasts for a month each time. During the first four years of secondary education, the children are taught only basic military preparation and have no contact with weapons. In the subsequent two years, they learn about weapons.

55. In addition to the usual school facilities, the college has sports and leisure facilities, a cafeteria, a television room and two computer rooms. Students at the college are not members of the military and are free to change schools over the course of their studies.

56. Since July 2018, the Eyadéma military college (technical branch) has had a modern multimedia room equipped with a high-speed Internet connection, an academic management system (student files, a record of absences, report cards) and a resource centre consisting of workstations and individualized workspaces for students (online courses, digital library, diary, course syllabus, assignments, etc.).

57. After obtaining the secondary school leaving certificate, students are free to join the army or to remain in civilian life, subject to reimbursement of the school fees for the time that they spent at the college.

58. The State has taken steps to bring instruction at the college into line with articles 28 and 29 of the Convention on the Rights of the Child. Tuition is free of charge for the duration of lower and upper secondary education. Instruction at the college matches the general curriculum. Particular attention is paid to discipline, morals and civic mindedness. Modules on international humanitarian law and the rights and protection of children are taught with due regard for the students' education level.

59. Discipline at school is maintained by encouraging children to behave appropriately. Disciplinary measures include the denial of weekend leave without suspension of school-based leisure activities, and classroom cleaning duty. Students are not subjected to corporal punishment, abuse or inhuman or degrading treatment.

60. Further to the information provided under paragraph 13 of the reporting guidelines, the students at the college – all boys, representing all regions of the country without distinction – are admitted on the basis of an entrance examination that is open to all. The college also takes students from French-speaking West African countries, Chad and the Central African Republic.

61. During their time at the college, the children are not members of the armed forces and therefore not military personnel. They cannot be mobilized under any circumstances, including armed conflict, situations of military necessity or other emergency situations.

62. Students can at any time freely exercise their right to leave the college and not pursue a military career, subject to the reimbursement of their school fees.

63. Togo has not ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted in New York on 19 December 2011. There is, therefore, no independent complaints mechanism for children.
64. Togo is not in a situation of armed conflict, and no armed groups are active in its territory.
65. Togo is not in a situation of armed conflict. Nevertheless, article 276 of the Children's Code establishes the use of children in armed conflict as a factor in situations of hardship or risk that may threaten the health, development or physical, emotional or mental integrity of the child.
66. Children who are in a situation of hardship or at risk are considered vulnerable children requiring special protection, under article 285 et seq. of the Children's Code. Such children are identified through an anonymous reporting mechanism (the toll-free helpline Allo 1011) supported by the general public, community-based protection committees, non-governmental organizations and associations.
67. For information regarding child refugees, see the response to paragraph 8 (d) of the reporting guidelines. There are no internally displaced persons in Togo, nor are there any identified ethnic minorities or Indigenous people.
68. To prevent attacks against civilian objects protected under international humanitarian law and other international instruments, including places where many children can generally be found, such as schools and hospitals, Togo has signed the four Geneva Conventions of 1949 relating to the law of war and the 1977 Protocols Additional thereto.
69. These instruments are regularly and widely disseminated among the defence and security forces, with the ongoing support of the International Committee of the Red Cross. International humanitarian law is taught as part of all training and courses provided to the Togolese armed forces. Prior to deployment, Togolese troops are always reminded of the law of armed conflict and the duty to protect civilians, especially children, during United Nations peacekeeping operations.
70. In addition to the nationwide dissemination of the Optional Protocol, the members of the National Children's Advisory Council and other children's and youth organizations receive training on the harmful effects of children's participation in armed conflict so that they can subsequently share the information with peer educators.
71. In 2016, under the theme of the Day of the African Child for that year, which was "Conflict and Crisis in Africa: Protecting All Children's Rights", a documentary on the impact of war and conflict on children and the State's efforts to protect children and prevent their involvement in such events was produced and used to raise awareness among children and young people around the country.
72. In 2015, with the aim of promoting peace in Togo, the Government required that human and children's rights education and the topic of peace in school settings be introduced in the new curricula for civic and moral education, which has become a compulsory subject at the secondary level.
73. Between 2016 and 2017, 66 officials of the Waterways and Forest Service took part in a special training course on judicial procedure that included a module on human rights and the protection of children.
74. Since 2013, modules on the rights and protection of children, including protection from involvement in armed conflict, have been introduced in the initial and in-service training for certain professionals who come into contact with children, such as social workers, security and law enforcement personnel, judges and other justice officials.
75. To ensure that these modules are taught to criminal investigation officers, the Minister of Security issued Order No. 0235/MSPC-CAB of 8 November 2013 on the inclusion of a permanent mandatory course on the rights and protection of children in police and national gendarmerie training programmes.
76. Between 2014 and 2017, 35 police officers and gendarmes were trained as trainers, and a number of gendarme recruits and new police officers received the training.



77. Furthermore, 28 instructors at social training schools have received training on the modules, and classes on the rights and protection of children have been taught at the National School for Social Workers since October 2016.

78. Judges and other justice officials have also received the training.

79. This initiative, implemented with the support of the United Nations Children's Fund (UNICEF), is part of a far-reaching action plan that was developed at a regional workshop held in Niamey in November 2011 in collaboration with the International Bureau for Children's Rights.

80. In 2012, Togo took ownership of the initiative by conducting a review of the provision of training in the rights and protection of children in order to identify the training needs of the various professionals who work with or for children.

81. In addition, national guidelines on juvenile justice have been developed as a reference document for the various actors.

82. Capacity-building on the implementation of the Children's Code has been carried out among criminal investigation officers, judges, lawyers, notaries and health-care professionals.

83. All the awareness-raising measures described in relation to paragraph 17 (a) of the reporting guidelines are being taken in close collaboration with non-governmental organizations, the media, the private sector, communities and children.

84. There is currently no mechanism to assess the effectiveness of the efforts described above or their results.

### **III. Prohibition and related matters (arts. 1–2 and 4 (1)–(2))**

85. The acts referred to in articles 1 and 2 of the Optional Protocol are punishable under the new Criminal Code (Act No. 2015-010 of 24 November 2015) and the Code of Military Justice (Act No. 2016-008 of 21 April 2016).

86. However, compulsory recruitment, the use of children in hostilities and the notion of direct participation are not clearly defined in the Criminal Code.

87. Article 146 stipulates the following: "Other serious violations of the laws and customs applicable to international armed conflict within the established framework of international law, including ... the conscription or recruitment of children under the age of 18 years to the national armed forces or armed groups or their active use in hostilities, also constitute war crimes."

88. Furthermore, article 147 establishes that "serious violations of article 3 common to the Geneva Conventions and other serious violations of the laws and customs applicable to international armed conflict, including ... the conscription or recruitment of children under the age of 18 years to the armed forces or armed groups or their active use in hostilities, also constitute war crimes."

89. The Code of Military Justice refers to the Criminal Code in relation to breaches of ordinary law committed by military personnel or persons of similar status (art. 47 (3)–(4)).

90. Compulsory recruitment and the use of children as direct participants in hostilities are punishable as war crimes, which carry a penalty of 20 to 30 years' imprisonment and a fine of 25 million to 100 million CFA francs, depending on their seriousness and the perpetrator's personal situation, under article 148 of the Criminal Code.

91. There have been no recorded cases of the acts prohibited under articles 1 and 2 of the Optional Protocol and thus no prosecutions or convictions.

92. To ensure that orders from a superior cannot be used to justify actions contrary to the Optional Protocol, article 18 of the General Armed Forces Regulations stipulates that:

- Military personnel must obey the orders of their superiors and are responsible for carrying out the tasks assigned to them.

93. However, they cannot commit or be ordered to commit acts that are in contravention of laws, customary rules of war or international conventions duly ratified by Togo or that constitute ordinary or serious offences, including against the security and integrity of the State.

94. The fact that subordinates bear individual responsibility does not exclude the responsibility of their superiors.

95. The Criminal Code contains similar provisions in articles 160–162. Article 160 states that “the responsibility of persons who commit one of the offences provided for in the present chapter cannot be excluded solely because the act they committed was prescribed or authorized by legislative or regulatory provisions or was authorized by a legitimate authority”.

96. An order issued by a legitimate authority does not exclude a person’s responsibility for the offences provided for in that chapter of the Criminal Code unless:

- The person was under a legal obligation to obey orders of the Government or the superior in question;
- The person did not know that the order was unlawful; and
- The order was not manifestly unlawful.

97. These three conditions are cumulative.

98. For the purposes of this article, orders to commit genocide or crimes against humanity are deemed to be manifestly unlawful.

99. Article 161 of the Criminal Code enumerates the situations in which criminal responsibility can be excluded for war crimes, genocide and crimes against humanity. These include when:

- The person suffers from a mental disease or defect that destroys the person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law.
- The person is in a state of intoxication, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime.
- The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force, subject to respect for the principle of proportionality.
- The conduct has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided.

100. Under the Criminal Code, these offences are considered war crimes or crimes against humanity. Article 164 of the Code establishes that genocide, war crimes, crimes against humanity and crimes of apartheid are not subject to a statute of limitation.

101. Article 263 of the Children’s Code bans the worst forms of child labour. According to article 264 (a), these include all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.

102. Attempting to commit, being an accessory to and participating in the commission of an offence under the Optional Protocol carry the same penalties as the commission of the offence (Criminal Code, arts. 46–48 and 51).

103. The recruitment and use in hostilities of persons under the age of 18 years by armed groups that are distinct from the armed forces of a State are punishable under the Criminal Code and the Code of Military Justice, in keeping with article 4 of the Optional Protocol.

104. See the information provided in relation to paragraph 18 (a) of the reporting guidelines.
105. Togo has not experienced armed conflict.
106. The recruitment and use in hostilities of persons under the age of 18 years by armed groups that are distinct from the armed forces of a State carry the same penalties and are subject to the same conditions as those enumerated in article 148 of the Criminal Code, which was cited in relation to paragraph 18 (b) of the reporting guidelines.
107. There have been no recorded cases of the acts prohibited under article 4 (1) and (2) of the Optional Protocol and thus no prosecutions or convictions.
108. The recruitment and use in hostilities of persons under the age of 18 years by armed groups that are distinct from the armed forces of a State are considered war crimes or crimes against humanity within the meaning of article 164 of the Criminal Code. They are not subject to a statute of limitation.
109. See the information provided in relation to paragraph 18 (f) of the reporting guidelines.
110. Attempting to commit, being an accessory to and participating in the commission of an offence under the Optional Protocol carry the same penalties as the commission of the offence (Criminal Code, arts. 46–48 and 51).
111. To give effect to the provisions of the Optional Protocol, Togo has adopted a number of instruments, including:
- The General Armed Forces Regulations
  - The Children's Code
  - The General Civil Service Regulations, which concern members of the Waterways and Forest Service and the customs authority
  - The Special National Police Regulations
  - The new Criminal Code
  - The new Code of Military Justice
  - The Decree on the Legal Framework Applicable to Prison Guards and their Status
112. No information.
113. Togo is a party to the Geneva Conventions of 1949 and to Protocols I and II Additional thereto.
114. Togo is not considering becoming a party to the Rome Statute of the International Criminal Court at this time.
115. Togo ratified the International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182) on 19 September 2000.
116. The Criminal Code establishes the criminal responsibility of legal persons. Article 53 states that, except where special provisions or exemptions apply, legal persons other than the State are criminally responsible for offences under the Code that are committed on their behalf by their entities or representatives.
117. The reference to legal persons in the Criminal Code is always understood to encompass Togolese and foreign legal persons.
118. However, local and regional governments and their entities are criminally responsible only for offences committed in the performance of activities that may fall under a public service concession agreement and activities related to government procurement or the management of public finances.
119. The criminal responsibility of legal persons does not preclude that of the individuals who commit or are accessories to the acts in question, subject to the provisions of the fourth paragraph of article 17 of the Criminal Code.

120. The legal person concerned may, by reasoned decision, be found liable, jointly and severally with the convicted individuals or not, for the payment in full or in part of the fines, fees and costs owed to the State, as well as civil damages.

121. Regarding war crimes, genocide, crimes of apartheid and crimes against humanity, the first paragraph of article 157 of the Criminal Code establishes that representatives of the State, including military leaders and other hierarchical superiors, members of organizations and institutions, and private individuals or groupings who commit or are accessories to, directly incite the commission of or are part of a conspiracy to commit any of the offences in question bear individual criminal responsibility and are liable to the penalties established for those offences.

122. Concerning the deterrent effect of these provisions with respect to the recruitment of children, it should be emphasized that, outside the context of recruitment by the State for service in the armed forces, the recruitment of children is not an issue in Togo at all.

123. Under articles 46–54 of the Code of Military Justice, the military courts are competent to try not only military offences but also ordinary offences under the Criminal Code, including the acts and offences covered by the Optional Protocol, which are considered to be war crimes and crimes against humanity. The ordinary courts will remain competent to handle these matters until such time as the military courts have become operational.

124. The Criminal Code contains provisions authorizing the Togolese courts to hear cases involving certain serious offences committed abroad. For example, article 155 establishes that “the provisions of the present chapter apply to offences committed in the national territory or abroad, irrespective of the nationality of the perpetrator or the accomplice or the place where the offence was committed”.

125. The serious offences concerned are genocide, war crimes, crimes against humanity and the crime of apartheid. The acts that are banned under the Optional Protocol and fall into the category of war crimes or crimes against humanity are covered by the principle of universal jurisdiction. The principle applies in all cases concerning children under the age of 18 years.

126. In practice, however, even though Togo recognizes universal jurisdiction, thus far none of its courts have heard a case on the basis of this fundamental principle. The capacity of the courts needs to be strengthened in order for them to be able to perform the functions assigned to them.

127. The legal framework for cooperation in criminal matters is made up of the international conventions ratified by Togo, the Constitution and national legislation. Togo has ratified the following regional conventions relating to international cooperation in criminal matters:

- The extradition treaty among Benin, Ghana, Nigeria and Togo, signed in Lagos on 10 December 1984
- The Economic Community of West African States (ECOWAS) Convention on Mutual Assistance in Criminal Matters, signed in Dakar on 29 July 1992
- The extradition agreement among West African States, adopted in Abuja in 1994
- The Agreement on Cooperation in Criminal Matters between the Police of Member States of ECOWAS, signed in Accra on 19 December 2003
- The Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa, signed in Abidjan on 27 July 2005 by Togo, Benin, Burkina Faso, Côte d’Ivoire, Guinea, Liberia, Mali, the Niger and Nigeria
- The Multilateral Cooperation Agreement to Combat Trafficking in Persons, Especially Women and Children, in West and Central Africa, signed in Abuja on 6 July 2006 by 27 States
- The bilateral agreement between Togo and Gabon, signed in New York on 25 September 2018

128. Relevant national laws include the Constitution of 14 October 1992 (art. 24), the Act of 10 March 1927 on the Extradition of Foreign Nationals and the Decree of 17 April 1928 on the Extradition Procedure and its Effects.

129. The extradition procedure is as follows:

- Once arrested, the person being sought must be brought before the State prosecutor of the place of arrest within 24 hours.

130. The State prosecutor must immediately conduct an interview to ascertain the person's identity and draw up a report of the interview. The report should include whether the person was notified of the fact that he or she would be placed in a short-stay prison to await extradition proceedings. The report must be signed by the State prosecutor, the individual concerned and the interpreter.

- If the State prosecutor exercises his or her functions at a court that is not located at the seat of the appeal court, he or she must request the transfer of the arrested person to the short-stay prison of the seat of that court.
- He or she then transmits the case file, together with a report, to the Prosecutor General.
- The Prosecutor General, following a second interview with the individual, requests the indictment chamber to consider whether the case meets the requirements for extradition.
- The indictment chamber may recommend rejecting the extradition request, thereby bringing proceedings to a close.
- However, if it finds that there are grounds for extradition, the Government must take the final decision through a decree submitted to the President. By decree, the Government is free to accede to or reject the extradition request.
- If the request is accepted, the requesting State has one month from the notification of the extradition decree to retrieve the individual; otherwise, the individual is released.

131. Concerning requests for extradition or judicial assistance, the first step is to check that:

- The person has been indicted or convicted
- There is a foreign element to the case
- The requirement of dual criminal liability is respected
- The penalty that may be or has been imposed is no less than 2 years' imprisonment, except in money-laundering cases, where no minimum duration is required
- There is a reciprocity treaty
- The extradition has not been requested in connection with a politically motivated or military offence

132. Once these precautions have been taken, the request is drawn up and, together with the relevant annexes, translated into the language of the requested State and transmitted through diplomatic channels.

133. Requests for judicial assistance are sent through diplomatic channels to the Ministry of Foreign Affairs, which transmits them to the Ministry of Justice for action. The following information must be included in such requests:

- The name of the requesting authority
- A summary of the facts
- The indictments and applicable laws
- A copy of any judicial assistance agreements between the requesting State and Togo
- A precise list and description of the actions to be taken
- Where available, the identity, address and nationality of all the individuals concerned
- A French translation of the case file if the requesting State is not French-speaking

134. This is the general procedure and is not specific to cases of offences under the Optional Protocol. Togo has not had to send or receive any requests for judicial assistance in connection with such offences.

#### **IV. Protection, recovery and reintegration (art. 6 (3))**

135. Togo does not use children in hostilities and is not in a situation of armed conflict.

136. Togo is not experiencing armed conflict and is therefore not confronted with the issue of child victims of offences under the Optional Protocol.

137. There is no public or private demobilization programme designed to provide social reintegration assistance to child victims of recruitment, as Togo is not in a situation of armed conflict.

138. Togo has not hosted any unaccompanied foreign children who have been involved in armed conflict.

139. There is no specific legal remedy for victims of recruitment. To obtain reparation, they must apply for the ordinary remedies established in the Code of Criminal Procedure. A complaint can be lodged with the prosecution service or the investigating judge, together with a claim for criminal indemnification. In this way, the victim simultaneously takes civil action with the aim of obtaining reparation for the harm suffered.

#### **V. International assistance and cooperation (art. 7 (1))**

140. Togo cooperates with other States in investigating and preventing acts contrary to the Optional Protocol within the framework of the International Criminal Police Organization (INTERPOL) and the international cooperation instruments mentioned in connection with paragraph 26 of the reporting guidelines. Togo is always open to all requests emanating from other countries. No cases of child soldiers have been recorded in Togo.

141. The country's cooperation with international partners, particularly UNICEF, in the area of children's rights encompasses the implementation and wide dissemination of the Optional Protocol, even though children's involvement in armed conflict is not an issue in Togo.

142. Togo ratified the Arms Trade Treaty on 8 October 2015. As for national legislation in that area, discussions have progressed well on the forthcoming adoption of a law regulating weapons, munitions, implements of war and related materials.

143. Firearms are currently governed by Decree No. 62-2 of 8 January 1962 regulating the import, possession and transfer of sophisticated weapons and their ammunition and by Decree No. 95-11/PR of 19 April 1995 regulating the import, possession and transfer of sophisticated hunting weapons and home-made firearms and their ammunition.

144. Togo stands ready to cooperate with the office of the Special Representative of the Secretary-General for Children and Armed Conflict should the need arise.

145. Togo fully supports the work of the United Nations to combat the unlawful recruitment of children by armed forces and groups and, as recommended by the Security Council, takes a comprehensive approach to preventing and combating the involvement of children in armed conflict.

146. In this connection, Togo welcomed Security Council resolution 1612 (2005) on the establishment of a monitoring and reporting mechanism regarding six types of violation of children's rights, namely, the recruitment or use of children, the killing or maiming of children, the abduction of children, rape or other grave sexual violence against children, attacks against schools and hospitals, and the denial of access to humanitarian organizations (see the statement by Togo following the adoption of Security Council resolution 2068 (2012) of 19 September 2012).

## **VI. Other legal provisions (art. 5)**

147. Togo has adopted a children's code (Act No. 2007-017 of 6 July 2007) that is more conducive to the realization of children's rights.

148. Togo takes into account the international instruments mentioned in paragraph 37 (c) of the reporting guidelines.

149. Togo has ratified the four Geneva Conventions of 1949 and Protocols I and II Additional thereto. It has also ratified the African Charter on the Rights and Welfare of the Child.

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