

DRAFT GUIDELINES ON THE IMPLEMENTATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

SUBMISSION TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

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Amnesty International welcomes the call for comments on the Draft Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The comments below focus on specific provisions in relation to the rights of trans, intersex and non-binary children and adolescents and in relation to training and education. It should not be seen as an exhaustive list of concerns or suggestions.

THE RIGHTS OF TRANS, INTERSEX, AND NON-BINARY CHILDREN AND ADOLESCENTS

Amnesty International welcomes that in paragraph 34 of the draft Guidelines, the Committee has noted the challenges faced by children in vulnerable situations, including LGBTI children. However, certain provisions in the Guidelines – as currently framed - appear restricted to the experience of children and adolescents who identify as “girls” or “boys”, which risks ignoring the experiences, realities and needs of non-binary children and adolescents who may not identify as “girls” or “boys”. It is also essential that the specific experiences and risks that trans and intersex children and adolescents face are taken into account. Amnesty International recommends amendments in the following provisions to take into account the particular needs and experiences of trans, intersex, and non-binary children and adolescents:

- i. Paragraph 4 recognizes “the gender dimension of sexual offences” and appears restricted to the experiences of girls and boys. It is important that the specific experiences of trans, intersex, and non-binary children are also acknowledged. There are various reasons why trans, intersex and non-binary children may be particularly vulnerable to becoming a victim of sale and sexual exploitation. The Committee on the Rights of the Child General Comment 20 on the implementation of the rights of the child during adolescence recognises that LGBTI adolescents “face persecution, including abuse and violence, stigmatization, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information”, which can lead to sexual assault, rape and even death in extreme cases as well as low self-esteem, higher rates of depression, suicide and homelessness.¹ In 2017, a group of human rights experts noted how “in some families, trans and gender diverse children remain stigmatized, ostracized, marginalized and rejected. Many of those children remain at risk of physical, sexual and psychological violence in community settings and within their own families”.²

Amnesty International recommends that the text of paragraph 4 be amended to clarify that the “gender dimension of sexual offences” are pertinent to all children and adolescents, including trans, intersex, and

¹ Committee on the Rights of the Child, General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, UN Doc. CRC/C/GC/20, 6 December 2016, Para 33.

² Embrace diversity and protect trans and gender diverse children and adolescents, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21622>

non-binary children and that response mechanisms should consider their specific needs and circumstances, including programmes to support children and their families.

- ii. Paragraph 34(c) asks states to take steps to prevent and end all harmful practices against children, noting that “the prevention of harmful practices requires a gender perspective, to ensure that different practices affecting boys and girls are adequately addressed”. Again, this risks ignoring the needs and realities of trans, intersex, and non-binary children and adolescents. Amnesty International recommends that the text be revised to clarify that these protections should apply equally to all children, without discrimination based on gender or gender identity.
- iii. In paragraph 56, the Guidelines ask states to “prohibit by law the sexual exploitation of children”. We ask that when states consider what amounts to sexual exploitation, they keep in mind that trans, intersex, non-binary children have very particular experiences that should be reflected in any effort to prohibit these acts.

TRAINING AND EDUCATION

The Committee noted in its General Comment No. 21 that “States should facilitate sensitization and training for other stakeholders who come into direct or indirect contact with children in street situations”.³ We suggest that the same recommendation be considered for professionals working in the areas covered by the draft Guidelines. Therefore, in paragraph 30(a), we suggest adding “and those likely to come into direct or indirect contact with children” so that the sentence reads “Ensure systematic and targeted training on the provisions of the OPSC and their implementation, including how to identify and address offences covered by the OPSC and foster child- and gender-sensitive approaches when dealing with child victims and survivors, to all relevant professionals and groups working with or for children, and those likely to come into direct or indirect contact with children.

We suggest that paragraph 31(c) “Train all police units investigating child sexual exploitation and abuse offences, including cases associated with the use of ICTs” should be expanded to clearly indicate that all police units, not just those investigating child sexual exploitation and abuse offences, should receive sensitization training. This is because a wider range of police personnel may come into contact with vulnerable and marginalized children and adolescents. For example, police forces may come into contact with children on the streets or any other places and they may be the first point of contact to receive and process complaints and/or inquiries whether face to face, on the phone or online.

Under paragraph 42(b) “mandatory school education on online behaviour and safety” should not be restricted to a school set-up only. This should also be provided for children that may be attending other educational and/or vocational initiatives. This would be particularly important for children living in street situations, shelters and in the juvenile detention system.

³ Committee on the Rights of the Child, General comment No. 21 (2017) on children in street situations, UN Doc. CRC/C/GC/21, 21 June 2017, para 18.