**Proyecto de Directrices sobre la implementación del Protocolo Facultativo de la Convención de los Derechos del Niño relativo a la venta de niños, la prostitución infantil y la utilización de niños en la pornografía**

**Comentarios del Gobierno de México**

|  |  |
| --- | --- |
| **DIRECTRIZ** | **COMENTARIO** |
| 29. To promote and support the implementation of the OPSC, information about this legal instrument should be widely disseminated at national, regional and local level. In order to enhance the understanding of the purpose and provisions of the OPSC States parties should:   1. Develop and conduct long-term educational and awareness-raising programmes and campaigns on preventive measures and harmful effects of all offences covered by the OPSC; 2. Systematically disseminate information on the provisions of the OPSC among government officials at the national, regional and local levels, among all relevant professional groups such as education, health, social welfare, judicial and law-enforcement sectors and in the areas of sport, culture, leisure activities and travel and tourism, and all other persons who have regular contact with children, as well as the public at large, in particular children and their families. Information material should be tailored to the audience, and children should receive age-appropriate, child- and gender-sensitive information; 3. Ensure that all persons, especially those caring for children, have an adequate knowledge of the different forms of sexual exploitation and abuse of children and of the means to detect them and identify victims, as well as of existing reporting mechanisms and how to use them whenever there is reasonable ground to believe that a child is a victim; 4. Ensure that issues relating to the provisions of the OPSC are included in school curricula at all levels of the educational system. In particular, children in primary and secondary school should receive appropriate materials created especially for children to learn about the risks of sexual exploitation and abuse as well as the means to protect themselves. Educational programmes should always include information on concrete practical ways for children to seek help and support, as well as to signal sexual abuse safely and confidentially. Information should be provided in collaboration with parents; 5. Take measures to target and reach also children who are outside of the formal school system, and who may be in situations making them more vulnerable to sale and sexual exploitation; 6. Encourage the media to provide appropriate information regarding all aspects of sexual exploitation of children, using appropriate terminology, while safeguarding the privacy and identity of child victims and child witnesses at all times. | Dada la importancia que las directrices dan al contexto actual de desarrollo y extensión en el uso de las Tecnologías de la Información y Comunicación (TIC), se sugiere que las directrices sobre difusión y sensibilización consideren explícitamente los derechos de niñas, niños y adolescentes en el acceso a las TIC, así como las violaciones a derechos contenidas en el Protocolo Facultativo cuando se realizan a través de éstas. Por ejemplo:  “(a) Develop and conduct long-term educational and awareness-raising programmes and campaigns on preventive measures and harmful effects of all offences covered by the OPSC, including when these are committed and/or facilitated through ICTs”  “(d) Ensure that issues relating to the provisions of the OPSC are included in school curricula at all levels of the educational system. In particular, children in primary and secondary school should receive appropriate materials created especially for children to learn about their rights and the risks of sexual exploitation and abuse as well as the means to protect themselves offline and online. Educational programmes should always include information on concrete practical ways for children to seek help and support, as well as to signal sexual abuse safely and confidentially. Information should be provided in collaboration with parents;”  En concordancia con las directrices 70, 71 y 72, niñas, niños y adolescentes deben aprender a protegerse a sí mismas en línea recibiendo información apropiada y suficiente sobre los riesgos del contenido autogenerado, el sexting y de compartir imágenes de otras NNA.  Por otro lado, en concordancia con la Observación General No. 9 “Los derechos de los niños con discapacidad” del Comité de los Derechos del Niño (CDN), se sugiere se explicite que la información que se brinde debe ser apropiada para niñas, niños y adolescentes con discapacidad. También se sugiere considerar la inclusión explicita de que sea en idiomas de niñas y niños pertenecientes a minorías étnicas.  Por ejemplo:  “(b) Systematically disseminate information on the provisions of the OPSC among government officials at the national, regional and local levels, among all relevant professional groups such as education, health, social welfare, judicial and law-enforcement sectors and in the areas of sport, culture, leisure activities and travel and tourism, and all other persons who have regular contact with children, as well as the public at large, in particular children and their families. Information material should be tailored to the audience, and children should receive age-appropriate, child- and gender-sensitive information, in appropriate technologies and languages for children with disabilities; and languages of indigenous children ” |
| 30. The provision of education and continued training of all relevant professionals, as well as support to families and caregivers, should be an integral part of any national policy and strategy for the implementation of the OPSC. States parties should:   1. 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; 2. Ensure that such training includes multidisciplinary programmes developed in consultation with relevant associations and professionals working with or representing child victims and survivors; 3. Strengthen cooperation and strategic partnerships with non-governmental organisations and use their expertise and advocacy materials to widen online literacy and safety among children and their families and promote responses to harm; 4. Conduct regular assessments of the training activities to ensure that the knowledge and skills acquired are translated into practice in order to effectively identify victims and protect children from the offences covered by the OPSC. | Considerando la situación de vulnerabilidad de niñas, niños y adolescentes con discapacidad frente a distintas formas de violencia, se sugiere explicitar que la capacitación debe incluir la detección y atención de formas de abuso y explotación sexual en su contra, Por ejemplo:  “(a) 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 and disability- sensitive approaches when dealing with child victims and survivors, to all relevant professionals and groups working with or for children;” |
| 1. With regard to specific groups who require specialised training, States parties should: 2. Ensure that teachers and other professionals working with various forms of education of children, including sports and cultural activities, receive adequate training in order to be able to effectively teach and speak with children about these issues; 3. Train health care professionals, who are often the first to notice signs of sexual abuse, as well as social workers and child welfare and child protection professionals to detect signs and to report them, and to address children who may be victims of sexual exploitation or sexual abuse in a child- and gender-sensitive manner; 4. Train all police units investigating child sexual exploitation and abuse offences, including cases associated with the use of ICTs, as well as prosecutors and the judiciary, to deal with child victims in a child- and gender-sensitive manner and to handle digital evidence and assess its weight and value, as well as to better understand child sexual exploitation and abuse cases associated with new technologies. | En concordancia con el comentario anterior, se sugiere explicitar que la capacitación a docentes, personas prestadoras de servicios de salud y policías incluya la detección y atención con enfoque de derechos de la niñez, perspectiva de género y consideración de la situación específica de niñas, niños adolescentes con discapacidad. |
| 1. The Committee recommends States parties to take all necessary measures, with due attention to the gender dimension, to identify, support and monitor children at risk of falling victims of the offences covered by the OPSC, especially children in vulnerable situations such as migrant and refugee children, children in street situations,[[1]](#footnote-1) child domestic workers, LGBTI children, children in alternative care and children deprived of liberty, children from economically vulnerable families and children experiencing social exclusion or isolation, and to strengthen prevention programmes and the protection of potential victims. To that end, States parties should:    1. Carry out studies to analyse and assess the nature, extent, root causes and consequences on children of the offences covered by the OPSC with a view to developing and adopting effective and targeted legislative, policy and administrative measures for the prevention of these offences;    2. Provide social protection and financial support, including income generating activities, to enable the economic empowerment of vulnerable families.    3. Prevent and end all harmful practices[[2]](#footnote-2) and pay special attention to those practices which amount to the sale, sexual exploitation or sexual abuse of children, such as child, early and forced marriage.[[3]](#footnote-3) The prevention of harmful practices requires a gender perspective, to ensure that different practices affecting boys and girls are adequately addressed. | En concordancia con los comentarios anteriores, se sugiere incluir a niñas, niños y adolescentes con discapacidad dentro de la niñez en situación de vulnerabilidad. |
| 43. Considering that child sexual abuse material, such as images and videos, can circulate indefinitely online, the Committee alerts States parties to the fact that the continuous circulation of such material, in addition to perpetuating the harm done to child victims, contributes to the promotion of a subculture in which children are perceived as sexual objects, and risks strengthening the belief among persons with a sexual interest in children that it is “normal” since many others share the same interest. The Committee therefore urges States parties to ensure that internet service providers control, block and, ultimately, remove such content as soon as possible as part of their prevention policies. | Se sugiere considerar la responsabilidad de proveedores de servicios de Internet en otras acciones, además del control, bloqueo y remoción de contenido perjudicial y dañino, incluyendo protección de datos personales e implementación y seguimiento de herramientas para el reporte. |
| 84. As a minimum, States parties must establish criminal jurisdiction over all offences mentioned in article 3, para. 1, as explained under the section on Prohibition, when they are committed in their territory, including on board of a ship or aircraft registered in their countries, regardless of the location of said ship or aircraft. This allows the State to investigate and prosecute all these offences regardless whether the alleged perpetrator or the victim is a national of that State. If necessary, the State can issue an international warrant for the arrest of the alleged perpetrator. The Committee urges States parties to adopt legislation to comply with this obligation if this is not already the case. | Se sugiere considerar en esta directriz y en todas las relacionadas con la jurisdicción y extradición, la situación de las niñas, niños y adolescentes migrantes y solicitantes de la condición de refugiados. |
| 103. The Committee reminds States parties of their obligation to provide appropriate support and legal counselling to assist child victims of offences covered in the OPSC at all stages of criminal justice proceedings and protect their rights and interests, and to ensure that such proceedings are carried out in the best interest of the child. This includes:   1. Ensuring that legal and investigative procedures, including methods of questioning, are child- and gender-sensitive, while also enabling officials to adapt such procedures to the special needs and preferences of the individual child, to avoid the secondary victimisation of the child. To that end, confrontation with the alleged offender and multiple interviews should be avoided. Police officers, judges, procedutors and lawyers should be sensitised to children’s rights and child-friendly justice measures; 2. Protecting the privacy of child victims in investigation and trial procedures, as well as ensuring legal and practical measures to guarantee appropriate and sufficient protection of child victims from intimidation and retaliation; 3. Providing free legal aid and assigning (depending on the national legal system) a lawyer or guardian ad litem or another qualified advocate to represent the child. Moreover, providing access to and support of medical personnel, child psychiatrists, psychologists and social workers to every child victim during the criminal justice process and ensuring that these professionals are well-trained and able to build relationships of trust with children; 4. Making efforts to avoid the need for child victims to be physically present during criminal proceedings, including when they are giving evidence, and to make use, where possible, of appropriate communication technologies to enable child victims to be heard during the trial without being present in the courtroom.[[4]](#footnote-4) This also becomes essential in judicial proceedings involving OPSC offences committed against children abroad, to enable testimonies from victims in other countries. If such technological means are unavailable, or if the child’s physical presence is absolutely necessary during a trial, States parties should ensure that the child is not confronted with the alleged perpetrator, e.g. by placing a screen between the two. 5. Taking special precautionary measures, as needed, when the alleged perpetrator is a parent, a member of the family, another child, or a primary caregiver. Such measures should involve careful consideration of the fact that a child’s disclosure should not worsen her/his situation and that of the other non-offending members of the family, and should not aggravate the trauma experienced by the child. The Committee encourages States parties to consider removing the alleged perpetrator rather than the child victim, since removal can be experienced by the child as a punishment. | Se sugiere explicitar que los procedimientos legales y de investigación deben realizarse en atención a la situación de niñas, niños y adolescentes con discapacidad, migrantes y solicitantes de la condición de refugiados, en un idioma que la niña, niño o adolescente comprenda.  Así mismo, niñas, niños y adolescentes deben recibir información apropiada y suficiente sobre el proceso y sus resultados y su opinión debe ser considerada en todo momento. |
| 106. The Committee reminds States parties that providing redress to child victims, compensating them for the harm suffered and enabling their recovery and reintegration is as important as punishing the offenders, and is also an obligation under articles 9.3 and 9.4 OPSC. To that end, the Committee recommends that States parties:  a. Ensure that the relevant services for the medical care, social reintegration and physical and psychological recovery of victims are accessible free of cost throughout the country to all children who need them, and that persons providing such services have certified training and the necessary expertise;  b. Develop a comprehensive continuum of care and support that includes closely-monitored, post-trial reintegration services, including for foreign victims;  c. Carefully consider which form of compensation is preferable for each victim, depending on her/his specific situation and prospects for life . In addition or as an alternative to cash payments, it is possible to provide compensation in the form of financial or other support to education and/or income generating activities, which could benefit the victim in the long term. | Sobre niñas, niños y adolescentes víctimas que sean extranjeros, se sugiere explicitar la atención a niñez migrante, solicitante de refugio y víctimas de tráfico internacional.  Así mismo, se sugiere hacer explícito que considerar para la compensación la situación y perspectivas de vida de niñas, niños y adolescentes incluye brindarles información y asesoramiento suficientes y apropiados y considerar su opinión. |
| 115. In accordance with article 10 OPSC, States parties are required to cooperate more broadly for the prevention, detection, investigation, prosecution and punishment of those responsible for acts related to the offences covered by the OPSC. Such cooperation should cover, inter alia, effective detection and reporting systems, information-sharing, safeguarding and transmission of evidence of crimes, including electronic evidence in a timely manner. Cooperation should also cover the assistance to victims in their recovery, reintegration and repatriation, where appropriate. | Se sugiere explicitar que la consideración de acciones de recuperación, reintegración y repatriación cuando sean apropiadas debe atender el derecho de la niña, niño o adolescentes a ser escuchado y a que su opinión sea tomada en cuenta, así como a la consideración de su interés superior:  “115. In accordance with article 10 OPSC, States parties are required to cooperate more broadly for the prevention, detection, investigation, prosecution and punishment of those responsible for acts related to the offences covered by the OPSC. Such cooperation should cover, inter alia, effective detection and reporting systems, information-sharing, safeguarding and transmission of evidence of crimes, including electronic evidence in a timely manner. Cooperation should also cover the assistance to victims in their recovery, reintegration and repatriation, where appropriate considering the child’s views and best interests”. |

1. General Comment No. 21 (2017). [↑](#footnote-ref-1)
2. General Comment No 18 (2015). See also The Sustainable Development Goals (2016 – 2030) target 5.3. calling for the elimination of harmful practices by 2030. [↑](#footnote-ref-2)
3. ECPAT International and PLAN International, “Unrecognised Sexual Abuse and Exploitation of Children in Child, Early, and Forced Marriage” (2015). [↑](#footnote-ref-3)
4. See Lanzarote Committee, 1st Implementation Report, Protection of children against sexual abuse in the circle of trust, the framework. [↑](#footnote-ref-4)