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RECOMMENDATIONS FOR PROTECTION OF THE RIGHTS OF ADOLESCENTS IN THE NATIONAL CHILD PROTECTION POLICY

While congratulating the MWCD's initiative in drafting a national child protection policy, we draw your attention to the category of adolescents among children, whose special needs and capacities must be specifically acknowledged in the policy. Given the vast demographic of adolescent (and youth) populations, this policy must explicitly mention the importance of applying the principle of 'evolving capacities' for measuring and formulating protections for different groups of children, based on their age and other distinct capabilities.

Since the category of child covers 0-18 years, a wide age group, across different ages, abilities and contexts, international law requires that the principle of "best interests of the child" be animated by the understanding of "evolving capacities of the child." These two key principles must find mention in any policy as they operate together to guide the protections designed for children. The UN Convention on the Rights of the Child (CRC) requires the needs and vulnerabilities arising from age, gender and sexuality, abilities and socio-economic locations, be considered in formulating the "best interest" of a child in a given situation. Unfortunately, such guidance finds no mention in the draft policy on the child. As a result, the policy fails to explicitly acknowledge the need for distinct responses for age, disability, contexts of poverty, conflict, marginalisation, and so on. This submission therefore, focuses on integrating the lens of 'evolving capacities' in relation to adolescents as a category of children. This submission sets out the international and domestic legal framework on evolving capacities, before proceeding to make recommendations to specific provisions of the draft policy.

International legal framework: At the outset, it is Article 5 of the UN CRC that obliges States Parties, including India, and all stakeholders to formulate rights, duties and guidance towards children "in a manner consistent with the evolving capacities of the child," including in the application of the "rights recognised in the present Convention."



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CRC General Comment 14 clarifies that the assessment of what might be best interests of the child must not be treated as fixed, universal and definitive across all situations but are in fact contingent on “the physical, emotional, educational and other needs at the specific moment of the decision” as well as the development in the short and long term. The decisions must “assess continuity and stability of the child’s present and future situation.”

Applying the evolving capacities to the category of adolescents, the UN CRC’s General Comment 20 elaborates: “The Committee defines evolving capacities as an enabling principle that addresses the process of maturation and learning through which children progressively acquire competencies, understanding and increasing levels of agency to take responsibility and exercise their rights.’ And further that, while this principle applies to all persons under 18 years, it must specifically ensure “the realization of the rights of adolescents”, recognising that these will “differ significantly from those (rights) adopted for younger children.” That age at which capacities for different fields may not be uniform but may vary depending on levels of understanding and risks involved, is the rationale for the Committee to recommend that “States introduce minimum legal age limits, consistent with the right to protection, the best interests’ principle and respect for the evolving capacities of adolescents.”

Domestic legal framework: While the category of adolescent is recognised more evenly in international law, it is uneven and ad hoc in domestic law and policy. We urge that this policy acknowledges adolescent as a category to ensure that measures and protections taken in relation to adolescent is commensurate with their evolving capacities.

In India, the laws are inconsistent in their recognition and application of evolving capacities of the adolescent. For example, while the POCSO erroneously denies the right to sexual consent to younger and older adolescents, treating even consensual, non-exploitative and non-coercive sexual contact between peers as ‘sexual abuse’, some of the other laws do differentiate the capacities of adolescents. The Child Labour (Prohibition and Regulation) Amendment Act, 2015 recognised the categorisation of the adolescent between 14 and 18 years of age for regulating the exploitation of their labour. In adjudicating child custody between separated parents, the development abilities, agency and choice of the child is taken into account. Penal laws affix different meanings of a ‘child’ and ‘minor’ with distinctions between boys and girls in relation to



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the offences of kidnapping, trafficking (Immoral Traffic (Prevention) Act), as child witnesses, as regards criminal responsibility even. The Plantations Labour Act, 1951 identifies a child as being under 15 years of age, an adolescent as being between 15 to 18 years and an adult as being above 18 years. The National Youth Policy, 2014, states that a youth is a person in the age - group 15-29 years, recognizing that "different segments of youth would have different needs and concerns, which needs to be addressed." Likewise, the National Health Policy, 2017 has included adolescent as a component in the RMNCH (reproductive maternal neonatal child health) component of policy. The Guidelines issued by the Ministry of Health and Family Welfare on the Medico-legal care for Survivors/Victims of Sexual Violence also recognize adolescents as uniquely vulnerable and as requiring special attention and care.

Specific policy recommendations: In light of the above, we strongly urge the MWCD to integrate the following inputs in the policy.

1. Explicitly acknowledge that the interests and nature of protections for the child be commensurate with their capacities and age – especially in light of adolescents (and children with disability, amongst others), in the introductory part of the policy.
2. That the vision statement is rephrased to as: **To stay safe, secure and be assured that the capacities of a child are enabled and respected, in all settings and circumstances.**
3. Guidelines for medical establishments must include: provision of quality, safe, confidential and legal sexual and reproductive health information and services in line with the evolving capacities of the child, their sexual orientation and gender identity.
4. Abortion services for children and adolescent must be seen as legal, without subjecting them to ‘medical board’ evaluations that have often been faulty and protracted, resulting in the child rape victims being forced to carry pregnancies to full term. The MTP Act should be amended to ensure it protects the best interests of child rape victims.
5. The POCSO Act be amended to ensure that minimum age of sexual consent be restored to 16 years, for non-exploitative, non-coercive, consensual sex between peers/ persons of proximate ages. The proximity clause, also known as the Romeo Juliet clause can be applied to consensual partners between a 5-7 years age gap. This is urgent and necessary



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to prevent the use of law to harm instead of protect the best interest of the adolescent in line with their evolving capacities.

6. Guidelines for educational institutions must include provision of age appropriate compulsory comprehensive sexuality education, under the life skills programme – which includes not just information about biological reproduction but about gender identities, relationships, sexuality without stigma or prejudice.

We would urge the MWCD to (a) extend the time for seeking inputs to finalise the policy; and (b) organize consultations with different groups working with children across ages, abilities and contexts – in particularly with groups working with adolescents, to understand the specific needs of this population group and the ways in which the MTPA and POCSO often serve to exacerbate their vulnerability and stigma for girls while harshly curtailing life chances of boys criminalized for consensual sex. The policy related consultations are a welcome opportunity to nuance the guidelines necessary for shaping institutional responses to children – which must be undertaken by engaging with organisations/ experts working with different groups of children.

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