



COMMITTEE ON THE RIGHTS OF THE CHILD

**INTERNATIONAL COMMISSION OF JURISTS (ICJ)  
INITIAL SUBMISSION ON A  
GENERAL COMMENT ON THE RIGHTS OF ADOLESCENTS**

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## INTRODUCTION

1. The International Commission of Jurists (ICJ) welcomes this opportunity to provide input into the Committee on the Rights of the Child's ("the Committee") elaboration of a General Comment on the rights of adolescents under the Convention on the Rights of the Child ("the Convention").
2. This submission focuses on adolescents' right to comprehensive sexuality education, as a human right with specific relevance to the respect, protection and realization of the rights of adolescents under the Convention. The ICJ considers that the right to comprehensive sexuality education entitles adolescents, among other things, to education that aims to enhance their understanding of and respect for diverse sexual orientations,<sup>1</sup> gender identities<sup>2</sup> or expressions, without discrimination.
3. Adolescence is "a period characterized by rapid physical, cognitive and social changes, including sexual and reproductive maturation". One of the challenges of adolescence is "developing an individual identity and dealing with one's sexuality".<sup>3</sup> In this context, UNESCO has noted that, "children and young people have a specific need for the information and skills provided through sexuality education that makes a difference to their life chances".<sup>4</sup>
4. In light of this, the ICJ considers that the inclusion of comprehensive sexuality education, as a specific topic to be addressed by the forthcoming General Comment on the rights of adolescents, is warranted especially given that "[t]he largest generation of adolescents ever in history is now entering sexual and reproductive life".<sup>5</sup> Moreover, a literature review of the sexuality education field shows that about two-thirds of rigorously evaluated, comprehensive sexuality education programmes have led to a reduction in "risk behaviours" among beneficiaries.<sup>6</sup>
5. The 1994 International Conference on Population and Development (ICPD) Programme of Action explicitly calls on governments to provide education on sexuality in order to promote the well being of adolescents.<sup>7</sup> However, in a 2010 report to the General Assembly, the Special Rapporteur on the right to education pointed to "a worrying lack of comprehensive and sustainable public policies in this area ... [T]he perspectives of rights, gender, sexual diversity, disability and non-discrimination are not incorporated

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<sup>1</sup> Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. See Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf).

<sup>2</sup> Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms. See Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf).

<sup>3</sup> Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (2003), para. 2.

<sup>4</sup> UNESCO, *International Technical Guidance on Sexuality Education* (2009), p. 7.

<sup>5</sup> UN Secretary General, Report: Framework of Actions for the follow-up to the Programme of Action of the International Conference on Population and Development (ICPD) Beyond 2014, UN Doc. E/CN.9/2014/4 (2014), para. 65.

<sup>6</sup> See UNESCO, *International Technical Guidance on Sexuality Education* (2009), p. 13-17. In contrast, programmes that teach only abstinence have not proved to be effective (ibid; also see, among others, Collins, Alagiri, Summers and Morin, *Abstinence only vs. comprehensive sex education: What are the arguments? What is the evidence? – Policy Monograph Series* (2002), AIDS Research Institute – University of California, San Francisco). Also see the criticism by the Special Rapporteur on the right to the highest attainable standard of physical and mental health on the inadequate curricula in Poland, which "touch only to a very limited extent on issues of sexuality and procreation, merely promoting abstinence and traditional methods of family planning. The curriculum also lacks science and evidence-based information on contraception, abortion and non-discriminatory content on gender and sexual orientation." (Report to the Human Rights Council on a mission to Poland, UN Doc. A/HRC/14/20/Add.3 (2010), para. 25.)

<sup>7</sup> ICPD Programme of Action, para. 4.29, 7.37, 7.41 and 7.47.

into the provisions of sexual education”.<sup>8</sup> Furthermore, in his 2014 report on the implementation of the ICPD Programme of Action, the UN Secretary General noted that, “few countries have made measurable progress towards integrated sexual and reproductive health services or managed to provide comprehensive education on human sexuality to all adolescents and youth [sic]”.<sup>9</sup>

6. As stated by the Special Rapporteur on the right to education, “sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual orientation or gender identity. Sexual education is a basic tool for ending discrimination against people of diverse sexual orientations.”<sup>10</sup> However, regrettably few sexual education programmes and curricula include a sexual diversity approach.<sup>11</sup> The Special Rapporteur further stated that, “[t]here is no valid excuse for not providing people with the comprehensive sexual education that they need in order to lead a dignified and healthy life”.<sup>12</sup>
7. The ICJ commends the above-mentioned observations about the critical importance of comprehensive sexuality education to the Committee’s attention in the context of its elaboration of a new general comment on adolescents’ rights under the Convention.

#### **A HOLISTIC, CHILD-RIGHTS BASED APPROACH: THE PRINCIPLE OF NON-DISCRIMINATION**

8. The rights embodied in the guiding principles of the Convention<sup>13</sup> – the right to non-discrimination (Article 2); the right of children to have their best interests viewed as a primary consideration in all actions concerning them (Article 3); the right to life, survival and development (Article 6); and children’s right to have their views given due weight in accordance with their age and maturity (Article 12) – should always be afforded critical importance in the interpretation of States Parties’ obligations under the Convention. As much is also true in the context of articulating and elucidating the content of adolescents’ right to comprehensive sexuality education and States parties’ correlative obligations under the Convention.
9. Given this submission’s focus on the provision of comprehensive sexuality education with a view to enhancing understanding of and respect for diverse sexual orientations, gender identities or expressions, it must be stressed, in particular, that States parties to the Convention are obliged under Article 2 to ensure that children enjoy all the rights set forth in the Convention without discrimination. As noted by the Committee, “[d]iscrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities”.<sup>14</sup> Furthermore, as the Committee elucidated, prohibited

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<sup>8</sup> Special Rapporteur on the right to education, Report to the General Assembly, UN Doc. A/65/162 (2010), para. 78.

<sup>9</sup> UN Secretary General, Report: Framework of Actions for the follow-up to the Programme of Action of the International Conference on Population and Development (ICPD) Beyond 2014, UN Doc E/CN.9/2014/4 (2014), para. 22.

<sup>10</sup> Special Rapporteur on the right to education, Report to the General Assembly, UN Doc. A/65/162 (2010), para. 23. Also see International Planned Parenthood Federation, *IPPF Framework for Comprehensive Sexuality Education* (2010), p. 7 (Olsson’s adapted “Stairs of Tolerance”).

<sup>11</sup> Special Rapporteur on the right to education, Report to the General Assembly, UN Doc. A/65/162 (2010), para. 67.

<sup>12</sup> Special Rapporteur on the right to education, Report to the General Assembly, UN Doc. A/65/162 (2010), para. 15.

<sup>13</sup> The guiding principles of the Convention represent the underlying requirements for any and all rights to be realized. See, UNICEF, Convention on the Rights of the Child, Rights under the Convention on the Rights of the Child, [http://www.unicef.org/crc/index\\_30177.html](http://www.unicef.org/crc/index_30177.html).

<sup>14</sup> Committee on the Rights of the Child, General Comment No. 1: The aims of education, UN Doc. CRC/GC/2001/1 (2001), para. 10.

grounds of discrimination include, among others, “adolescents’ sexual orientation”<sup>15</sup> and gender,<sup>16</sup> gender identity or expression.<sup>17</sup>

10. In order to guarantee the exercise of rights without discrimination, discrimination itself must be eliminated both formally and substantively; the latter requires the adoption of measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate substantive or de facto discrimination.<sup>18</sup> Indeed, substantive equality requires the undertaking of positive measures.
11. In this regard, education is a fundamental vehicle to combat discrimination and realize human rights. The Committee on Economic, Social and Cultural rights identified, as part of the strategies, policies, and plans of action that should be in place and implemented in order to address both formal and substantive discrimination, among other things, “teaching on the principles of equality and non-discrimination” that should be “integrated in formal and non-formal inclusive and multi-cultural education, with a view to dismantling notions of superiority or inferiority based on prohibited grounds and to promote dialogue and tolerance between different groups in society”.<sup>19</sup>
12. Although beyond the scope of this submission, it should be noted that individuals belonging to particular groups may be disproportionately affected by intersectional discrimination in the context of the right to sexual and reproductive health. The Committee on Economic, Social and Cultural rights has in this context identified, among others, groups such as older or poor women; persons with disabilities; national, ethnic, religious and linguistic minorities; aboriginals and indigenous peoples; persons working in the sex industry; LGBTI persons; and, people living with or affected by HIV and AIDS.<sup>20</sup> Given the historically unequal power relations between men and women, protection of the human right to comprehensive sexuality education is especially important in ensuring the enjoyment of adolescent girls’ right to live free of violence and gender discrimination.<sup>21</sup> Further, because of women’s reproductive capacities, the realization of sexual and reproductive health is essential to the realization of the full

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<sup>15</sup> See e.g., Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (2003), para. 2.

<sup>16</sup> Committee on the Rights of the Child, General Comment No. 1: The aims of education, UN Doc. CRC/GC/2001/1 (2001), para. 10 states, “gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls’ participation”.

<sup>17</sup> See, for example, the Committee’s Concluding observations on the combined second to fourth periodic reports of Iraq, where the Committee expressed concern “about persistent discrimination against various groups of children in the State party, including... lesbian, gay, bisexual and transgender children, children who are cared for by persons from these groups and children demonstrating non-conformist social behavior”, and recommended that “the State party: ... Ensure that children who belong to lesbian, gay, bisexual and transgender groups or who are cared for by persons from these groups, as well as children demonstrating non-conformist social behaviour, are not subjected to any form of discrimination, by raising the public’s awareness of equality and non-discrimination on the basis of sexual orientation and gender identity” (UN Doc. CRC/C/IRQ/CO/2-4 (2015), para. 19 and 20).

<sup>18</sup> Committee on the Rights of the Child, General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/5 (2003), para. 3, 12 and 30; Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20 (2009), para. 8. Also see, among others, Human Rights Committee, General Comment No. 18: Non-discrimination, UN Doc. HRI/GEN/1/Rev.6, p. 147 et seq. (1989), in particular para. 10.

<sup>19</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20 (2009), para. 38.

<sup>20</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20 (2009), para. 15-35.

<sup>21</sup> See CEDAW, Article 5 and 10(h). Also see Committee on the Elimination of Discrimination against Women, General Recommendation No. 24: Women and health, UN Doc. A/54/38/Rev.1 (1999), para. 30: In States parties reports, “[p]articular attention should be paid to the health education of adolescents”. That Committee continually calls upon States to implement sexual education programmes, see, among others, Concluding Comments: Venezuela, UN Doc. CEDAW/C/VEN/CO/6, para. 32; Concluding Comments: Burundi, UN Doc. A/56/38, para. 62; Concluding Comments: Spain, UN Doc. A/54/39, para. 266.

range of their human rights. Gender equality requires that states take into account and provide services for women's differing health needs.

13. In the context of this submission, two aspects should in particular be stressed:
- a. The non-discrimination dimension of the accessibility element; and,
  - b. The acceptability element, which the Committee on the Rights of the Child defines as the obligation to design and implement all health-related facilities, goods and services in a way that takes full account of and is respectful of medical ethics as well as children's needs, expectations, cultures, views and languages, paying special attention to certain groups, where necessary.
14. The pre-eminent status of the principle of non-discrimination as one of the fundamental underpinnings of international human rights law entails that cultural acceptability cannot be used to justify discrimination or other human rights violations related to sexual and reproductive health, including the refusal to provide tailored facilities, goods, information and services, which comprises comprehensive sexuality education.

### **THE RIGHT TO COMPREHENSIVE SEXUALITY EDUCATION IN INTERNATIONAL LAW**

15. While certain obligations imposed for example by the International Covenant on Economic, Social and Cultural Rights (ICESCR) are subject to the progressive realization principle, meaning that, for instance, as far as children are concerned, States Parties are obliged to fulfil their economic, social and cultural rights "to the maximum extent of their available resources",<sup>22</sup> under the ICESCR, even though States may realize economic, social and cultural rights progressively, they must also take immediate action, irrespective of the resources they have, in the elimination of discrimination. States must prohibit discrimination in, for instance, health care, education and the workplace immediately. Discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status must be prohibited.<sup>23</sup>
16. In this context, the Committee has clarified that "[a]ll States, regardless of their level of development, are required to take immediate action to implement these obligations [i.e. to respect, protect and fulfil children's rights] as a matter of priority and without discrimination of any kind".<sup>24</sup> Moreover, as the Committee on Economic, Social and Cultural Rights has clarified, progressive realization means that States parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of rights.<sup>25</sup> The same Committee has non-exhaustively identified as "appropriate" measures for these purposes "administrative, financial, educational and social measures".<sup>26</sup>
17. Education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate<sup>27</sup> is a right in itself,<sup>28</sup> and a means to protect and fulfil children's interconnected and interdependent rights to, among others, the highest attainable standard of health (Article 24), to life, survival and development (Article 6), to education (Articles 28-29) and to information (Article 17).

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<sup>22</sup> CRC, Article 4.

<sup>23</sup> Office of the United National High Commissioner for Human Rights, Frequently asked questions on Economic, Social and Cultural Rights: Fact Sheet No. 33.

<sup>24</sup> Committee on the Rights of the Child, General Comment No. 15: Right of the child to the enjoyment of the highest attainable standard of care, UN Doc. CRC/C/GC/15 (2013), para. 72.

<sup>25</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations, UN Doc. E/1991/23 (1990), para. 2, 9 and 11. Also see e.g., Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 31.

<sup>26</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of States parties' obligations, UN Doc. E/1991/23 (1990), para. 7.

<sup>27</sup> UNESCO, International Technical Guidance on Sexuality Education (2009).

<sup>28</sup> Special Rapporteur on the right to education, Report to the General Assembly, UN Doc. A/65/162 (2010), para. 61.

18. The UN Population Fund defines comprehensive sexuality education as a rights-based and gender-focused approach to sexuality education, whether in school or out of school. It aims to equip children and young persons with the knowledge, skills, attitudes and values that will enable them to develop a positive view of their sexuality, in the context of their emotional and social development.<sup>29</sup> While to a certain extent variety in the local context implies differences in emphasis in regard to specific content, UNFPA has identified a number of core principles regarding comprehensive sexuality education. They comprise, among other things, respect for human rights and diversity, and addressing vulnerabilities and exclusion.<sup>30</sup> Indeed, a "rights-based approach [to comprehensive sexuality education] puts the fight against inequality, discrimination and stigmatization at the core of its programming."<sup>31</sup>
19. The Committee has noted that "[h]ealth-seeking behaviour is shaped by the environment in which it takes place, including ... levels of health knowledge, life skills and values. States should seek to ensure an enabling environment to encourage appropriate health-seeking behaviour by parents and children."<sup>32</sup> Furthermore, States should consider allowing children, in accordance with their evolving capacities, to consent to certain medical treatments and interventions without the permission of a parent or guardian, such as "sexual and reproductive health services, including education and guidance on sexual health".<sup>33</sup> The Committee has further pointed out that "[c]hildren's right to health contains a set of freedoms and entitlements. The freedoms, which are of increasing importance in accordance with growing capacity and maturity, include the right to control one's health and body, including sexual and reproductive freedoms to make responsible choices".<sup>34</sup> With regard to the obligation "to ensure that all segments of society ... have access to education and are supported in the use of basic knowledge of children's health",<sup>35</sup> the Committee has stated that "[c]hildren require information and education on all aspects of health to enable them to make informed choices in relation to their lifestyle and access to health service".<sup>36</sup> In this context, "[s]exual and reproductive health education should include self-awareness and knowledge about the body ... It should include content related to sexual health and well-being ... designed in a manner through which children are able to gain knowledge regarding reproductive health and the prevention of gender-based violence, and adopt responsible sexual behaviour."<sup>37</sup>
20. In order to fulfil their obligations in respect of the right to the highest attainable standard of health, States must ensure that all health services and programmes comply with the criteria of availability, accessibility, acceptability and quality.<sup>38</sup> These

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<sup>29</sup> UNFPA, *Operational Guidance for Comprehensive Sexuality Education: A Focus on Human Rights and Gender* (2014), p. 6. The UNFPA definition is consistent with the 1994 ICPD Programme of Action; Commission on Population and Development: Resolution 2009/1, para. 7 and Resolution 2012/1, para. 26; and UNESCO's International Technical Guidance on Sexuality Education.

<sup>30</sup> UNFPA, *Operational Guidance for Comprehensive Sexuality Education: A Focus on Human Rights and Gender* (2014), p. 7; UNFPA, *Comprehensive Sexuality Education: Advancing Human Rights, Gender Equality and Improved Sexual and Reproductive Health* (2012), p. 15-20, in the context of this submission in particular see p. 19: "To achieve universal access, barriers due to poverty or to discrimination must be eliminated and special efforts made to serve different populations with particular vulnerabilities - ... people of different sexual orientations or gender identities ... In the context of HIV prevention ... men who have sex with men ... require special attention."

<sup>31</sup> UNFPA, *Comprehensive Sexuality Education: Advancing Human Rights, Gender Equality and Improved Sexual and Reproductive Health* (2012), p. 19.

<sup>32</sup> Committee on the Rights of the Child, General Comment No. 15: Right of the child to the enjoyment of the highest attainable standard of care, UN Doc. CRC/C/GC/15 (2013), para. 30.

<sup>33</sup> Committee on the Rights of the Child, General Comment No. 15: Right of the child to the enjoyment of the highest attainable standard of care, UN Doc. CRC/C/GC/15 (2013), para. 31.

<sup>34</sup> Committee on the Rights of the Child, General Comment No. 15: Right of the child to the enjoyment of the highest attainable standard of care, UN Doc. CRC/C/GC/15 (2013), para. 24.

<sup>35</sup> CRC, Article 24(2)(e).

<sup>36</sup> Committee on the Rights of the Child, General Comment No. 15: Right of the child to the enjoyment of the highest attainable standard of care, UN Doc. CRC/C/GC/15 (2013), para. 59.

<sup>37</sup> Committee on the Rights of the Child, General Comment No. 15: Right of the child to the enjoyment of the highest attainable standard of care, UN Doc. CRC/C/GC/15 (2013), para. 60.

<sup>38</sup> Committee on the Rights of the Child, General Comment No. 15: Right of the child to the enjoyment of the highest attainable standard of care, UN Doc. CRC/C/GC/15 (2013), para. 112-116. Also see Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 12.

standards also apply to the underlying determinants, or the preconditions of health, including access to comprehensive sexuality education and sexual and reproductive health information.

21. The above in turn underscores the interrelationship between adolescents' rights to the highest attainable standard of health (Article 24); to life, survival and development (Article 6); to information (Article 17); to have their best interests viewed as a primary consideration in all actions concerning them (Article 3); to have their views given due weight in accordance with their age and maturity (Article 12); and the right to comprehensive sexuality education (Articles 28 and 29). Comprehensive sexuality education is recognized as "extremely important" in view of the threat of HIV/AIDS and sexually transmitted diseases, in particular for groups at risk.<sup>39</sup> In respect of the particular significance of HIV/AIDS education, UNESCO noted that young people face risks and threats, including HIV/AIDS, that limit learning opportunities and challenge education systems and that in order to protect them from these risks, "youth-friendly programmes must be made available to provide the information, counselling and services needed".<sup>40</sup> Quality HIV and AIDS education embodies a number of cross-cutting principles, including being rights-based, inclusive and scientifically accurate. Further, "[i]t is delivered in safe and secure learning environments that are free from stigma, discrimination ... [and] homophobia".<sup>41</sup>
22. The Committee has "emphasize[d] that effective HIV/AIDS protection requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that, consistent with their obligations to ensure the right to life, survival and development of the child (art. 6), States parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality."<sup>42</sup> In this context, Governments, as part of their commitments to address the HIV/AIDS crisis, had undertaken to "develop and/or strengthen strategies, policies and programmes ... to reduce the vulnerability of children and young people by ... expanding good quality youth-friendly information and sexual health education and counselling service".<sup>43</sup>
23. Furthermore, the concepts of "health and development", as clarified by the Committee, must be understood more broadly than being strictly limited to the provisions defined in Articles 6 and 24 of the Convention.<sup>44</sup>
24. Accordingly, addressing State parties' obligations pertaining to adolescents' health and development, the Committee has stated that, "States parties must notably fulfil the following obligations: ... To ensure that adolescents have access to information that is essential for their health and development and that they have opportunities to participate in decisions affecting their health (notably through informed consent and the right of confidentiality), to acquire life skills, to obtain adequate and age-appropriate information, and to make appropriate health-choices ... [and] to ensure that adolescent girls and boys have the opportunity to participate actively in planning

<sup>39</sup> Special Rapporteur on the right to education, Report to the General Assembly, UN Doc. A/65/162 (2010), para. 14. Also see, among others, CRC, General Discussion on children living in a world with HIV/AIDS, UN Doc. CRC/c/80 (1998), para. 243; CRC, Concluding Observations: Colombia, UN Doc. CRC/C/15/Add.137 (2000), para. 49; CRC, Concluding Observations: Ethiopia, UN Doc. CRC/C/15/Add.144 (2001), para. 60-61; CESCR, Concluding Observations: Ukraine, UN Doc. E/C.12/1/Add.65 (2001), para. 18 and 31; CEDAW, General Recommendation No. 24: Women and health, UN Doc. A/54/38, para. 18 and 31(b); CEDAW, Concluding Observations: Nigeria, UN Doc. CEDAW/C/NGA/CO/6 (2008), para. 334;

<sup>40</sup> UNESCO, Expanded Commentary on the Dakar Framework for Action – Education for All: Meeting our Collective Commitments (2000), para. 35.

<sup>41</sup> EDUCAIDS, *Framework for Action* (January 2008 – 2<sup>nd</sup> edition), p. 10. EDUCAIDS, the Global Initiative on Education and HIV & AIDS, is a UNAIDS initiative led by UNESCO.

<sup>42</sup> Committee on the Rights of the Child, General Comment No. 3: HIV/AIDS and the rights of the child, UN Doc. CRC/GC/2003/3 (2003), para. 16; Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 34.

<sup>43</sup> General Assembly, Resolution: Declaration of Commitment on HIV/AIDS, UN Doc. A/RES/S-26/2 (2001), para. 63.

<sup>44</sup> Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (2003), para. 4.

and programming for their own health and development".<sup>45</sup> Further, "[t]he right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit".<sup>46</sup>

25. Guaranteeing informed consent in the context of sexual and reproductive health implies the provision of adequate and appropriate information on sexuality. It must be realized with every protection against stigmatization or discrimination on any grounds.<sup>47</sup> Principles 17 and 18 of the Yogyakarta Principles highlight the importance of safeguarding informed consent of sexual minorities as a component of the right to the highest attainable standard of health and protection from medical abuses.<sup>48</sup> The Special Rapporteur on the right to the highest attainable standard of health has stated that "[h]ealth-care providers must be cognizant of and adapt to the specific needs of lesbian, gay, transgender and intersex persons".<sup>49</sup>
26. The Committee on Economic, Social and Cultural Rights has likewise characterized the right to the highest attainable standard of health as "as inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as ... access to health-related education and information, including on sexual and reproductive health".<sup>50</sup> Furthermore, "States parties should provide a safe and supportive environment for adolescents, that ensures the opportunity ... to build life-skills, to acquire appropriate information ... and to negotiate the health-behaviour choices they make".<sup>51</sup> These "underlying determinants" are in fact themselves rights guaranteed in the International Covenant on Economic, Social and Cultural Rights and other international and regional human rights treaties, and thus the right to sexual and reproductive health is intrinsically related to the realization of other human rights.

## **INTERNATIONAL COOPERATION AND ASSISTANCE**

27. As recently reiterated by the Committee in its General Comment 16, States obligations under the Convention do not stop at their borders. On the contrary, "States have obligations to engage in international cooperation for the realization of children's rights beyond their territorial boundaries ... As such, the full realization of children's rights under the Convention is in part a function of how States interact."<sup>52</sup> The importance of bilateral and multilateral cooperation and of the extraterritorial dimension of State obligations for the realization of children's rights under the Convention has several implications for the right of adolescents to comprehensive sexuality education. As spelled out by the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights,<sup>53</sup> States have obligations to respect, protect and fulfil human rights including the rights to health and education of adolescents within and beyond their borders. In order to respect these rights, States providing aid under international cooperation and assistance must not interfere with the enjoyment of the rights, for instance by imposing conditionality or any other

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<sup>45</sup> Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (2003), para. 39(b) and (d).

<sup>46</sup> Committee on the Rights of the Child, General Comment No. 12: The right of the child to be heard, UN Doc. CTC/C/GC/12 (2009), para. 101. Also see Committee on the Rights of the Child, General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (2003), para. 32-33.

<sup>47</sup> See also UNESCO, Universal Declaration on Bioethics and Human Rights, Article 6-7.

<sup>48</sup> Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf).

<sup>49</sup> Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report to the General Assembly, UN Doc. A/64/272 (2009), para. 46. The issues of protection against medical abuse and of informed consent are of particular relevance to trans and intersex children, see e.g. Schneider, *An insight into respect for the rights of trans and intersex children in Europe* (Council of Europe, November 2013), p. 14-19 and 26-35.

<sup>50</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 11.

<sup>51</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 23.

<sup>52</sup> Committee on the Rights of the Child, General Comment No.16: State obligations regarding the impact of the business sector on children's rights, UN Doc. CRC/C/GC/16 (2013), para. 41.

<sup>53</sup> Consulted at <http://www.etoconsortium.org/en/library/maastricht-principles/> (last accessed 1 April 2015).



measures (on moral or cultural grounds) that would prevent the delivery of comprehensive and non-discriminatory sexual education. In compliance with their extraterritorial obligations to protect the right of adolescents to comprehensive sexuality education, States must ensure that any non-state actors under their jurisdiction,<sup>54</sup> such as private education providers, will not impose restrictions on this right or otherwise deliver discriminatory, incomplete or scientifically inaccurate sexuality education. Finally, States in a position to do so must provide international assistance under the obligation of international cooperation, observing international human rights standards such as non-discrimination and equality.<sup>55</sup> International aid programmes supporting the establishment and running of sexuality education in recipient countries must therefore not discriminate, but take due consideration of specific needs of minorities and marginalized individuals and groups, including adolescents who may be marginalized partly or wholly because their real or imputed sexual orientation, gender identity or intersex status.

## VIOLATIONS

28. Violations include the adoption of legislation or policies that create barriers to the realization of comprehensive sexuality education.<sup>56</sup> It must be recalled that States have the obligation not to take any retrogressive measures that could hamper the enjoyment of children's rights. States must progressively work for the full realization of all human rights and there should be no retrogressive measure to that end.
29. In this context, the ICJ urges the Committee to identify as violations of the Convention instances such as the recent wave of enactments of legislation that criminalizes same-sex sexual conduct<sup>57</sup> or that makes illegal the provision of information on same-sex sexual orientation and/or conduct,<sup>58</sup> sometimes under the guise of "protection of minors"<sup>59</sup>
30. Violations through omissions include the failure to take deliberate, concrete and targeted measures towards the full realization of comprehensive sexuality education as expeditiously and effectively as possible. The Committee may find the approach of the Special Rapporteur on education in this respect particularly instructive. The Special Rapporteur has pointed out that "deciding not to offer sexual education at teaching centres is opting for an omissive form of sexual education, that leaves girls, boys and

<sup>54</sup> See Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Principle 9, "Scope of jurisdiction" and Principle 25, "Bases for protection".

<sup>55</sup> See Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Principle 32, "Principles and priorities in cooperation" and Principle 33, "Obligation to provide international assistance".

<sup>56</sup> See e.g., the Committee's serious concerns about the negative consequences of the Holy See's position and practice of denying adolescents access to sexual and reproductive health and information, and its recommendation that the Holy See "overcome all barriers and taboos surrounding adolescent sexuality that hinder their access to sexual and reproductive information" (CRC, Concluding Observation: the Holy See, UN Doc. CRC/C/VAT/CO/2 (2014), para. 56-57); CRC, Concluding Observations: Ireland, UN Doc. CRC/C/IRL/CO/2 (2006), para. 52-53, in which the Committee criticizes the fact that parents can exempt their children from sexuality education.

<sup>57</sup> See e.g., among others, Nigeria, Same-Sex Marriage (Prohibition) Act, 2013.

<sup>58</sup> See e.g., among others, Russian Federation, Federal law for the purpose of protecting children from information advocating for a denial of traditional family values, 2013.

<sup>59</sup> The Committee has expressed concern over the Russian legislation prohibiting "propaganda of unconventional sexual relationships" and recommended that the Russian Federation "provide LGBTI children with easy access to necessary sexual health information" (CRC, Concluding Observations: Russian Federation, UN Doc. CRC/C/RUS/CO/4-5 (2014), para. 24-25, 55-56). Also see Human Rights Committee, *Irena Fedotova v. Russian Federation*, Communication No. 1932/2010 (2012), on how these laws are incompatible with freedom of expression. The Human Rights Committee considered that "the State party has not shown that a restriction on the right to freedom of expression in relation to 'propaganda of homosexuality' – as opposed to propaganda of heterosexuality or sexuality generally – among minors is based on reasonable and objective criteria. Moreover, no evidence would point to the existence of factors justifying such a distinction has been advanced." (para. 10.6). In *Toonen v. Australia*, Communication No. 488/1992 (1994), the Human Rights Committee observed that "[c]riminalization of homosexual activity thus would appear to run counter to the implementation of effective education programmes in respect of the HIV/AIDS prevention" (para. 8.5). Also see Special Rapporteur on the right to the highest attainable standard of physical and mental health, Interim Report to the General Assembly, UN Doc. A/66/254 (2011), para. 59; and, Report to the Human Rights Council, UN Doc. A/HRC/14/20 (2010), para. 6-26, 76.

adolescents on their own as regards the type of knowledge and messages, generally negative, that they receive on sexuality".<sup>60</sup> The principle of non-discrimination moreover obliges States to tackle de facto and substantive discrimination, such as that experienced by LGBTI children in many countries of the world.

## CONCLUSIONS

31. As Article 1 of the Universal Declaration of Human Rights proclaims and consistent with the fundamental tenet of the Convention, "[a]ll human beings are born free and equal in dignity and rights." In light of this, the ICJ urges the Committee to ensure that its General Comment is premised and builds on the principles of universality, non-discrimination, interdependence and indivisibility of all human rights for all human beings. In this context, the General Comment should underscore that sexual orientation, gender identity and intersex status are integral to individuals' dignity and humanity and must not be the basis for discrimination or abuse. Discrimination on those grounds, as well as on any other prohibited grounds, is inconsistent with the human rights and fundamental freedoms enshrined in the Convention, including one's right to identity, and contrary to the inalienability of human dignity.
32. In respect of the right to comprehensive sexuality education, in particular, the ICJ notes with regret that, despite its clear status in international human rights law as well as governments' repeated commitments to ensuring its implementation, and the overwhelming evidence of its effectiveness in promoting the well-being of adolescents, there has been little progress in this area, and in fact, there is evidence of the adoption of regressive measures, including in respect of both legislation and jurisprudence.
33. This is particularly regretful as the lack of progress in fulfilling states' obligations with respect to adolescents' right to comprehensive sexuality education, in turn, impacts negatively on gender equality and non-discrimination. Further, it impedes the development of a positive and respectful approach to sexuality, and the prospect of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence, for adolescents and later on in adult life.
34. In light of the above, the ICJ urges the Committee to elucidate fully the right of adolescents to comprehensive sexuality education in its General Comment and comprehensively articulate States' obligations under the Convention in respect of this right.
35. In particular, the ICJ urges the Committee to identify core obligations with regard to comprehensive sexuality education, which should comprise among others:
  - a. Eliminate laws, policies and practices that criminalize or otherwise undermine access to education, including comprehensive sexuality education, without discrimination;
  - b. Ensure in law and in practice non-discrimination and equality in access to and delivery of comprehensive sexuality education;
  - c. Provide education on sexuality that is age-appropriate, evidence-based and scientifically accurate, and that emphasizes the importance of non-discrimination and gender-equality.
36. Furthermore, the ICJ draws the Committee's attention to Principle 16 of the Yogyakarta Principles, which affirms that, "[e]veryone has the right to education, without discrimination on the basis of, and taking into account, their sexual orientation and gender identity. The recommendations set out in the Principles that pertain to the States' obligations in securing the right to education, without discrimination, are also particularly relevant to the Committee's elaboration of a General Comment on the rights of adolescents. The Principles recommend that States should:
  - Take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the

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<sup>60</sup> Special Rapporteur on the right to education, Report to the General Assembly, UN Doc. A/65/162 (2010), para. 18.

education system, without discrimination on the basis of sexual orientation or gender identity;

- Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;
- Ensure that education is directed to the development of respect for human rights, and of respect for each child's parents and family members, cultural identity, language and values, in a spirit of understanding, peace, tolerance and equality, taking into account and respecting diverse sexual orientations and gender identities;
- Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, inter alia, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;
- Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment;
- Ensure that students subjected to such exclusion or violence are not marginalized or segregated for reasons of protection, and that their best interests are identified and respected in a participatory manner;
- Take all necessary legislative, administrative and other measures to ensure that discipline in educational institutions is administered in a manner consistent with human dignity, without discrimination or penalty on the basis of a student's sexual orientation or gender identity, or the expression thereof;
- Ensure that everyone has access to opportunities and resources for lifelong learning without discrimination on the basis of sexual orientation or gender identity, including adults who have already suffered such forms of discrimination in the educational system.