

THE CHALLENGES OF GIRL'S RIGHT TO EDUCATION: LET'S TALK ABOUT HUMAN RIGHTS-BASED SEX EDUCATION

DR MEGHAN CAMPBELL
WESTON JUNIOR RESEARCH FELLOW, NEW COLLEGE, OXFORD UNIVERSITY
DEPUTY DIRECTOR, OXFORD HUMAN RIGHTS HUB

NEW COLLEGE OXFORD, OX1 3BN, UK
+44 07554088329
MEGHAN.CAMPBELL@LAW.OX.AC.UK

Abstract

The UN human rights framework offers new ways of conceptualising sex education. Although none of the treaties explicitly refer to sex education, an analysis of the rights contained in the core treaties demonstrates that there is a positive obligation on the state to provide sex education to fulfill the human rights of girls and women. A human rights perspective offers a framework in which to address the challenges to delivery of sex education. It is argued that due to the significance of the human rights that are fulfilled by sex education it is proportionate to limit the role of religious and cultural norms in delivery of sex education.

Key words: Sex Education, Right to Education, Gender Equality, Role of Religion, UN treaty bodies

More girls than ever before are attending school.¹ As the global community renews its commitment through the Sustainable Development Goals (SDGs) to inclusive and equitable quality education (SDG-4) and gender equality and empowerment (SDG-5), it is important to address the remaining challenges to fully realising girl's right to education. Attendance for girls in secondary and tertiary schools is significantly behind boys.² Girls are routinely and often violently prevented from getting to school.³ It remains crucial to focus on human rights-based approaches to ensure girls are able to access all levels of education.⁴ However, focus on access to education alone is not sufficient. If a right to education is to be an empowering and multiplier right,⁵ it is crucial to examine how the content, structure and delivery of education can perpetuate and reinforce gender inequalities. The UN Special Rapporteur on the right to education observes 'progress on gender equality [is not] separate from the quality of education.'⁶ It is essential to move beyond a right *to* education and 'consider the broader notion that also includes rights *within* education and rights *through* education.'⁷

International human rights law has under-utilised potential for contributing to the realisation of gender equality in education.⁸ The Convention on the Elimination of Discrimination Against Women⁹, (CEDAW), the prominent legal instrument on women's human rights, includes significant provisions that ensure rights within and through education. Article 10(c) of CEDAW recognises the importance of removing gender stereotypes within the classroom. The International Covenant on Economic, Social and Cultural Rights (ICESCR) requires states to ensure high-quality education is 'directed to the full development of the human personality...'¹⁰ Given the renewed global commitment to education and women's empowerment, it is an opportune moment to consider how the UN human rights treaties and treaty bodies can engage the state on girl's education. Specifically, this article uses the current challenges to realising sex education as a case study to examine how international human rights law can respond to perennial and emerging challenges to girls' right to education. There are strong links between sex education and the realisation of key human rights. It is

argued that the delivery of comprehensive, human rights-based sex education is a positive obligation on the state to fulfil, *inter alia*, girl's right to equal education. Moreover, sex education sharply brings into focus the discriminatory gender norms that influence and undermine a girl's right to high quality education and the accountability challenges that are becoming increasingly pervasive throughout all of education.

This article proceeds in the following manner: section I analyses the current challenges girls face in accessing human rights-based sex education. Around the world girls are not provided with comprehensive knowledge on their sexual and reproductive rights. Their ability to access sex education is often limited due to a combination of conservative religious and cultural norms and a lack of legal accountability and monitoring for the provision of sex education. Section II argues that there is an inter-woven commitment to high quality sex education in crucial UN human rights treaties. The provision of human right-based sex education is a necessary and positive obligation on the state to fulfil its human rights commitments. Section III evaluates how the UN treaty bodies have developed the state's obligation to provide sex education. Although the treaty bodies have made some positive developments, they have not specifically addressed the most pressing obstacles to sex education. The final section investigates how the state's positive obligation to provide sex education can be fully developed. It specifically focuses on mediating the tensions between conservative religious and cultural norms and the delivery of comprehensive, human rights-based sex education. It concludes with recommendations for how the treaty bodies can address the obstacles to sex education and thereby begin to ensure that all girls' are able to enjoy their equal rights to high-quality education.

I. Sex education around the world

Gender discrimination limits the quality of girls' education.¹¹ This article focuses on sex education, but it should be placed in context and understood as part of the larger challenge of ensuring that a right to education promotes gender equality. Sex education is required to realize the human rights of all people, including boys and men and specifically for disabled persons and sexual minorities. The UN Special Rapporteur on the right to education explicitly assess how sex education can further the rights of disabled and LGBTQI people in his report on sex education.¹² Many of the obstacles that limit sex education apply equally to boys, men and disadvantaged groups; however, there is a subset of obstacles that uniquely engage the gender relations between men and women. It is imperative to adopt a gender perspective to analyzing the connection between sex education and human rights. This article is concerned with the right to education for girls and thus takes an asymmetric approach to gender. It focuses on how sex education can further girls and women's right to education and other fundamental human rights. Achieving gender equality requires transforming stereotypes on boys and men. However, as Committee on Economic Social and Cultural Rights notes that 'due to women's reproductive capacities,' it is essential that girls and women they have the information on sexuality and reproduction to make meaningful decisions about their lives.¹³ Without detracting from the important of understanding how sex education can further the human rights of all people, it is of particular significance to assess the relationship between sex education and women and girl's human rights. Section I canvasses both the general and specific constraints girls and women face in accessing high-quality sex education. Furthermore, this is not a comprehensive assessment of sex education but highlights the trends that exist and pin-points factors that limit sex education. Notwithstanding the guidance provided by various international bodies, the most overwhelming trend around the world is the varying degrees of information on sexual and reproductive health that are provided within schools ranging from non-existent to comprehensive, human rights-based sex

education. There are global differences, but even within the state there is a lack of consistency among schools on the provision of sex education. This inconsistency can be due to the state not recognising that it has a positive obligation to provide sex education or if the state does have a law or policy in place it is routinely not enforced or creates faith-based or moral exemptions.

Underpinning these obstacles are discriminatory gender norms based on conservative religious and cultural beliefs. These points are examined below.

International actors are developing standards for the provision of sex education. These bodies consistently recommend that sex education be comprehensive, that it accurately cover all relevant topics, and that it incorporate a normative perspective, specifically a human rights approach. The UN Special Rapporteur on the right to education holds that sex education should take a holistic, scientific and pluralistic perspective ‘that does not focus exclusively on biology and ensures that inter alia, the gender dimension, human rights, new patterns of male behaviour, diversity and disability are included.’¹⁴ Furthermore, he notes that sex education ‘must be free of prejudice and stereotypes that could be used to justify discrimination and violence against any group it must therefore include a gender perspective that encourages people to think critically about the world around them.’¹⁵ UN Education, Scientific and Cultural Organisation (UNESCO) defines comprehensive sex education as ‘education that encompasses the full range of information, skills and values to enable young people to exercise their sexual and reproductive rights and to make decisions about their health and sexuality.’¹⁶ It advises that sex education should be evidence-based and that it include ‘education on healthy relationships and awareness-raising on gender-based violence.’¹⁷ Similarly, the UN Population Fund (UNFPA) advocates that sex education: (i) has a basis in universal human rights; (ii) is linked to gender equality and empowerment; (iii) is based on scientifically accurate information and (iv) is culturally relevant in tackling human rights violations and gender equality.¹⁸

Despite the international guidance, there are significant discrepancies on the content and delivery of sex education. There are examples of best practices. In Denmark, Norway, Sweden, Finland and the Netherlands, sex education is consistent with international guidance. It is based ‘on the premise of young people as “rights-holders” who are entitled to information and education, as well as the right to express and enjoy their sexuality.’¹⁹ At the other end of the spectrum, in many states there is no provision of sex education in schools. Prior to July 2015 there was no sex education in schools in Kyrgyzstan.²⁰ In Malawi, 66 per cent of females and 56 per cent of males aged 15-19 who have attended school report that they have not received any kind of sexual education.²¹

If sex education is provided it routinely falls short of the international standards. There is evidence that it is not accurate or comprehensive.²² In many countries in Sub-Saharan Africa ‘almost half of the people who received sexual education received no information on [key] topics: ...contraception, pregnancy...[STIs] and the right to say no to sex.’²³ In many countries sex education tends to be limited to the biological facts of reproduction and sexually transmitted diseases (STIs).²⁴ In El Salvador, Senegal and Chile the predominant message of sex education is to warn young people about the risks of unprotected sex and strong emphasis is placed on abstinence.²⁵ The UN Special Rapporteur on the right to education notes that this may create ‘an erroneous association between sexuality and disease.’²⁶ He further observes that abstinence-only programmes deny students’ knowledge that allows them to make informed decisions.²⁷

Sex education is also being used to entrench traditional gender roles. In Senegal, sex education is perceived as necessary for girls to learn but not a subject for boys, consequently there is a ‘disproportionate focus on female reproductive identities and roles.’²⁸ In certain schools in Poland girls are taught that contraception is a barrier to loving relationships and can cause cancer.²⁹ This misinformation makes it less likely that they will use contraception which in turn increases their risks

of STIs and pregnancy. Early pregnancy can limit the education and employment opportunities for women and trap them into traditional caring roles. Moreover, family values, marriage and reproduction are emphasized in sex education over gender equality.³⁰ This approach to sex education portrays women as passive. There is evidence that promoting traditional gender roles in sex education can restrict the autonomy of girls and women making it difficult for them to insist on using contraception.³¹ This again exposes girls to the risks of infection and pregnancy. In the US, sex education programs rely on stereotypes on women's dress and behavior to buttress abstinence-only arguments.³² De Lamter analysis reveals that sex education can perpetuate dangerous stereotypes on consent to sexual activity. Rather than explaining the laws on sexual consent and empowering girls and women to secure their bodily integrity, one student workbook warns that "girls need to be aware they may be able to tell when a kiss is leading to something else."³³ He further observes that the discourse in the US of "sex is risky and dangerous" limits women and girls to express sexual desire 'which may lead to...the inability to express agency in heterosexual interactions and relationships.'³⁴ There is empirical evidence linking the lack of comprehensive, human rights-based sex education to young people's lack of knowledge on the laws and age of consent to sexual activity, violence against women and their rights to access and use sexual and reproductive health services.³⁵

There are many cross-cutting factors that explain the limited provision of sex education. Two of the most prominent and inter-connected are conservative religious and cultural norms and the lack of recognition and accountability for the state's positive obligation to provide sex education. The UN Special Rapporteur on the right to education observes that a comprehensive, human rights-based approach to sex education is often 'obstructed in the name of religious ideas.'³⁶ For example, in Canada, the Ontario provincial government has unveiled new comprehensive compulsory curriculum for sex education. There has been strong opposition to this from parents and faith-based schools arguing that the curriculum 'dismantles biblical perspectives on human sexuality...by an

aggressive agenda of the LGBT [movement].³⁷ There are similar faith-based objections to sex education in Peru, the UK, Senegal and El Salvador from both parents and faith-based schools.³⁸ International Planned Parenthood Federation observes that in the UK ‘young people from both faith and non-faith schools reportedly received sex education that appeared to be influenced by religiously conservative cultural norms’³⁹ and as a result young people were receiving a strong negative message about sexual activity.⁴⁰

The first UN Special Rapporteur on the right to education, Katarina Tomasevki, notes that girls have paid the highest price in the political duels which determine the content of school curricula on sexuality.⁴¹ In Senegal sex education stresses that ‘acceptable sex takes place within marriage, has a reproductive purpose, and is primarily the domain of women and girls, who take responsibility for pregnancy, child birth and caring for the family.’⁴² Due to deeply embedded conservative religious and cultural norms, young girls are disproportionately discouraged from having sex before marriage, and when girls violate these norms they are often punished.⁴³ Girls who become pregnant can be expelled from school or face stigma upon their return to class.⁴⁴ This creates a vicious cycle of disadvantage: young girls are not provided the information necessary to avoid pregnancy and then are punished upon becoming pregnant. Due to a lack of further education, young mothers can become trapped in reproductive roles or are only able to access low-paid, informal and precarious work.⁴⁵

The influence of conservative socio-cultural and religious norms is made possible by the challenge of recognising and enforcing the state’s positive obligation to provide sex education in both public and private institutions.⁴⁶ Often there is no legal framework mandating the content of sex education within the school. In Latin America and the Caribbean nine states have no specific legalisation on sex education and in six European states sex education is not compulsory.⁴⁷ Even if national legislation or regulation is in place, it often remains unimplemented or is not properly

supported. Within Europe ‘the quality of education varies not so much from country to country as within each country.’⁴⁸ For instance, in Poland there are significant differences in the quality of sex education between rural and urban areas.⁴⁹ In the UK there are discrepancies between faith-based and non-faith-based schools.⁵⁰ There are similar inconsistencies in the US. One-third of students in the US receive abstinence-only education and only a small minority are able to access comprehensive sex education.⁵¹ UNFPA observes in relation to sex education ‘there is often a wide gap between progressive national policies and programme implementation at the local level.’⁵² For example, while there is detailed and comprehensive guidance for sex education in both Northern Ireland and England, it is not a compulsory component of the curriculum and there is little pressure placed on schools to adopt the state’s guidelines.⁵³ At other times, the law gives primacy to religious and cultural norms. In England, the law stipulates that ‘due regard to the moral considerations of family life’ must be had in the delivery of sex education and parents have the ‘absolute right to remove their child from [sex education].’⁵⁴ The challenge of recognising and enforcing a positive obligation to sex education and role of religious and cultural norms in the provision of comprehensive, human rights-based sex education is investigated in Section IV.

In conclusion, a human rights-based approach to sex education requires that students have adequate knowledge on reproduction, STIs, the law on consent to sexual activity and violence against women. It seeks to transform stereotypical gender norms and relationships and includes a pluralistic and diverse perspective on sex and sexual relationships. Although there are emerging international standards on sex education, the content and delivery of sex education varies and is focused on limited topics, such as reproduction and STIs. Worryingly, sex education can actually reinforce traditional gender stereotypes. There is opposition from religious and culturally conservative segments of communities to having comprehensive human rights-based sex education within the classroom. The difficulty in enforcing a positive obligation to provide sex education and

the provision of faith-based exemptions create significant challenges to ensuring sex education within schools. The UN Special Rapporteur on the right to education concludes that ‘the absence of planned, democratic and pluralist sexual education constitutes, in practice, a model of sexual education (by omission) which has particularly negative consequences for people’s lives and which uncritically reproduces patriarchal practices, ideas, values and attitudes that are a source of many forms of discrimination.’⁵⁵

II. Sex education at international human rights law

What role can the international human rights law framework play in ensuring a comprehensive, human right-based approach to sex education? Prima facie, it may appear redundant as various UN bodies have already developed crucial standards for the content and delivery of sex education. Arguing for greater engagement by the international human rights framework seemingly places treaty bodies in competition with other actors in the UN system. However, this position overlooks the multiple ways that international human rights law can enrich, support and complement the activities of the UN Special Rapporteurs, UNESCO and UNFPA. Crucially, the treaty bodies can situate sex education within existing legal frameworks and accountability mechanisms. The language and power of human rights can legitimatise claims and empower individuals and stakeholders to argue within international and domestic forums that sex education is a necessary positive measure to fulfil fundamental human rights. Furthermore, a clear understanding at the international level that human rights require the provisions of sex education can be a catalyst to shift dialogue in the domestic sphere. If a positive obligation to provide sex education is interpreted as being included within the international human rights system it can inspire individuals, civil society, courts and legislators to interpret similarly framed domestic human rights to include sex education.⁵⁶ At the same time, it is important to acknowledge that there is no direct guaranteed route between domestic and

international human rights, but there is evidence of the power of the international human rights framework to influence and shape domestic norms, particularly in the context of gender-based violence.⁵⁷ Moreover, the international human rights framework has its own sophisticated accountability system. Through the periodic reporting process, individual communications and inquiry procedures the treaty bodies can constructively engage with the state on sex education and hold it accountable for failing to meet its human rights commitments. The UN Special Rapporteur on the right to education specifically recommends that human rights mechanisms be strengthened ‘so that they can consider and investigate specific problems relating to barriers and challenges to effective enjoyment of the right to comprehensive sex education.’⁵⁸

To achieve these goals it is first necessary to understand how the human rights commitments in various UN treaties require the state to provide comprehensive, human rights-based sex education. This analysis is from a gender perspective and pays particular attention to how sex education ensures girls and women are able to enjoy their human rights, although it does also briefly address how the rights of boys and men are furthered when they are provided sex education. A careful analysis of the text of the UN treaties demonstrates that although there are no direct provisions on sex education, there is a strong inter-woven commitment to the delivery of comprehensive, human-rights based sex education. This builds upon on the analysis of the UN Special Rapporteur on the right to education and provides a deeper insight into the strength of the positive obligation to provide sex education, particularly in the context of gender equality. Although rights are framed differently in different treaties, for example the right to education in ICESCR is to be progressively realised while the right to equal education in CEDAW is an immediate obligation, this does not impede the construction of a coherent positive obligation to provide to sex education across the UN human rights treaties. The differently framed obligations in each treaty factors into the assessment of the appropriateness of the measures the state has taken, but this difference does not undermine the core argument that

there is a positive obligation upon the state to provide sex education so as to ensure the enjoyment of fundamental human rights.⁵⁹

i. Information on Family Planning and Education

The two treaties that directly refer to family planning link it to the realization of other human rights. Under CEDAW information on family planning is a measure to ensure gender equality while under the Convention on the Rights of the Child (CRC)⁶⁰ it crucial to fulfil the right to health. Starting first with CEDAW, it contains the most explicit obligations to provide sex education. Article 5(b) of CEDAW specifically requires the state to ensure that ‘family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing...of their children.’ Article 10(h) of CEDAW requires states to ensure on an equal basis ‘access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning.’ In a similar vein, Article 16(1)(e) of CEDAW guarantees that women have ‘the same rights to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means to enable them to exercise these rights.’ Combined these provisions create a specific link between gender equality and sex education. They ‘speak to the importance of providing a base from which decisions about family size and other health related issues can be made.’⁶¹ CEDAW emphasises using education on family planning/birth control as a tool to developing critical thinking skills and autonomous decision-making to secure bodily integrity. Under CEDAW sex education should seek to transform traditional gender relations. The connection between gender equality and sex education is explored further below.

The CRC, on the other hand, links family planning to the right to health. Article 24(2)(f) requires states to ‘develop preventive health care, guidance for parents and family planning, education and

services.’ The aim of this provision is to provide education on sexual activity to protect children’s health. The CRC Committee notes that ‘adolescent girls should have access to information on the harm...early pregnancy can cause.’⁶² The academic commentary on this provision focuses on health care workers not teachers.⁶³ Since the aim of Article 24(2)(f) is to prevent health risks by providing information on family planning, including sex education in the classroom should be part of a comprehensive strategy to fulfil this obligation. The connection between sex education and health is explored in the preceding subsection.

ii. Rights to Life and Health

The International Covenant on Civil and Political Rights⁶⁴ (ICCPR) and the Convention on the Rights of Persons with Disabilities⁶⁵ (CRPD) holds ‘that every human being has the inherent right to life.’ This right is not to be understood ‘in a restrictive manner, and the protection of this right requires that States adopt positive measures.’⁶⁶ Related to this, several of the treaties include a right to health. CEDAW holds that states have an obligation to ensure equality in access to health care services,⁶⁷ ICESCR and the CRC ‘recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’⁶⁸ The CRPD holds that persons with disabilities should be provided with same standard of health care and specifically refers to sexual and reproductive health.⁶⁹ The right to health has traditionally encompassed access to a high quality health care system and pharmaceuticals but it is also now focusing on mental health and preventive measures, including the underlying detriments to ill-health.⁷⁰

Sex education has a crucial role to play in the life and health of all people. The UN Special Rapporteur on the right to education goes so far as to hold that access to sex education may be a question of life or death.⁷¹ The most obvious example is through information on preventing the spread of STIs, such as HIV/AIDS. Insufficient knowledge about HIV remains at dangerously high

levels. In sub-Saharan African countries only 30 percent of young women and 37 percent of young men have correct knowledge of HIV.⁷² Without a proper education on the risks and measures to protect against STIs, people are at greater risk of being infected and dying. Sex education is an important preventive intervention strategy for STIs and a necessary step for protecting the right to life and health.⁷³

Sex education further engages women's rights to life and health as it is a powerful preventive measure for maternal mortality, adolescent pregnancy and abortion.⁷⁴ Along with emergency maternal medical care and ensuring women are not criminalized or prevented from accessing abortions, investing in sex education can ensure that girls and women have the necessary information on reproduction and different methods of contraception to avoid unintended pregnancies that can severely risk their health and lives.⁷⁵ Education as an empowering and multiplier right promotes girls and women autonomy over their sexual and reproductive health. The World Health Organisation (WHO) reports that 'about 16 million girls aged 15 to 19 and some 1 million girls under-15 give birth every year—most in low-and middle-income countries.'⁷⁶ Complications 'during pregnancy and childbirth is the second largest cause of death for 15-19 year old girls globally.'⁷⁷ Women and girls also suffer serious injuries, infection and disabilities from pregnancy and childbirth.⁷⁸ It is estimated that 22 million unsafe abortions are performed each year.⁷⁹ The WHO notes that 'almost every abortion death and disability could be prevented through [inter alia] sexuality education...'⁸⁰ Adolescent pregnancies are more likely in poor, uneducated and rural communities because 'some girls do not know how to avoid getting pregnant: sex education is lacking in many countries.'⁸¹ Sex education that explains the options on how to avoid unintended pregnancies, for instance the different effectiveness rates of various contraception methods is an important step to empower girls and women and prevent them from dying in children birth and the

health risks associated with adolescent pregnancies and abortion. It is an early intervention tool to ensure women and girl's right to life and health.⁸²

With the advent of technology there is a rise in adolescents sharing sexually explicitly images and videos of themselves ('sexting'). Sexting is a relatively new phenomenon but it is highly gendered and can have severe and harmful consequences. The Victorian Law Reform Committee in Australia observed that 'the majority of sexting involves sexually explicit images of girls rather than boys.'⁸³ Young girls and women report feeling pressured to produce and send sexually explicit images of themselves to their partners.⁸⁴ These images can be shared with other friends or posted on social media sites. It can be viewed by a large number of people, including family, friends, co-workers and potential employers. Once it has been shared over the internet the creator of the image loses meaningful control of it. Sexting has pronounced implications for the mental and emotional health and lives of young girls and women. There is evidence that young girls and women who make these images can be socially shamed, humiliated, bullied, harassed and threatened.⁸⁵ There are tragic situations in Canada and the US where young women committed suicide after nude photographs they had taken of themselves were widely disseminated.⁸⁶ The law has been very slow to respond to the harms of sexting,⁸⁷ making sex education on these issues of particular importance. Sex education that includes information on the risks of sexting and on cyber-safety is a crucial component to respond to these new challenges to women's rights to life and mental health.

iii. Right to Education

Numerous UN human rights treaties contain a right to education. Article 10 of CEDAW requires states to ensure girls and women are equally able to access and enjoy education, Article 13 of ICESCR and Articles 28 and 29 of CRC requires states to provide education that empowers the individual and is consistent with human rights norms. Article 19 of CRC requires the state to ensure

children are educated to protect them from sexual abuse and exploitation. The right to education pursues many overlapping aims. This subsection highlights several of the relevant aims. First, education is seen as the best vehicle to break cycles of poverty and disadvantage, empower women, safeguard children from exploitation, promote human rights norms, protect the environment and control population growth.⁸⁸ Second, education is meant to ensure the holistic development of the child.⁸⁹ It goes ‘beyond formal schooling to embrace the broad range of life experiences and learning process which enable children...to develop their personalities...and to live a full and satisfying life.’⁹⁰ A right to education is meant to ensure that individuals are able ‘to take greater control of the circumstances of their lives and to shape, rather than merely endure, the change that affects them.’⁹¹

Sex education is necessary to fulfil the right to education. This is true for boys and girls, men and women but it is particularly imperative for girls and women because a lack of knowledge on sex and reproduction can disproportionately and significantly limit the opportunities for girls and women to develop their talents and for advancement. There is also evidence of a gender dimension in the lack of information on sex education. As mentioned above, girls and women in Sub-Saharan Africa are less likely to have knowledge on HIV/AIDS. When girls are able to stay in secondary school this significantly reduces their vulnerability to HIV because it increases their opportunities to be economically independent and to have the knowledge to keep safe before becoming sexually active.⁹² Without high-quality sex education, girls and women are not able to make informed and autonomous decisions about their bodies and lives. In several countries in Africa girls do not receive adequate sex education and when they become pregnant are expelled from school. The Centre for Reproductive Rights found that even when there are no laws or policies in place, teachers and school administrators still expel pregnant learners.⁹³ The school believes this is necessary so as to punish girls who become pregnant, to deter other students from engaging in pre-marital sex and concerns that young mothers cannot concentrate on their education. Comprehensive, human rights-

based sex education can both provide the requisite knowledge to avoid unwanted pregnancies and STIs thereby ensuring girls and women are able to take control of their lives and at the same time, tackle negative cultural stereotypes on girls' sexual activity.

A right to education requires more than knowledge on avoiding pregnancies or STIs. The holistic development of the child would also require sex education to provide information on the law of consent to sexual activity, on healthy relationships, on different types of sexual relationships, on the use of technology in sexual relationships and on the enjoyment of a safe sexual activity. The UN Special Rapporteur on the right to education asserts that it is crucial that sex education 'provides the tools that are needed for decision-making in relation to sexuality corresponding to the lifestyle which each human chooses in the context of her situation.'⁹⁴

iv. Right to Cultural Life and Scientific Progress

Article 15(1)(b) of ICESCR recognises the rights of individuals to enjoy the benefits of scientific progress. Benefitting from scientific progress is an exciting and dynamic commitment that is just beginning to be developed.⁹⁵ Article 15(1)(b) places a positive obligation on the state to ensure individuals have knowledge and understanding of science, through education, so that they can enjoy the benefits and fruits of scientific endeavours. This would also encompass education and information on the latest scientific progress in relation to sex and reproduction; including information on innovations in birth control.

Article 15(1)(a) of ICESCR recognises the importance of cultural life. To a certain extent, Article 15 of ICESCR brings together the tensions identified in Section I between comprehensive sex education based on scientifically accurate information and conservative religious and cultural groups, although CESCR holds that culture is a broad and inclusive concept that cannot be used to limit the human rights of others.⁹⁶ This tension is further explored in Section IV.

v. *Women's Right to Equality*

The above analysis on the relationship between sex education and rights to life, health, education and information on family-planning implies a deeper relationship between sex education and gender equality. There is a strong and repeated commitment to gender equality in the UN treaties. Together Articles 3 of the ICCPR and Article 2(1) of ICESCR require states to ensure the equal right of men and women to the enjoyment of civil, political, socio-economic and cultural rights. Article 26 of the ICCPR, Article 2 of CRC and Article 6 of the CRPD prohibits discrimination on the basis of sex. CEDAW contains the strongest provisions ensuring women's equality. States are required to take all appropriate measures to eliminate discrimination against women in various fields and achieve gender equality.⁹⁷ It requires states to ensure the full development and advancement of women⁹⁸ and dismantle cultural attitudes and stereotypes that are based on the superiority of men and inferiority of women.⁹⁹ The human rights treaties do not define equality. Although the rights to life, health and education are similarly undefined, the meaning of right to gender equality is deeply contested. It is necessary to consider in detail how gender equality has been developed by the treaty bodies so as to accurately draw out the relationship between gender equality and sex education.

The treaty bodies have consistently held that equality in the UN treaties is a rich concept that includes formal and substantive equality.¹⁰⁰ The treaty bodies all define formal equality in similar terms. Formal equality 'is achieved if a law or policy treats men and women in a neutral manner.'¹⁰¹ There is no similarly definitive understanding of substantive equality, although there is an emerging consensus. CESCR explains that substantive equality 'is concerned with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups' experience.'¹⁰² The Human Rights Committee (HRC) holds that substantive equality requires the state to adopt positive measures in 'all areas so as to achieve

[women's] effective and equal empowerment.¹⁰³ The CEDAW Committee has not articulated a coherent definition of substantive equality. At times it indicates substantive equality requires: differential treatment;¹⁰⁴ an equal start; 'an enabling environment to achieve equality of results'¹⁰⁵; 'strategies for overcoming underrepresentation of women and a redistribution of resources and power between men and women'¹⁰⁶; 'the ability to develop personal ability...[to] make choices without the limitation set by stereotypes, rigid gender roles and prejudices'¹⁰⁷; and 'real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.'¹⁰⁸ The treaty bodies may use slightly different language but they have consistently interpreted equality at international human rights law as moving beyond formal equality. The state is required to realise substantive gender equality and to ensure women's de facto enjoyment of their human rights.

The CEDAW Committee's definition of substantive equality hints at a further model of equality: transformative gender equality. The CEDAW Committee has not yet explicitly stated that CEDAW is premised on transformative gender equality, but it tends 'to view transformative equality as part of substantive equality rather than as a distinct model of equality.'¹⁰⁹ The academic literature consistently holds that this model of equality is included in CEDAW.¹¹⁰ Fredman's influential model of transformative equality is prominent in the text of CEDAW.¹¹¹ This model of equality pursues four-overlapping aims: breaking the cycle of disadvantage; promoting respect for dignity and worth; accommodating difference by achieving structural change and promoting political and social inclusion; and participation. The CEDAW Committee's comments, referred to above, on transforming institutions and stereotypical gender norms indicates that it implicitly understands that equality within CEDAW is transformative. The remaining treaty bodies have not explicitly referred to transformative equality. Fredman and Goldblatt's study on the outputs of treaty bodies indicates that 'while there is little attempt to articulate and apply a consistent framework to evaluate progress

towards [transformative] equality, there is nevertheless a strong, implicit adherent to the aims encapsulated in the concept.¹¹² In practice, the treaty-bodies are, to varying degrees, using the four-dimensional model of transformative equality to evaluate if the state has complied with its obligation to achieve gender equality.

With a firm understanding of the multiple conceptions of women's right to equality at international human rights law, it is possible to un-pack the relationship between gender equality and sex education. Formal equality would require the removal of any de jure restrictions to girls and women accessing sex education. For example, if the school only provided sex education to boys but not to girls. To fully understand the complex relationship between sex education and women's equality it is helpful to apply Fredman's four-dimensional model of equality not only because it can capture the nuances of gender equality but also because this framework is in practice being used by the treaty bodies. The first element, breaking the cycle of disadvantage recognises that individuals and groups have suffered because of their personal characteristics and to redress this imbalance positive measures are required. Everyone needs comprehensive, human rights-based sex education, but the evidence, referred to above, demonstrates that poor, uneducated, rural girls and woman are at greater risk for maternal mortality and morbidity. Sex education can redress this disadvantage and it must be targeted to those most at risk. To realise gender equality for poor, rural girls the state must take positive measures to ensure that sex education is taught in all classrooms and most specifically in the overlooked and marginalised classrooms where poor, rural, girls go to school.

The dignity element addresses recognition harms, including harassment, prejudice and violence. Violence against women is such a significant human rights issue it is dealt with separately below. Cultural norms valorise boys and men as powerful sexual agents and encourage and praise male promiscuity while female sexuality is restricted, passive and 'seen as shameful and degrading.'¹¹³ Girls and women feel stigmatised in expressing their sexuality¹¹⁴ and using sexual and reproductive

health services.¹¹⁵ Girls feel they do not have the power in gender relations to insistence on using contraception.¹¹⁶ Women are held responsible for any unintended consequences of sexual activity and for the reproduction and caring of children.¹¹⁷ Sex education can be a powerful tool to dismantle these norms and ‘encourage rethinking of roles assigned to men and women so that equality can be achieved.’¹¹⁸ To break patriarchal control of women’s sexuality, sex education should discuss ‘the pleasure in and enjoyment of sexuality...abolishing guilt feelings about eroticism that restrict sexuality to the mere reproductive function.’¹¹⁹ Comprehensive, human-rights based sex education can ensure that girls and women’s choices on sex, sexuality and sexual health are not based ‘on social norms that perpetuate gender inequalities and discrimination.’¹²⁰

The third element, the structural element ensures that institutions do not oppress but that they accommodate difference. The state must ensure that sex education programmes are properly supported through adequate funding, monitoring and teacher-training. The delivery of sex education needs to be structured so as to empower women and girls not replicate traditional gender relations. The structural element also influences the content of sex education. To accommodate difference and valorise diversity, sex education should positively portray different types of sexual relationships.

Finally, participation requires the state to meaningfully consult with women and girls. The participation element is the most challenging as women and girls can have diverse understandings on the role of sex education in furthering gender equality. The heterogeneity of women and girl’s perspectives raises challenging questions on the relationship and potential conflict between religion, culture and different strands of feminist thought. These challenges are considered in greater depth in Section IV. Here it is only necessary to note that a commitment to gender equality requires the participation of all women and girls, even the most marginalised and oppressed in the design and delivery of sex education.

vi. Gender-Based Violence

Sex education also forms part of a holistic and transformative strategy on gender-based violence.

Gender-based violence is a serious violation of various human rights. In the most extreme situations gender-based violence undermines women's right to life.¹²¹ Violence against women also significantly impairs women's physical and mental health¹²², security and autonomy of the person¹²³, standard of living and rights to employment.¹²⁴ It is recognised as one of the most pernicious forms of discrimination against women.¹²⁵ While there is broad recognition that violence against women is systemic, pervasive and entrenched, 'this has not led to the adoption of coherent and sustainable' remedial strategy.¹²⁶ The UN Special Rapporteur on violence against women identifies unequal power relations as the root of gender-based violence and this 'inequality is sustained through dominant norms regulating women's sexuality, and notions of masculinity that sanction violence and control over women.'¹²⁷ She recommends that states 'engage in transformative remedies' that target gender power relations and empower and build women's capacities to 'facilitate the questioning of hegemony within cultures.'¹²⁸ Sex education can emphasise girls and women's right to bodily integrity and autonomy, teach the laws on sexual consent, link gender-based violence to human rights, encourage young men and women to critically reflect on gender relations and empower young women to protect and claim their rights to live without the fear, risks and experiences of gender-based violence. Sex education that adopts a right-based approach should be understood as an important preventive, empowering and transformative measure in a larger strategy to end gender-based violence.

vii. Conclusion

Sex education is a necessary positive obligation to fulfil various fundamental human rights. The rights to life, health, education, gender equality, security of the person and the right to be free from

violence are all furthered by sex education. It is a crucial preventive strategy to protect women and girls from maternal mortality and morbidity stemming from unwanted pregnancies; it can challenge entrenched gender norms on sex, sexuality and caring roles; it provides the necessary information and critical thinking skills to empower girls and women to protect their bodily integrity. Although there is no explicit requirement that states ensure sex education is provided in schools, there is a tightly inter-woven commitment to sex education in the treaties that engages many human rights. It may appear that there is significant overlap between the various rights and sex education. However, it is important to draw out the inter-connections for several reasons. First, it demonstrates the strength of the implicit commitment to sex education in the international human rights framework. Second, the rich and multi-faceted human rights framework clarifies that the aim of sex education is to inform, educate, protect and empower all people, but particularly young girls and women. Third, for pragmatic reasons it is important to understand the indivisibility of the human rights framework and each of the rights that are engaged and the connections between rights. One of the aims of the international human rights framework is to empower the domestic grassroots level. Different domestic jurisdictions will recognise different rights. A comprehensive understanding of the inter-connections between sex education and human rights ensures that individual and civil societies can use the domestic rights at hand to argue for comprehensive sex education. Having established that there is a coherent commitment to sex education at the international level, it is now time to turn to investigate how the treaty bodies are developing this obligation.

III. The Treaty Bodies' Approach to Sex Education

This section examines the General Recommendations, Individual Communications and Inquiry Procedures and the latest round of Concluding Observations to assess how the treaty bodies are

currently using the human rights framework to develop a positive obligation to provide sex education. On a positive note, the treaty bodies are repeatedly, albeit not consistently, calling on states to provide sex education so as to fulfil its human rights commitments. The CEDAW Committee takes the most holistic approach calling on states to provide sex education to fulfil women's rights to education, health and equality in family life. It holds that sex education should be a mandatory part of the curricula and address gender equality, violence, prevention of [STIs], reproductive and sexual health rights, gender relations and harmful practices.¹²⁹ It further stresses that that sex education should pay specific attention to the needs of girls, seek to empower girls to make responsible sexual choices, reduce teen pregnancy and guarantee women's bodily autonomy.¹³⁰ Under the Optional Protocol to CEDAW, the CEDAW Committee has held states accountable under Article 10(h)(family planning) and 16(1)(e) (number of children) of CEDAW for failing to provide information on birth control, although this has been in the context of health care rather than sex education.¹³¹ In contrast the HRC, CRPD Committee, CRC Committee and CESCR stress the aim of sex education is to reduce STIs, maternal mortality and teenage pregnancy and generally overlook the role sex education can play in fulfilling the fundamental human rights of girls and women.¹³²

The treaty bodies are also implicitly drawing on several of the elements of the transformative equality framework in developing an obligation to provide sex education. CESCR and CRPD Committee use the disadvantaged element to stress that sex education should be targeted to rural areas and at the community level.¹³³ The CRC Committee draws on the structural element to recommends that states ensure that the necessary human, financial and technical resources are provided to design and implement sex education programmes.¹³⁴

There is a growing awareness of the inter-woven commitment to sex education in the human rights treaties. However, the treaty bodies are not addressing the three key obstacles to realising comprehensive, human rights-based sex education in the classroom. First, as discussed in Section I, one of the most pronounced trends is the inconsistencies in the content of sex education. The treaty bodies appear to be aware of this challenge and routinely recommend that states provide comprehensive and mandatory sex education. The problem is that the term ‘comprehensive’ remains un-interrogated. Without clarifying what the treaty bodies mean by comprehensive sex education, the recommendation rings hollow and leaves significant discretion to the state to develop its own definition which may fall short of the treaty bodies’ implicit understanding of comprehensive sex education. Moreover, apart from CEDAW, none of the treaty bodies have explicitly held that sex education should include a human rights perspective. Without explicitly linking it to human rights norms, the treaty bodies are overlooking the transformative potential of sex education which can remedy gender power relations, sex-based stereotypes and ensure girl and women’s rights to life, health, education, bodily integrity and freedom from violence. Second, there is no reference to conservative religious and cultural norms that oppose the strengthening of comprehensive, human rights based sex education in the classroom. Without explicitly addressing this, the treaty bodies’ are missing out on making recommendations that tackle the de facto challenges to sex education. As a result, their recommendations are at risk of being ignored or perceived as irrelevant which in turn undermines the argument that there is a coherent positive obligation upon the state to provide sex education in international human rights law. Third, the treaty bodies are not consistently addressing the legal mechanisms and accountability structures that the state needs to put in place to fully realise a positive obligation sex education. The final section examines how the treaty bodies’ recommendations could to be reformed so as to specifically address the most pressing obstacles to sex education.

IV. Strengthening Sex Education at International Human Rights Law

At international human rights law there is a coherent positive obligation on states to provide sex education so as to fulfil fundamental human rights, including a right to life, health, education and gender equality. The UN human rights treaty bodies are beginning to express concern that states are not fulfilling this obligation and providing recommendation to strengthen the delivery of comprehensive, age and gender appropriate sex education, particularly in rural areas. This is a crucial development in fully recognising the transformative potential of sex education. It is necessary to take the next step forward and ensure that the treaty bodies' recommendations address the de facto challenges to realising sex education. The predominant obstacles to sex education are: (i) the inconsistencies in the content of sex education; (ii) conservative religious and cultural norms that limit access to comprehensive, human-rights based sex education and (iii) the lack of accountability structures and enforcement mechanisms to ensure a positive obligation to sex education is realised. These challenges raise complex legal issues, particularly on the role of religion and culture in education. This section explores the legal arguments that support a robust positive obligation to sex education and proposes how the treaty bodies' recommendations can be modified so as to tackle the obstacles to sex education.

i. Addressing the Inconsistencies in Sex Education

There are several simple recommendations the treaty bodies' can make to address the knowledge gap. First, it is important to clarify that the role of treaty bodies is not pedagogical. They are not meant to be designing curriculum or creating teaching methods. Rather, the treaty bodies are evaluating if the state's sex education programs are consistent with its commitment to human rights. Does it allow students to critically reflect on gender relations? Does it provide information on

gender-based violence? Answering these questions does necessitate examining the curriculum but the role of the treaty bodies is only to assess the state's sex education program against a human rights framework. If the provision of sex education is not comprehensive or is not approached from a human rights perspective, the role of the treaty bodies is to recommend that the state ensure the delivery of comprehensive, human rights-based sex education. While the treaty bodies are currently encouraging states to do this, this recommendation could be strengthened by drawing on the standards developed by UNESCO, UNFPA and the UN Special Rapporteur on the right to education. The treaty bodies need to consistently recommend that the state provide:

mandatory comprehensive, *gender* and age appropriate, *human rights-based* education on sexual and reproductive health and rights of girls and boys, particularly in rural areas, as part of the regular school curricula *in accordance with international standards developed by UNESCO, UNFPA and UN Special Rapporteur on the right to education.*

It is crucial to explicitly state the sex education is “human rights-based” as this emphasises the normative content and aims of sex education and imports the rich and detailed standards used by other UN actors. Linking “comprehensive” to “human rights-based” gives the term a more determinate meaning and provides clearer guidance to state parties on the content of sex education. Furthermore, it ensures harmony and consistency across the UN human rights framework.¹³⁵ There is a legal basis in the treaties that permits the treaty bodies to recommend that the state avail itself of guidance and technical assistance from other international actors, such as the UN Special Rapporteur on the right to education.¹³⁶ While this is no guarantee that states will provide sex

education that is comprehensive and human rights-based, it can ensure that the treaty bodies provide a more robust recommendation.

ii. The Role of Religion and Culture

Arguably the biggest obstacle to recognising the state's positive obligation to provide comprehensive, human rights-based sex education is opposition from conservative religious and cultural groups. These groups argue that it is against their religious and cultural norms to have information on sex education in the classroom. Relying on the freedom of religion and belief recognised in human rights law, they campaign to have sex education either removed from the classroom, limit its content or to have individual or institutional faith or moral-based exemptions. These arguments bring into focus the challenge of balancing competing human rights claims. Comprehensive, human rights-based sex education is a necessary positive obligation to fully realise women's fundamental human rights but the right to the freedom of religion and belief means that people are free to hold all manner of religious and cultural beliefs, including beliefs that limit the delivery of sex education. How are these competing interests to be brokered? Justice Sachs of the South African Constitutional Court recognised the depth of this challenge:

religious and secular activities are for purposes of balancing frequently as difficult to disentangle from a conceptual point of view as they are to separate in day to day practice...it is in this area that balancing becomes doubly difficult, first because of the problems of weighing considerations of faith against those of reason, and secondly because of the problems of separating out what aspects of an activity are religious and protected by [human rights] and what are secular and open to regulation in the ordinary way.¹³⁷

The achieve a proper balance it is necessary first, to examine how the rights of parents and children to religious freedom are framed in the UN human rights system and second, domestic and regional jurisprudence on role of religion and culture in the classroom when it limits the rights of others provides illuminating examples of this balance in practice. Together these sources demonstrate that conservative religious and cultural rights cannot be used to justify limitations placed on the delivery of comprehensive, human rights-based sex education.

International human rights law takes a multifaceted approach to the freedom of religious and cultural belief. Article 18 of ICCPR holds that everyone has the right to freedom of thought, conscience and religion and protects the individual and communities right to manifest their religious beliefs. Under Article 18(3) the freedom to manifest religion may be limited so as to ‘protect public safety, order, health or morals or the fundamental rights and freedoms of others.’ Nowak explains that the restriction on religious freedom in ICCPR be ‘proportional in severity and intensity to the purpose being sought.’¹³⁸ In contrast CEDAW does not recognise a right to religious freedom. Rather it holds that cultural attitudes and beliefs need to be modified to ensure gender equality.¹³⁹ CESCR, CRC Committee and the CEDAW Committee have held that ‘no one may invoke cultural diversity to infringe upon human rights guaranteed by international law.’¹⁴⁰ CESCR further notes that proportionate limitations on the right to cultural life may be necessary, especially in the case of negative practices that infringe rights, again, implying that the balancing of competing rights and freedoms is on a proportionality standard.¹⁴¹ The CRC and CEDAW Committee jointly condemn harmful practice based on socio-cultural and religious customs and values. They hold that communities cannot rely on discriminatory social norms and cultural belief and harmful practices to preserve their cultural identity.¹⁴² The ICCPR, ICESCR and the CRC contain specific provisions on the relationship between religion, culture and education. They recognise the liberty of parents to provide their children a religious and moral education.¹⁴³ But again this freedom can be limited.

Private faith-based institutions under Article 13(3) of ICESCR must conform to ‘minimum educational standards as may be laid down or approved by the State.’¹⁴⁴ CESCR further explains that the state standards used in private institutions must be consistent with the goals of a right to education articulated in ICESCR: dignity, tolerance, gender equality, human development and respect for the environment.¹⁴⁵ This means that private institutions which provide moral and faith-based education must respect the normative aims of the right to education. Article 14 of CRC while recognising the right of parents to instruct their children in religion, hold that the manifestation of religion can be limited to protect the fundamental rights of others.

Prima facie, it would appear the international human rights law specifically recognises that conservative religious and cultural values cannot be used to limit the delivery of sex education which fulfils fundamental human rights for girls and women. The UN Special Rapporteur on the freedom of religion and belief helpfully notes that ‘there is no general recipe for handling’ the conflict between sex education and conservative religious or cultural based oppositions.¹⁴⁶ Recognising that the freedom of belief and religion can be limited to ensure the human rights of others does not provide any guidance on the exact parameters of this limitation. Domestic and regional courts have been assessing claims for faith-based exemptions in the context of education and provide helpful examples on how these rights can be balanced. The European Court of Human Rights (ECtHR) in *Dojan v Germany* did not allow faith-based exemptions to sex education in public school.¹⁴⁷ It used a proportionality analysis and gave significant weight to the state’s aims in providing sex education. The court relied on two contradictory characterisations of the state’s aims to justify limiting the freedom of religion. First, the court repeatedly describes the delivery of sex education as the neutral transmission of knowledge and further notes that sex education was presented in an objective, critical and pluralistic manner. This implies that sex education should be value free. This is problematic as this justification for limiting the freedom of religion is based on neutrality. This has

the potential to reduce sex education to biological facts and ignores its human rights and transformative aims. Second, at the same time, the court draws on the normative aims on the right to education. It notes that the state can pursue specific education goals such as encouraging tolerance among people, diversity, developing the child's individual moral views and independent critical thinking skills. The court holds that the state's sex education programmes furthers these goals. It concludes that faith-based exemptions to sex education would undermine these aims. This is the stronger, more compelling argument. It is the weight of the human rights at stake, such as the right to education that explains why sex education is a necessary and compulsory positive obligation on the state and justifies the limitation the freedom of religion and belief. This argument is more consistent with the understanding developed in Section II that there is inter-woven human rights commitment to comprehensive, human-rights based sex education.

The ECtHR also closely examined the manner in which freedom of religion and belief was limited to demonstrate that it was minimally restricted and that respect was still been shown to religious differences. The court drew a distinction between public and private space. There is a difference between what is taught in the home about sex education which can explicitly be faith-based and what is taught in the school, comprehensive human-rights based sex education. The parents 'were free to educate their children after school...thus their right to educate their children in conformity with their religious convictions was not restricted in a disproportionate manner.'¹⁴⁸ Second, the sex education programme did not criticise any religious beliefs. The court noted that the curriculum did not 'put into question the parents' sexual education based on their religious convictions, as children would not have been influenced to approve or reject specific sexual behaviour.'¹⁴⁹ Third, the right to freedom of belief or religion 'does not guarantee the right not to be confronted with opinions that are opposed to one's convictions.'¹⁵⁰ The UN Special Rapporteur on freedom of religion and belief has made similarly observations: a respectful attitude [to religion and

culture] does not require avoiding sensitive issues.’¹⁵¹ The ECtHR is engaging in a true assessment. It is not simply that sex education “wins” and the right to freedom of religion “loses”. There is still scope for religion and cultural beliefs but due to the fundamental human rights at stake, it cannot be used to justify limits on sex education in school.

Case law from South Africa and the UK where schools and parents wanted faith-based exemptions to the ban of corporal punishment in schools also offers a useful precedent for considering faith-based limitations to sex education. The CRC Committee has already unequivocally held that faith-based justifications for corporal punishment are prohibited under international human rights law.¹⁵² The domestic courts, however, provide more detailed arguments on this issue. Similar to *Dojan*, on one hand there is the faith belief in corporal punishment and the right of parents to raise their children in their religious tradition and on the other hand, the health, security, dignity and equality rights of the child. The Constitutional Court in South Africa and the House of Lords in the UK both held that the security, dignity and equality of the child were paramount. Again, the courts examine the inter-locking and underlying goals of the human rights engaged in banning corporal punishment. Justice Sachs in South Africa noted with corporal punishment ‘the child is being subjected to...the indignity of suffering a painful and humiliating hiding deliberately inflicted on him in an institutional setting’ and the ban ‘has a principled and symbolic function, manifestly intended to promote respect for the dignity and physical and emotional integrity of all children.’¹⁵³ Lord Bingham in the UK explained: ‘the statutory ban pursues a legitimate aim...the legislation is intended to protect children against the distress, pain and other harmful effects of this infliction of physical violence.’¹⁵⁴ It is the manner and severity in which the child’s dignity and physical security is violated that allows the court to reject faith-based exemptions to the corporal punishment. The manifestation of religious and cultural beliefs is limited because of the weight of

the fundamental rights that are undermined by these beliefs and the state's legitimate aim in protecting these rights.

The South African and UK courts also considered the effects of the proposed faith-based exemption. Lady Hale in the UK noted that the vulnerability of children supports a blanket ban. She was also concerned that allowing exemptions in faith-based institutions would create inequality between children. If an exemption was permitted then some children would be subject to corporal punishment and some would not. Lady Hale asked: 'how could [an exemption] be justified in terms of the rights and protection of the child to allow some schools to inflict corporal punishment while prohibiting the rest from doing so? If a child has a right to be brought up without institutional violence, as he does, that right should be respected whether or not his parents and teachers believe otherwise.'¹⁵⁵ This is an important insight because it means with respect to corporal punishment there is no difference between public and private faith-based educational institutions. Justice Sachs in South Africa drew a distinction between types of exemptions. He observed that the faith-based exemption to corporal punishment were not administrative, regulatory or commercial in nature but went to the principled foundations of a measure that was meant to 'transform national civic consciousness in a major way.'¹⁵⁶ As an alternative argument the parents and faith-based schools also argued that their consent to corporal punishment should be the basis for allowing the exemption to corporal punishment. The courts rejected this argument and firmly held that parental consent was not sufficient to override the child's other human rights.¹⁵⁷

Turning back to the international plane and drawing these insights together, similar to corporal punishment, limiting comprehensive, human-rights based sex education on the basis of conservative religious or cultural beliefs denies all people, but especially girls and women their rights to education, health, security and equality. Without proper knowledge and information girls' life and health can be at serious risk for complications of unwanted pregnancy. Sex education is a powerful

tool to dismantle negative cultural attitudes and norms on the roles of men and woman and is a transformative remedy to gender-based violence. These are fundamental, crucial and significant human rights and the state has a legitimate aim in fulfilling these rights. Thus, conservative religious and cultural norms cannot be used to justify limitations on sex education that fulfils these rights. This analysis goes one step further than *Dojan* and does not only draw on the normative aims of the right to education but on all of the rights that are fulfilled by a positive obligation to provide sex education. Private faith-based schools or individual exemptions to sex education are not permissible as they create inequality amongst girls and women. Exemptions would go to heart of the fundamental and transformative aims sex education seeks to achieve. Parents still retain the right to instruct their children at home on sex and sexuality and sex education within the school cannot be critical of different religious beliefs, thus there still is respect being shown to this important right. However, the freedom of religion and belief cannot be used to justify limiting sex education. The UN Special Rapporteur on religion forcefully noted that ‘it can no longer be taboo to demand that women’s rights take priority over intolerant beliefs used to justify gender discrimination.’¹⁵⁸

How should the treaty bodies approach conservative religious and cultural norms in the context of sex education? The UN Special Rapporteur on religion recommends a soft approach that de-escalates conflict and reaches out towards particular communities.¹⁵⁹ A conciliatory approach is crucial. There is no categorical approach that is guaranteed to be successful but UNFPA and the UN Special Rapporteur on the right to education have been developing strategies that the treaty bodies can draw on to help bridge tensions between religious and cultural beliefs and human-rights based sex education. First, the treaty bodies can recommend that the state build strategic relationships through dialogue with parents, community and religious leaders on the design and implementation of comprehensive human rights-based sex education.¹⁶⁰ Consultation and the participation of diverse groups can ensure that unique and culturally sensitive solutions, that have the support of powerful

local actors, are developed to conservative religious and cultural obstacles to sex education. Second, the state can address the concerns of conservative religious and cultural leaders and any misconceptions of sex education. For instance, there is often concern that sex education will increase the rates of sexual activity among young people and the state can demonstrate with evidence based arguments that this is not the case.¹⁶¹ Third, It can also be particularly helpful for the state to familiarize parents and community and religious leaders using evidence that comprehensive human rights based education aims not to undermine religious and cultural norms but to protect and fulfil rights to health, education, gender equality and freedom from gender-based violence.¹⁶² The main goal of a conciliatory approach is to establish and maintain respectful lines of communication between the relevant parties while at the same time ensuring the delivery of comprehensive, human-rights based sex education. However, the treaty bodies still must affirm the positive obligation on the state to provide sex education regardless of conservative religious and cultural beliefs. The treaty bodies can express concern when it is evident that conservative religious and cultural norms are limiting sex education. They can remind the state that the freedom of religion and belief needs to be limited so that the human rights of girls and women are fulfilled by accessing high quality sex education in both public and private institutions.

iii. Establishing Legal Accountability Mechanisms

The final obstacle that the treaty bodies need to address when evaluating the state's sex education programmes is the establishment of legal accountability mechanisms. Too frequently sex education is treated as an option. Recognising that sex education is linked to the fulfilment of human rights means that the state needs to establish and maintain a transparent and effective monitoring system.¹⁶³ Monitoring the enforcement of the quality of rights, such as quality education, is the new frontier in socio-economic rights. Much work remains to be done in developing human rights

frameworks to monitor quality.¹⁶⁴ This challenge is compounded with the multiple educational structures that exist within the state: ranging from state to privately funded schools and the proliferation of public-private partnerships in education.¹⁶⁵ These new educational models tend to conceptualise education as a market good. They are often un- or poorly regulated and ‘a human rights perspective is largely absent from the public discourse.’¹⁶⁶ However, the UN Special Rapporteur on the right to education reminds that ‘any arrangement...between the public (government) and the private (a private entrepreneur, enterprise or entity) is and remains subject to human rights laws.’¹⁶⁷ The state retains its human rights obligations and accountability ‘even when outsourcing education to private actors.’¹⁶⁸

Again, the treaty bodies are not designing specific accountability systems. The state has the choice between legislation, regulation, internal audits and other curriculum monitoring devices. The treaty bodies should remind the state that because sex education fulfils fundamental human rights, it must be properly monitored. In the context of the delivery of comprehensive, sex education this also means that states cannot argue that they do not have an obligation to monitor private institutions. The treaty bodies can draw on Lady Hale’s equality arguments and the UN Special Rapporteur on the right to education’s insights that the state cannot outsource its human rights obligations. The accountability challenges for a right to quality education are just beginning to theorized upon. At this nascent stage the treaty bodies can recommend that states monitor the quality of sex education and remind states that they retain their human rights obligations in all types of educational settings.

iv. Conclusion

Despite international guidance, there are serious challenges to delivering comprehensive, human right-based sex education in the classroom. The lack of good quality sex education can have a

devastating effect on the lives of girls and women and perpetuate cycles of gender disadvantage. The UN human rights framework offers new ways of conceptualising and addressing these challenges. Although none of the UN human rights treaties explicitly refer to sex education, a careful analysis of the rights contained in various treaties demonstrates that there is a positive obligation on the state to provide sex education to fulfil the fundamental rights of girls and women. Sex education is a necessary measure to ensure girls and women's right to life, health, education, gender equality and freedom from violence. A human rights perspective also brings clarity in how to address the obstacles to sex education. The treaty bodies in their monitoring role can recommend that the state approach sex education as an issue of human rights. Furthermore, the treaty bodies can remind the state that there needs to be legal accountability monitoring and mechanisms in place so that individuals can enforce the state's positive obligation to provide sex education regardless of the type of school they attend. Perhaps most importantly a human rights approach offers a framework in which to mediate the role of conservative religious and cultural norms and the delivery of comprehensive, human-rights based sex education. Due to the significance of the human rights that are fulfilled by sex education it is necessary and proportionate to limit the role of conservative religious and cultural norms in delivery of sex education in the classroom. Using the international human rights framework to reconceptualise sex education as a positive obligation necessary to fulfil human rights can help ensure that women and girls are able to live empowered and equal lives.

* Dr Meghan Campbell, Weston Junior Research Fellow, Oxford University. I would like to thank Sandy Fredman, Helen Taylor, Jaakko Kusomanen, Victoria Miyandazi, Richard Martin, Max Harris and Shreya Atrey for their helpful comments.

¹ UN, The Millennium Development Report: 2015, (UN, 2015) 29
<[http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf)>

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The right to education*, UN Doc. E/C.12/1999/10 (1999), para 1.

⁶ UN Special Rapporteur on the right to education, Report to the Human Rights Commission (Girls' right to education) UN Doc. E/CN.4/2006/45 (Geneva: UN, 2006), para 99.

⁷ UN Committee on Elimination of Discrimination Against Women (CEDAW Committee), Concept Note on the Draft Recommendation on Girls'/Women's Right to Education
<<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Womensrighttoeducation.aspx>>, para 5.1.

⁸ Mac Darrow, "Master or Servant? Development Goals and Human Rights", in *The Millennium Development Goals and Human Rights*, Malcolm Langford, Andy Sumner, and Alicia Ely Yamin ed (Cambridge: Cambridge University Press, 2014); Sandra Fredman, Jaakko Kuosmanen and Meghan Campbell, "Transforming Equality: Making the SDGs Work for Women", 2016 *Ethics & International Affairs* (forthcoming).

⁹ 1249 UNTS 13.

¹⁰ 993 UNTS 3, Article 13.

¹¹ Naila Kabeer, "Gender equality and women's empowerment: A critical analysis of the third millennium development goal 1", *Gender & Development* 13, no. 1 (2005) 13, 17.

¹² UN Special Rapporteur on the right to education, Report to the UN General Assembly (Sex Education) UN Doc. A/65/162 (Geneva, UN: 2010), para 87(d).

¹³ CESCR, *General Comment No. 22 on the right to sexual and reproductive health* UN Doc E/C.12/2016/22 para 25.

¹⁴ Ibid., para 87(d).

¹⁵ Ibid., para 63.

¹⁶ UNESCO Office in Brasilia, 'Sexual Education' <<http://www.unesco.org/new/en/brasil/education/health-education-in-brazil/sexuality-education-in-brazil/>>.

¹⁷ UNESCO and UN Women, 'Written Contribution to the General Discussion on Girls'/Women's Right to Education for the General Recommendation on Girls'/Women's Right to Education, 12
<http://www.ohchr.org/Documents/HRBodies/CEDAW/WomensRightEducation/UNESCO_UNwomen.pdf>.

¹⁸ UNFPA, 'UNFPA Operational Guidance for Comprehensive Sexuality Education: A Focus on Human Rights and Gender' (New York, UN: 2014) 10-15.

¹⁹ Heather D Boonstra, 'Advancing Sexuality Education in Developing Countries: Evidence and Implications' *Guttmacher Policy Review* 14 no. 3 (Summer 2011).

²⁰ UNFPA, 'Sex Education Comes to Kyrgyzstan' (6 August 2015) <<http://www.unfpa.org/news/sexuality-education-comes-kyrgyzstan>>

²¹ UN Special Rapporteur on the right to education, Sex Education, para 57.

²² UN Committee on the Rights of the Child (CRC Committee), 'General Comment No. 3: HIV/AIDS and the rights of the child' UN Doc. CRC/C/GC/2003/3, (2003), para 16; International Planned Parenthood Federation (IPPF), 'Over-protected and under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health: UK' (2014) 17 <http://www.ippf.org/sites/default/files/ippf_coram_uk_report_web.pdf>.

²³ UN Special Rapporteur on the right to education, Sex Education, para 55.

²⁴ Ibid., para 47; IPPF, UK, 14.

²⁵ IPPF, 'Over-protected and under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health: El Salvador' (2014) 14 <http://www.ippf.org/sites/default/files/ippf_coram_el_salvador_report_eng_web.pdf> ; IPPF 'Over-protected and under-served: A multi-country study on legal barriers to young people's access to sexual and reproductive health: Senegal' (2014) 15 <http://www.ippf.org/sites/default/files/ippf_coram_senegal_report_eng_web.pdf>; 'Preventing Teen Pregnancy with Sex Education in Chile' <<http://www.ippf.org/our-work/stories/volunteers/Preventing-Teen-Pregnancy-Sex-Education-Chile>>.

²⁶ UN Special Rapporteur on the right to education, Sex Education, para 15.

²⁷ Ibid., para 65.

²⁸ IPPF, Senegal, 15.

²⁹ Susanne Heuck and Jessica Mowles, 'Love Your Neighbour, but Not Too Much: Political and Religious Involvement in Sex Education within Polish Public School' Human in Action <<http://www.humanityinaction.org/knowledgebase/214-love-your-neighbor-but-not-too-much-political-and-religious-involvement-in-sex-education-within-polish-public-schools>>

³⁰ Ibid.

³¹ Julie Beck, 'When Sex Ed Discusses Gender Inequality, Sex Gets Safer' The Atlantic (27 April 2015) <<http://www.theatlantic.com/health/archive/2015/04/when-sex-ed-teaches-gender-inequality-sex-gets-safer/391460/>>

³² John Delamter, 'Gender equity in formal sexuality education' in *Handbook for Achieving Gender Equity Through Education* (2nd Ed) Sue Klein et al eds (New York: Routledge, 2007) 415.

³³ Ibid.

³⁴ Ibid.

³⁵ IPPF, UK; IPPF, Senegal; IPPF, El Salvador.

³⁶ UN Special Rapporteur on the right to education, Sex Education, para 5.

³⁷ Pete Baklinski, 'Christian private school rejects Wynne's sex-ed as 'perverse'' (14 July 2015) <<https://www.lifesitenews.com/news/christian-private-school-rejects-wynnes-sex-ed-as-perverse>>.

³⁸ IPPF, UK; IPPF, Senegal; IPPF, El Salvador.

³⁹ IPPF, UK, 20.

⁴⁰ Ibid.

⁴¹ UN Special Rapporteur on the right to education, Report to the Human Rights Commission (Girl's Education) UN Doc. E/CN.4/2004/45 (Geneva, UN: 2004) para 37.

⁴² IPPF, Senegal, 16.

⁴³ IPPF, El Salvador, 15.

⁴⁴ Rebecca Davis 'Analysis: When schoolgirls fall pregnant, why don't we talk more about rape?' Daily Maverick (23 January 2015) <<http://www.dailymaverick.co.za/article/2015-01-23-analysis-when-schoolgirls-fall-pregnant-why-dont-we-talk-more-about-rape/#.VcNXpDbbLIU>>.

⁴⁵ UN Special Rapporteur on the right to education, Girl's Education, para 78.

⁴⁶ Ibid., para 37 and 39.

⁴⁷ UN Special Rapporteur on the right to education, Sex Education, para 42.

⁴⁸ Ibid., para 45.

⁴⁹ Heuck and Jessica Mowles

⁵⁰ IPPF, UK.

⁵¹ De Lamater 412.

⁵² UNFPA, 'The Evaluation of Comprehensive Sexuality Education Programmes: A Focus on the Gender and Empowerment Outcomes' (New York: UNFPA, 2015) <<http://www.unfpa.org/sites/default/files/pub-pdf/UNFPAEvaluationWEB4.pdf>>

⁵³ IPPF, UK, 14.

⁵⁴ Ibid., 14.

⁵⁵ UN Special Rapporteur on the right to education, Sex Education, para 76.

⁵⁶ See for example, *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (Indian Supreme Court).

⁵⁷ Judith Resnik, 'Comparative (in)equalities: CEDAW, the jurisdiction of gender and the heterogeneity of transnational law production' *Int'l J of Con. L.*, 10(2) (2012) 531, 542.

⁵⁸ UN Special Rapporteur on the right to education, Sex Education, para 88(a).

⁵⁹ CESCR, 'General Comment No. 3: The nature of the state parties obligations' UN Doc. E/1991/23.

⁶⁰ 1577 UNTS 3.

⁶¹ Fareda Banda, 'Article 10' in *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* ed Marsha A. Freeman, Christine Chinkin and Beate Rudolf (Oxford: Oxford University Press, 2013) 269.

⁶² CRC Committee, *General Comment No. 4: Adolescent health and development* UN Doc. CRC/GC/2003/4 (2003) para 31.

⁶³ Wenche Barth Eide, *Commentary on the UN Convention on the Rights of the Child: Article 24: The Right to Health* (Leiden: Martinus Nijhoff, 2005) 43-6.

⁶⁴ 999 UNTS 171, Article 6.

⁶⁵ A/RES/61/106, Article 10.

⁶⁶ UN HRC, *General Comment No. 6: The right to life* UN Doc. CCPR/C/GC/6 (1982) para 5.

⁶⁷ CEDAW, Article 12.

⁶⁸ ICESCR, Article 12

⁶⁹ CPRD, Article 25.

⁷⁰ CESCR, *General Comment No. 14: The right to the highest attainable standard of health* UN Doc. E/C.12/2000/4 (2000) para 5.

⁷¹ UN Special Rapporteur on the right to education, Sex Education, para 15.

⁷² The Millennium Development Report: 2015, 45.

⁷³ UNESCO, *School-Based Sexuality Education Programmes in Six Countries* (Paris: UNESCO, 2011) 15
<<http://unesdoc.unesco.org/images/0021/002116/211604e.pdf> 15>

⁷⁴ UN Special Rapporteur on the right to education, Sex Education, para 15.

⁷⁵ CESCR, *General Comment No. 22* para 28.

⁷⁶ WHO, *Fact Sheet No. 364: Adolescent Pregnancy* (September, 2014)
<<http://www.who.int/mediacentre/factsheets/fs364/en/>> .

⁷⁷ Ibid.

⁷⁸ UN Special Rapporteur on the right to health, Report to the UN General Assembly (Maternal Mortality) UN Doc. A/61/338 (Geneva: UN, 2006) para 8.

⁷⁹ WHO, *Fact Sheet No. 388 Preventing unsafe abortion* (July 2015)
<<http://www.who.int/mediacentre/factsheets/fs388/en/>> .

⁸⁰ Ibid.

⁸¹ WHO, Adolescent Pregnancy.

⁸² UN Special Rapporteur on the right to education, Sex Education, para 13, 14 and 30.

⁸³ Victoria Law Reform , *Inquiry into Sexting* (2013) Parliamentary Paper No. 230, Session 2010-2013, 21, 41.

⁸⁴ Ibid.

⁸⁵ Canadian Paediatric Society, *Sexting: Keeping Teens Safe and Responsible in a Technically Savvy World* (Feb 2014)
<<http://www.cps.ca/documents/position/sexting>> .

⁸⁶ Victoria Law Reform, 42.

⁸⁷ Laura Hilly, *“UK Efforts to Criminalize Revenge Porn: Not a Scandal, but a Sex Crime”* (OxHRH Blog, 31 October 2014) <<http://humanrights.dev3.oneltd.eu/uk-efforts-to-criminalize-revenge-porn-not-a-scandal-but-a-sex-crime/>> .

⁸⁸CESCR, *General Comment No. 13*, para 1.

⁸⁹ CRC Committee, '*General Comment No. 1: The Aims of Education*' UN Doc. CRC/C/GC/2001/1, (2001), para 1.

⁹⁰ *Ibid.*, para 2.

⁹¹ CEDAW Committee, Concept Note, para 3.4.

⁹² *Ibid.*, para 5.3.8.

⁹³ Centre for Reproductive Rights, 'Submission for Half-Day of General Discussion and Draft General Recommendation on the Right to Education' (2014) 2
<<http://www.ohchr.org/Documents/HRBodies/CEDAW/WomensRightEducation/CenterForReproductiveRightsContribution.pdf>>.

⁹⁴ UN Special Rapporteur on the right to education, Sex Education, para 17.

⁹⁵ Audrey R. Chapman, 'Towards an Understanding of the Right to Enjoy the Benefits of Scientific Progress and its Applications' (2009) 8:1 *J of Hum Rts* 1.

⁹⁶CESCR, '*General Comment No. 21: The right to take part in cultural life*' UN Doc. E/C.12/GC/21 (2009) para 18.

⁹⁷ CEDAW Committee, '*General Comment No. 28: Of Core Obligations Under Article 2 of CEDAW*' UN Doc. CEDAW/C/GC/28 (2010).

⁹⁸ CEDAW, Article 3.

⁹⁹ CEDAW, Article 5(a).

¹⁰⁰*Ibid*; CESCR, '*General Comment No 16: The equal right of men and women to the enjoyment of economic, social and cultural rights*' UN Doc. E/C.12/2005/4 (2005) para 7.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ HRC, '*General Comment No. 26: Article 3 (The equality of rights between men and women)*' UN Doc. CCPR/C/21/Rev.1/Add.10 (2001) para 3.

¹⁰⁴ CEDAW Committee, *General Recommendation No 28*, para 16.

¹⁰⁵ CEDAW Committee, '*General Recommendation No. 25: Temporary Special Measures*' UN Doc. CEDAW/C/GC/24 (2004) para 8.

¹⁰⁶ *Ibid.*

¹⁰⁷ CEDAW Committee, *General Recommendation No. 28*, para 22.

¹⁰⁸ CEDAW Committee, *General Recommendation No. 25*, para 9.

¹⁰⁹ Simone Cusack and Lisa Pusey, 'CEDAW and the rights to equality and non-discrimination' *Melbourne J of Int'l L*, 14 (2013) 54, 63.

¹¹⁰ *Ibid*; Andrew Byrnes, 'Article 1' in *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary* ed Marsha A. Freeman, Christine Chinkin and Beate Rudolf (Oxford: Oxford University Press, 2013) 56.

¹¹¹ Sandra Fredman, *Discrimination Law* (Oxford: Clarendon Press, 2011) Chapter 1.

¹¹² Sandra Fredman and Beth Goldblatt, 'Discussion Paper: Gender Equality and Human Rights for Progress of the World's Women 2015-2016' (Geneva: UN Women, 2015) 12.

¹¹³ IPPF, El Salvador, 22.

¹¹⁴ Victoria Law Reform.

¹¹⁵ IPPF, El Salvador, 12; IPPF, Senegal, 10-13. See also, Inga Winkler and Virginia Roaf 'Brining the Bloody Dirty Linen Out of the Closet: Menstrual Hygiene as a Priority for Achieving Gender Equality' (2015) 21 *Cardozo Journal of the Law and Gender* 1.

¹¹⁶ Ibid.

¹¹⁷ IPPF, Senegal 16-9; IPPF, UK 35-8.

¹¹⁸ UN Special Rapporteur on the right to education, Sex Education, para 63.

¹¹⁹ Ibid., para 16 and 71.

¹²⁰ CEDAW Committee, 'Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review' (Feb 2014) Fifty-Seventh Session.

¹²¹ ICCPR, Article 6.

¹²² CEDAW Article 12; ICESCR Article 13.

¹²³ ICESCR, Article 9.

¹²⁴ ICESCR, Article 6 and 11. See also World Bank, 'Voice and Agency: Empowering Women and Girls for Shared Prosperity' (World Bank, 2014).

¹²⁵ CEDAW Committee, '*General Recommendation No. 19: Violence Against Women*' UN Doc. CEDAW/C/GC/19 (1992).

¹²⁶ UN Special Rapporteur on Violence Against Women, Report to the Human Rights Council (Twenty Years) UN Doc. A/HRC/26/38 (Geneva: UN, 2014) para 57.

¹²⁷ Ibid.

¹²⁸ Ibid., para 60.

¹²⁹ CEDAW Committee, 'Concluding Observations: Spain' U.N. Doc. CEDAW/C/ESP/CO/7-8 (2015) para 26-7; CEDAW Committee and CRC Committee '*General Recommendation No. 31: On Harmful Practices*' UN Doc. CEDAW/C/GC/31 (2014) para 68.

¹³⁰ CEDAW Committee, *General Recommendation No 19*; CEDAW Committee, *General Recommendation No 28*, para 21; CEDAW Committee, 'Concluding Observations: St Vincent's and Grenadines' U.N. Doc. CEDAW/C/VCT/4-8 (2015) para 29(b).

¹³¹ *A.S. v Hungary*, CEDAW/C/36/D/4/2004; CEDAW Committee, 'Prohibitions on contraception in the Philippines' U.N. Doc. CEDAW/C/OP.8./PHL/1 (2015).

¹³² As examples see CESCR, 'Concluding Observations: Chile' UN Doc. E/C.12/CHL/CO/4 (2015) para 29; CESCR, 'Concluding Observations: Thailand' U.N. Soc. E/C.12/THA/CO/1 (2015) para 30; CRC Committee, 'Concluding Observations: Ethiopia' U.N. Doc. CRC/C/ETH/CO/4-5 (2015) para 24; CRC Committee, 'Concluding Observations:

Mexico' U.N. Doc. CRC/C/MEX/CO/4-5 para 50; HRC, 'Concluding Observations: San Marino' UN Doc. CCPR/C/SMR/CO/3 (2015) para 14-15.

¹³³ CESCR, 'Concluding Observations: Uganda' U.N. Doc. E/C.12/UGA/CO/1 (2015) para 35.

¹³⁴ CRC Committee, 'Concluding Observations: Ethiopia' para 59.

¹³⁵ OHCHR, 'Strengthening the UN Human Rights Treaty Bodies' (2012)
<<http://www2.ohchr.org/english/bodies/HRTD/docs/HCREportTBStrengthening.pdf>>

¹³⁶ ICESCR, Article 22; CRC, Article 45(a); CRPD, Article 32. See also, Meghan Campbell 'The Development of the International Duty to Co-operation' (on file).

¹³⁷ *Christian Education South Africa v Minister of Education* (CCT4/00) [2000] ZACC 11, para 33- 34.

¹³⁸ Manfred Nowak, *UN Covenant on Civil and Political Rights* (Oxford: OUP, 1993) 325.

¹³⁹ CEDAW, Article 5. See also Frances Raday, 'Traditionalist Religious and Cultural Challengers-International and Constitutional Human Rights Responses' *Israel Law Review* 14 (2008) 408.

¹⁴⁰ CEDAW Committee, General Recommendation No. 31; CESCR, '*General Comment No. 21: The Right of everyone to take part in cultural life*' U.N. Doc. E/C.12/GC/21 (2009) para 18; CRC Committee '*General Comment No. 18: Harmful Practices*' U.N. Doc. CRC/C/GC/18 (2015).

¹⁴¹ CESCR, *General Comment No. 21: Cultural Life*, para 19.

¹⁴² CEDAW Committee, *General Recommendation No. 31*, para 6

¹⁴³ ICCPR, Article 18(4); ICESCR, Article 13(4); CRC, Article 14.

¹⁴⁴ ICESCR, Article 13(3).

¹⁴⁵ CESCR, General Comments No. 13, para 4-5.

¹⁴⁶ UN Special Rapporteur on freedom of religion or belief, Report to the Human Rights Council (School Education) UN Doc. A/HRC/16/53 (Geneva, UN: 2011) para 55.

¹⁴⁷ Application No. 319/08 (Admissibility)

¹⁴⁸ *Ibid.*, 16.

¹⁴⁹ *Ibid.*, 7.

¹⁵⁰ *Ibid.*, 15.

¹⁵¹ UN Special Rapporteur on freedom of religion or belief, School Education, para 38.

¹⁵² CRC Committee, '*General Comment No. 8: The right of the child to protection from corporal punishment and another cruel or degrading forms of punishment*' U.N. Doc. CRC/C/GC/8 (2006) para 29.

¹⁵³ *Christian Education South Africa*, para 52.

¹⁵⁴ *R v Secretary of State for Education and Employment and Other (Respondents) ex parte Williamson (Appellant) and others* [2005] UKHL 15, para 49.

¹⁵⁵ Ibid., para 86 per Lady Hale.

¹⁵⁶ *Christian Education South Africa*, para 50.

¹⁵⁷ Ibid., para 47.

¹⁵⁸ UN Special Rapporteur on freedom of religion or belief, Report to the Human Rights Council (Effort to Protect and Promote) UN Doc. A/65/207 (Geneva, UN: 2010) para 69.

¹⁵⁹ UN Special Rapporteur on freedom of religion or belief, Report to the Human Rights Council (Equality Between Men and Women) U.N. Doc. A/68/290 (Geneva, UN: 2011) para 55.

¹⁶⁰ UNFPA, Operational Guide, 19-21; UN Special Rapporteur on the right to education, Sex Education, para 87(h).

¹⁶¹ Ibid.

¹⁶² Ibid; Nicole Haberland, 'The Case for Addressing Gender and Power in Sexuality and HIV Education' (2015) *International Perspective on Sexual and Reproductive Health* 41:1, 311.

¹⁶³ CESCR, *General Comment No. 13*, para 49.

¹⁶⁴ Elaine Unterhalter, 'Measuring Education for MDGs: Reflections on Targets, Indicators and a Post-2015 Framework' (2014) *Journal of Human Development and Capabilities* 15:2-3 176

¹⁶⁵ UN Special Rapporteur on the right to education, Report to the UN General Assembly (Public-Private Partnerships) U.N. Doc. A/70/342 (Geneva, UN: 2015).

¹⁶⁶ Helen Taylor, Laura Hilly, Meghan Campbell, 'Background Paper to Public-Private Partnerships' <<http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2015/07/Background-Paper1.pdf>>

¹⁶⁷ UNSR on the right to education, Public-Private Partnerships para 82.

¹⁶⁸ Ibid., para 94.