

Sexuality Education and International Standards: Insisting Upon Children's Rights

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The #MeToo movement has exposed the need for education about consent, power dynamics and positive relationships. International human rights instruments oblige states to provide sexuality education, and there have been some legal challenges to state provision of such education. Courts at regional and domestic levels have focused on the benefits to the state of sexuality education, holding it permissible if it is 'objective' and if parents may educate privately to avoid it. It is argued in this article however that greater focus is required on sexuality education as primarily a child's human right, independent of state discretion and/or parental rights.

I. Introduction

It has been stated by numerous international human rights bodies that the UN Convention on the Rights of the Child (CRC) and other instruments include a right to sexuality education. Yet international research also tells us that the provision of comprehensive sexuality education is not the norm. The primary reason for this appears to be the notion – perceived or real – that parents will oppose it, and that it is the 'right' of parents to withhold this education from their children if they see fit. Various jurisdictions have experienced legal challenges to their provision of sexuality education in public schools by conservative/religious parents (and organisations) on the basis that it interfered with parental educational rights. These challenges have largely been unsuccessful and the state's legitimate interest in providing sexuality education has been confirmed. Courts have focused on the public health benefits of sexuality

education, and the importance of insisting upon non-discrimination approaches to lesbian, gay, bisexual, transsexual, queer, questioning and intersex people (LGBTQQI) families and persons.

Positive though these judgments have been, they also constitute a missed opportunity from the perspective of promoting children's rights. In particular, courts have held that parents can educate children outside of the state system if they do not wish for them to receive sexuality education. This demonstrates a perception that sexuality education should only be delivered if parents acquiesce to it and fails to recognise that this will inevitably leave some children uneducated about issues relating to sexual health and consent. They will therefore be left unprotected themselves and/or potentially posing a risk to others where consent is not understood.

The #MeToo movement, which spread virally in October 2017 as a hashtag on social media, highlighted the shocking scale of sexual assault and harassment. Its effect has been to draw attention to power dynamics and the impact that these dynamics may have on the behaviour of those in dominant and authoritative positions in the workplace. It has inspired conversations about consent, about what sex is coercive¹ and about the “complicated ambivalences in which sexual harassment ...[is] embedded.”² In this new era, conversations about what behaviour is appropriate and legal – and what is not – are more prevalent than ever.

Children and young people are often defined by their vulnerability,³ yet factors such as information, education and support will make a difference to how vulnerable one actually is. Equipping children with knowledge around sexuality and relationships leaves them more capable of making positive choices and therefore less vulnerable to exploitation and abuse.⁴

As exposed by movements such as #MeToo, there are high rates of sexual violence, particularly against girls and women. One of the reasons for this is the unequal power dynamics that exist when children and young people lack knowledge about sex, consent and about what constitutes a respectful relationship.

It will be argued in this article that sexuality education, like education generally, is and should be primarily understood as a right of the child, not of the parent or state. Sexuality education aims to assist children and young people to make healthy and respectful choices about sexual health and relationships.⁵ Their ability to make these choices should not be dependent on the personal views or beliefs of parents. Nor should it be dependent on the willingness of the state to provide it. States have international human rights law obligations in the CRC (the most ratified UN human rights treaty) and elsewhere to provide sexuality education. This must be better recognised by both petitioners and courts at regional and national level.

In Part II of this article, the aims and benefits of sexuality education are considered. The conceptualisation of such education as a child's right is outlined in Part III. Part IV will consider and critique case law of the European Court of Human Rights and other courts. Part V will advocate for the pro-active framing of sexuality education as a child's right in future litigation.

II. The Aims and Benefits of Comprehensive Sexuality Education

A. The Nature of Sexuality Education

Comprehensive sexuality education is defined by UNESCO as an “age appropriate, culturally relevant approach to teaching about sex and relationships by providing scientifically accurate, realistic, non-judgmental information.”⁶ It provides the opportunity to explore values and attitudes to sex and relationships and to build decision-making and communication skills.⁷ The European Expert Group on Sexuality Education also emphasises that an aim of sexuality education should be to enhance the ability of children and young people to make healthy choices around relationships and sexuality.⁸ Sexuality education therefore encompasses several components.⁹ The first is *sex*, with a focus on biological characteristics. The next is *relationships*, where the focus is on sexual/romantic relationships and interactions. Finally *sexual health* involves a focus on health outcomes and issues relating to sexuality.¹⁰ Sexuality education therefore extends beyond the bare technicalities of sex. It must encompass “attitudes, feelings, rights, and responsibilities” as well as consideration of how people “[understand] themselves as sexual beings in societies that hold particular views about how and when sex should happen, between whom, and at what stage of one’s life”.¹¹

Sexuality education can of course be gained from many arenas, but as this article is concerned with State obligations, we centre on the provision of such education through school. Children and young people themselves express that they want to have sexuality education provided to them through school.¹² Although parents can have an enormous role to play in children’s sexuality education, many parents do not talk to their children about sex, and in any case many children indicate that they feel awkward about such conversations and instead seek such information elsewhere.¹³ In the face of inadequate or non-existent sexuality education through schools, they are left to seek information about sex via the (obviously less reliable) avenues of peers, online sources, or pornography.¹⁴

There is no doubt that the benefits of state provision of comprehensive sexuality education for children and young people are numerous. Comprehensive sexuality education encourages respectful relationships.¹⁵ For example, young people in Sweden and the Netherlands – where sexuality education is comprehensive and widespread – regard love and maturity as preconditions for sex.¹⁶ It also empowers children by educating them about their bodies and about sexuality.¹⁷ From a personal health-protection perspective, research indicates that such programmes reduce risky behaviour,¹⁸ delay sexual debut, and decrease sexual activity better than abstinence-only-until-marriage (AOUM) programmes.¹⁹ Countries with well-established sexuality education programmes, such as Sweden, Norway and the Netherlands, have lower teenage pregnancy rates than countries that do not.²⁰

Of course, many of these individual health benefits are also beneficial from a public health (and purse) perspective. Similarly, education that encourages relationships based on respect is good for individuals and for society. It has been found that countries with sexuality education have better gender equality than countries that do not.²¹ The UN Special Rapporteur on the Right to Education emphasises that sexuality education can further the rights of various minorities and vulnerable groups in society – people with disabilities for example, as well as LGBTQI people. The Rapporteur states that sexuality education should “ensure that, inter alia, the gender dimension, human rights, new patterns of male behaviour, diversity and disability are included.”²² As will be discussed below, the European Court of Human Rights and other decision-making bodies have noted that sexuality education can meet pluralism goals such as encouraging tolerance and diversity in society. Finally, individual/public health benefits overlap with the individual/public benefits of fostering modern, pluralist societies. Programmes that address gender power relations have been found

to be five times as effective in reducing pregnancy and sexually transmitted infections (STIs) as those that do not.²³

Unfortunately international research indicates that the provision of comprehensive sexuality education is not the norm. It is reported that sexuality education tends to focus on the mechanic and biological aspects of heterosexual sexual intercourse and reproduction rather than looking more holistically at the social and emotional aspects of sexual relationships.²⁴ The reasons for this are varied. It may be because of the religious ethos of the school.²⁵ It can also be due to the wide discretion states and schools are perceived to have concerning what is included in sexuality education (if it is received at all). A strong factor appears to be embarrassment amongst teachers who may not have chosen to teach about sexuality but find themselves doing so anyway,²⁶ meaning they are likely to limit sexuality education to the biological.

It is also likely due to a concern that has been identified in the international literature, namely that such information will preternaturally sexualise children and encourage sexual experimentation. Research tells us that this is not the case.²⁷ Moreover, the reality is that young people will engage in or be exposed to sexual activity with or without sexuality education. The difference is that without sexuality education they may partake in sexual activity in ignorance of the possible consequences for themselves and for others. As Archard explains, "...the ideology of 'innocence' may not protect children from sex. It may only expose them to a sexuality in the face of which such innocence is debilitating."²⁸

Connected to the misplaced concern that sexuality education sexualises children is the failure to recognise that it can be provided to very young children in an age-appropriate way. Young

children also need education about consent and respect to help them protect themselves and to prevent their harming others. National experts in public health and child protection such as social work organisations, the UK's National Society for the Prevention of Cruelty to Children, and inter-governmental organisations such as the UN and the Council of Europe, not only advocate for such education but also provide tool kits to facilitate it.²⁹

The provision of inaccurate sexuality education is also an issue. Reviewing the scientific evidence on the failure of AOUM programmes to protect young people from STIs, the US Society for Adolescent Health and Medicine has come to the conclusion that such programmes undermine public health goals, are contrary to the child's right to access to health information, and are "at odds with commonly accepted notions of medical ethics".³⁰ Similarly, the UN Special Rapporteur on the Right to Education notes that AOUM programmes deny children the knowledge that would facilitate them in making informed decisions.³¹ From a health perspective, young people who experiment with various sexual practices in ignorance of or on the basis of misinformation about STIs are engaging in behaviour that is health-threatening and can be life-threatening.³²

B. The Importance of the Social and Emotional Elements of Sexuality Education

The failure to include the social and emotional aspects of sexual relationships in many sexuality education curricula has significant negative consequences. Apart from affecting the credibility of the educator in the eyes of students by desexualising sex and thus undermining the messages sought to be imparted,³³ the failure to consider the context in which sexual encounters take place risks leaving children liable to being victims and/or perpetrators of sexual abuse. Consent is not only the basis for respectful and healthy sexual interactions but

it is also the legal boundary between permissible and impermissible sexual contact. Yet a 2017 study of over 3000 US high school students and young adults found that most had never had a conversation with either a parent or an educator in school about matters pertaining to consent.³⁴ A survey of 1000 Australian women found that only 37 percent were taught about consent.³⁵

In this information vacuum, young people are left to piece together for themselves the parameters of their sexual relationships without the knowledge or skill-set to evaluate the “conflicting and sometimes damaging messages from their peers, the media or other sources.”³⁶ These messages, which mean that sexual encounters between young people take place in an unequal terrain where consent can be confused with acquiescence or can be seen as optional, provide the context for some troubling survey findings. Twenty-seven percent of those questioned in the 2016 Eurobarometer survey on gender-based violence believed that it was appropriate to have sexual intercourse with a woman without her consent in at least one of the following circumstances: where she was drunk, where she voluntarily went home with someone, where she wore revealing clothing, where she did not fight back or say no, where she has had several sexual partners, and where she was flirting with her assailant.³⁷ A 2014 survey of 86 U.S. male college students found that 31.7 percent of those questioned would use force to obtain intercourse as long as no-one found out.³⁸ However when they were asked directly if they would rape a woman this figure dropped to 13.6 percent. Although the latter figure is obviously worrying, so too is the residual 18.1 percent who would in fact rape because they do not understand that non-consensual sex is rape.

Although efforts must be made not to frame sexuality as something threatening, child protection must be one of the aims of sexuality education. Sadly, many children are already

exposed to distinctly harmful adult behaviours and problems before their time. Child sexual abuse is endemic – a 2011 meta-analysis estimated that globally 12.7-18 percent of girls and 7.6 percent of boys experience it³⁹ – demonstrating both the prevalence of sexual abuse, and its gendered nature. In addition, it is likely that children and young people do not recognise sexual abuse when it occurs to them. In 2013 it was found that 44 percent of Irish students who experienced unwanted sexual contact did not think what happened to them was a crime.⁴⁰ Young people may also be unable to articulate their discomfort with unwanted behaviour because they have not practiced the language of consent or bodily autonomy and thus submit to it.⁴¹

Such research findings give enormous weight to the argument that states have an obligation to educate children not just about the biological elements of sex, but to provide comprehensive sexuality education to all children to ensure that sexual health, respectful relationships and consent are concepts that are well understood. There are indications of change in some jurisdictions. It is reported that in the wake of the #MeToo movement, several American states have introduced legislation compelling additions to public school sexuality education including language on consent and healthy relationships.⁴² Such modernisations have the potential to protect children from becoming both victims and/or perpetrators of sexual crimes.

III. Acknowledging the Right to Sexuality Education

There is an extremely strong basis for arguing that there exists a right to comprehensive sexuality education under international human rights law, despite the majority of international and regional human rights law documents not explicitly enumerating such a right.⁴³ This is

because numerous sources of international law and guidance strongly assert such a right, particularly as an integral component of the right to health. The UN Committee on Economic, Social and Cultural Rights is the implementing body of the International Covenant on Economic, Social and Cultural Rights, which enshrines the right to the highest attainable standard of health (Article 12). The Committee states that Article 12 obliges states to ensure that:

[U]p-to-date, accurate information on sexual and reproductive health is publicly available and accessible to all individuals, in appropriate languages and formats, and to ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their required curricula⁴⁴

The CRC, which has been almost universally ratified, provides that children have the right to access information aimed at the promotion of their health (Article 17), and that states have the obligation to develop preventive health care, education and services (Article 24). The CRC implementing body – the UN Committee on the Rights of the Child (the Committee) – emphasises that children have the right to “age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards”⁴⁵

The right to education is another core human right enshrined in various international treaties, agreements and conventions. A right to sexuality education can be read into the CRC with reference to the aims of education that it identifies in Article 29 and to the Committee’s *General Comment on the Aims of Education*.⁴⁶ Of greatest relevance are:

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

...

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin

It is clear from the above that the right to education in the CRC is not confined to literacy and numeracy. The General Comment notes that “[b]asic skills include ... life skills such as the ability to make well-balanced decisions; ... and to develop a healthy lifestyle, good social relationships and responsibility ... which give children the tools needed to pursue their options in life.”⁴⁷ As sexual health is part of a healthy lifestyle, various implementing bodies have emphasised the state obligation to provide sexuality education. The UN Special Rapporteur on the Right to Education asserts that: “... States have an unavoidable obligation to guarantee education that is free from prejudices and stereotypes”⁴⁸ citing the complementary roles of school and family, while the Committee emphasises the positive duty on states to take measures to provide sexuality education to children and young people.⁴⁹

There is also an inherent gender rights element to sexuality education. First, as the Committee on Economic, Social and Cultural Rights emphasises, the ‘reproductive capacities’ of women and girls means that it is essential that they have information on sexuality to enable meaningful choices in their lives.⁵⁰ Second, although males and females experience sexual abuse and exploitation, it is females who disproportionately suffer. Given its focus on gendered harms experienced by women and girls, it is unsurprising that the

Convention on the Elimination of Discrimination Against Women contains an express right to sexuality education. Articles 5(b), 10(h) and 16(1)(e) all require states to provide education about family matters, including family planning.⁵¹

There is accordingly a strong argument that a right to sexuality education encompasses a right to a curriculum that challenges social norms that pose a danger to women and girls. The UN Special Rapporteur on the Right to Education opines that a failure to provide “planned, democratic and pluralist sexual education” results in the provision of a model by omission, a model which “uncritically reproduces patriarchal practices, ideas, values and attitudes that are a source of many forms of discrimination”.⁵² If sexuality education is left exclusively to parents, there is a risk that it will (un)wittingly include discriminatory views that are contrary to individual and societal interests. Research from Ireland tells us that when parents discuss sexuality with their children, the emphasis of the education differs according to gender, with parents assuming their sons will be sexually active and their daughters not.⁵³ Research from the UK and the US has found that females from ethnic and religious minorities have appreciated the provision of sexuality education in schools because sex was either not discussed in their homes or it was “value laden” in content.⁵⁴

This broader context requires sexuality education to include information on “the right to say no to sex”⁵⁵ – understanding this right is key to equipping children, and everyone, with an enhanced ability to stay safe from abuse. It also requires that sexuality education be sex-positive. This is not the same thing as sex-promoting. It means recognising the sensuality of sexual expression which, in addition to addressing student complaints that sexuality education disembodies sex, will perform a protective function. As Hirst writes:

If pleasure is asserted as a right and continually reinforced through SRE ... young people are more likely to feel vindicated in declining pressure to take part in sexual acts or related activities they are not comfortable with, might not enjoy, regret or evoke anxiety ...⁵⁶

In sum, there is now broad acceptance at the level of international human rights and public health bodies that sexuality education is a human right. Research further indicates that throughout Europe and Central Asia sexuality education has become the norm,⁵⁷ demonstrating that the importance of such education is also recognised at domestic level. Moreover, it is a necessary right, the importance of which is grounded in solid evidence – it protects children’s and young people’s health, prevents victimisation (because it gives them the resources to recognise potentially abusive behaviour and so avoid exploitation), and supports values conducive to a more equitable society (thus reducing abuse).

IV. Provision of Sexuality Education: At the Discretion of Parents?

One of the main obstacles to the provision of compulsory comprehensive sexuality education has been parental objection. In 2019, for example, extensive protests in Birmingham, UK against lessons inclusive of information about LGBTQQI matters made headlines, even attracting the support of a small number of sympathetic politicians.⁵⁸ Arguments from some groups of parents, primarily from conservative religious backgrounds, have led to cases being taken at regional and domestic level about the ability of the state to render sexuality education compulsory in state schools. In this section it will be noted that parental rights in respect of education are not absolute. Parental objections to sexuality education likely represent a minority position and as such should not be accorded undue weight. It will also

consider the ways in which these arguments and associated cases have generally failed to focus on children's rights.

A. Perceptions of Parental Objections

The ostensible right of parents to withdraw their children from sexuality education is a prominent matter in the arena of sexuality education. The UN Special Rapporteur on the Right to Education points out that the religious beliefs of parents can affect whether children receive sexuality education.⁵⁹ An example of this tendency at play is the fact that in the UK, in spite of the introduction of 'compulsory' sexuality education under the *Children and Social Work Act 2017*, the right of parents to withdraw persists.⁶⁰ However such accommodations indicate a failure to recognise the provision of sexuality education as a means to keep children empowered, therefore protecting their rights as individuals. This opt-out possibility is particularly problematic where groups such as children with disabilities deemed to be 'difficult' for sexuality education or otherwise falling outside the norm run the risk of missing out on such education.⁶¹ As one special needs teacher put it: "[o]ur guys can't opt-out of puberty".⁶²

It is indeed a parental right to determine the nature of their children's education to a large extent. There is also a positive obligation on the state, for example inherent in the European Convention on Human Rights, to respect parental religious and philosophical convictions⁶³ and states must not pursue an aim of indoctrination contrary to this.⁶⁴ There are strong arguments however that it is proportionate to override parental preferences when it comes to sexuality education.⁶⁵ Parents are not permitted to opt-out of various elements of curricula, such as literacy and numeracy. The suggestion that they should be able to do so would be met

with derision on the basis that all children must learn these crucial skills in order to function in society, and to prevent this learning would be unduly harmful to their well-being and future. This is why there are minimum standards of education which must be met even for children who are home schooled.

The same arguments apply to sexuality education, perhaps more forcefully considering the benefits of sexuality education outlined previously, and the risks that ignorance and misinformation pose to children and young people. In addition, while it is legitimate to respect parental convictions, there are and should be limits. The European Court of Human Rights has held that parental convictions that are “incompatible with human dignity” or that “conflict with the fundamental right of the child to education”⁶⁶ are not protected. This provides a basis for arguing that the dignity of children requires the provision of sexuality education even against the wishes of parents.

Unfortunately European Court of Human Rights jurisprudence concerning sexuality education has turned primarily on questions around balancing the position of parent and state, rather than children’s rights. These cases will be considered in the next section. Before doing so, it is important to note that while the parental opt-out issue is a significant one, there are indications that parents are not, in general, as resistant to comprehensive sexuality education as the discourse in the area would lead one to believe. Most parents want what is best for their children and recognise that sexuality education represents this. US research from 2017 indicated that over 93 percent of parents place great importance on sexuality education at middle and high school level and that high levels of support existed regardless of political affiliation.⁶⁷ The sexuality education supported by these parents included a wide range of topics including healthy relationships, puberty, abstinence, STIs and birth control. Bearing

such research in mind, it seems likely that the efforts of a few conservative/religious parents are having a disproportionate effect on whether sexuality education is provided by states to all children. It is likely that their efforts create a perception that there is greater resistance to sexuality education than there is in reality.

Another possible reason for the lack of provision for the right relates to insufficient emphasis on state obligations to provide for the right. As Campbell notes, the ability of conservative and religious groups to influence the availability of sexuality education to children has been facilitated “by the challenge of recognising and enforcing the state’s positive obligation to provide sex education in both public and private institutions.”⁶⁸ As noted above, a variety of international instruments have made strong provision for the right and/or their implementation bodies have emphasised they are to be interpreted accordingly. This indicates that States Parties to these instruments have positive obligations in this regard. Yet, as arises frequently in the area of international human rights, problems of implementation lie in the interpretation of what those standards entail.⁶⁹ States may interpret the right to sexuality education as limited to the provision of biological information. States may also interpret the right as requiring opt-out powers for objecting parents. Political and resource issues may make these convenient interpretations. Yet such interpretations are contrary to international legal standards, and leave children and young people more vulnerable to sexual violence.

B. Case Law Concerning Sexuality Education: Emphasising Parent and State

Interpretations of international law standards in domestic and regional courts are crucial for shaping understandings of those standards. Cases have emerged at regional and domestic

levels where the provision of sexuality education has been an issue. One strong feature of the case law in the area is that, as with most children's rights matters, the litigation tends to be taken by parents and therefore the children's rights perspective becomes obscured in the dispute between parent and state.

European Convention on Human Rights Case Law Phase 1: A Limited Success for Sexuality Education

The European Convention on Human Rights (ECHR) is perhaps the primary source of human rights case law on sexuality education to date. Article 2 of Protocol 1 of the ECHR states that:

In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

As this instrument is primarily about negative obligations, the right to education generally has been about parental freedoms rather than the obligation of the state to provide anything in particular.⁷⁰ Consequently case law concerning sexuality education has not been focused on states' obligations to provide sexuality education in furtherance of children's rights but rather on questions around balancing the position of parent and state.

In the 1976 case of *Kjeldsen, Busk Madsen & Pedersen v. Denmark*⁷¹ the European Court of Human Rights (ECtHR) found that compulsory sexuality education in public schools does not violate parental freedom. The Court opined that the purpose of the education was for a legitimate state interest, that being the reduction of the rate of unwanted pregnancies. The education was not for the purpose of indoctrination, and the information provided was not

based on morals or beliefs, but rather objective fact and knowledge.⁷² The education was, the ECtHR determined, provided in an objective, critical and pluralistic manner. Unlike religious education therefore, it was permissible for this sexuality education to be made mandatory and it did not violate Article 2 of Protocol 1 to the Convention.

While it is positive that the case recognised that sexuality education is a public good, it is clear is that a children's rights-based approach (or even acknowledgement of children's interests) is lacking in this reasoning. There is no mention of the fact that children are vulnerable and require education to support them to protect themselves and to recognise abuse. It is simply an acknowledgement that states may deliver such education as long as it is neutral in nature.

The public good of sexuality education was also noted in the 2011 case of *Dojan v. Germany*.⁷³ Conservative religious parents were not permitted by a school in a region of Germany to exempt their children from mandatory sexuality education classes (and other elements of the curriculum). The parents argued that this education conflicted with their religious and moral beliefs. Some parents were fined for removing their children (and other activities) and some, refusing to pay the fines, were imprisoned for weeks or months. The ECtHR determined in *Dojan* that education rights were not violated by the sexuality education at issue in this case. The state could require children to attend sexuality education classes with the aim of integrating minorities. The sexuality education in this case constituted a neutral transmission of knowledge and promoted participation in a pluralistic society. These objectives were found to be in conformity with the principles of pluralism and objectivity inherent in Article 2 of Protocol 1. The Court also noted that parents were free to educate their children at home if they so wished. The decisions of German authorities therefore fell

within the margin of appreciation of the state in establishing the nature of their educational systems.

Here again the ECtHR entirely misses the point that children as individuals have a right to sexuality education. The focus is not on children's own empowerment and protection, but on the benefit to the state of educational programmes which encourage pluralist values. Furthermore, the Court emphasises as part of its reasoning upholding the sexuality education in question that children can be home schooled, and therefore parental choice remains. This reasoning is deployed without any consideration of the fact that this in effect means that individual children are left without sexuality education by the state and may well not receive any from parents either. This leaves them vulnerable to abuse and potentially open to prosecution if they themselves engage in sexual behaviour that is either prohibited by age of consent laws and/or is exploitative. Parental religious or conservative beliefs will not protect a child or young person who is being prosecuted for sexual offending, so it is inappropriate that they are invoked to deny them access to information that may stop them from engaging in the criminalised behaviour.

Campbell also points to the problematic reasoning of the case that as long as the education is 'neutral' it does not violate the ECHR.⁷⁴ It is now emphasised by, amongst others, the UN Special Rapporteur on the Right to Education that sexuality education should *not* in fact be neutral; it should instead aim to achieve gender equity and pluralism in society.⁷⁵ The ECtHR's emphasis on the neutrality of the education (i.e. as a factor in favour of the state not overstepping its margin of appreciation) is further indication of the failure by the Court to acknowledge that children have a right to be educated on power dynamics, positive

relationships, and staying safe in a world of inequality between adults and children, and between genders.

Canadian Case Law: A Focus on Pluralism

At domestic level, Canadian courts have also grappled with parent-state struggles over the provision of sexuality education in public schools. These cases have likewise involved courts giving little if any consideration to the position of children themselves. The focus has continued to be on balancing the rights of parents to control the education of their children with the ability of the state to progress pluralist values. For example, in *Chamberlain v. Surrey School District*, the Supreme Court held that a School Board's refusal to approve kindergarten books depicting same-sex parented families was contrary to its obligation to promote tolerance.⁷⁶

The Board's refusal to approve books in *Chamberlain* was on the basis that it would be controversial due to the religious objections of some parents regarding the morality of same-sex relationships. It was held by the Supreme Court that the Board acted contrary to its *School Act 1996* mandate to promote tolerance by prioritising the concerns of one set of parents (those concerned with the morality of same-sex parenting) over others. It was in the interests of same-sex parented families, the Court determined, to have equal recognition and respect in the public-school system. All children would have to be exposed to views and ways of living which were different to those of their parents, continued the Court, and this "is simply a part of living in a diverse society."⁷⁷

The decision is heavily concerned with the human rights of the adults involved, citing the competing rights of “homosexual persons to be free from discrimination”⁷⁸ on the one hand, and parental rights on the other.⁷⁹ The position of children themselves is also considered albeit in an indirect way as an opportunity⁸⁰ rather than a right. That is, a concern is expressed that the Board’s decision has the effect of “denying certain children the chance to have their families accorded equal recognition and respect in the public school system”.⁸¹ This recognition that pluralistic sexuality education has a child-centric value is significantly undermined, however, by the emphasis in the decision on the ability of parents to home school “or send them to private or religious schools where their own values and beliefs may be taught.”⁸² As with ECHR jurisprudence, the primary focus here is therefore not on the rights of individual children to learn, but on the dispute between parent and state.

European Committee of Social Rights: *Interights v. Croatia*

Unlike the other cases considered, the challenge to the sexuality education curriculum in Croatia in *Interights v. Croatia*⁸³ was not taken by conservative/religious parents. Instead it was a European Social Charter Collective Complaint lodged by non-governmental organisations. Despite this, neither the focus of the litigants’ arguments nor that of the judgment shifted. Both were squarely concerned with whether the curriculum was discriminatory against particular groups (e.g. same sex couples and women) rather than with the treatment of children’s own rights to sexuality education.

The challenge was made on the basis that the sexuality education model implemented in Croatian schools was religious and ideology-based. It promoted abstinence at the expense of alternatives such as teaching about contraception. The applicants argued that these

programmes failed to provide adolescents with objective, accurate information on crucial reproductive health issues. It was further argued that such curricula were unconstitutional and in violation of international human rights law, including the rights to information, education, health, and non-discrimination. The European Committee of Social Rights agreed that the non-discrimination provision of the European Social Charter had been violated.

The Committee held that states had a wide margin of discretion to set their own agenda on sexuality education and therefore did not (as encouraged by the applicants) find a failing in the short duration of the sexuality education programme, nor did the Committee make a pronouncement on the type of staff being engaged to deliver it (i.e. religious conservatives). However the Committee held that several passages from a government-approved textbook used in the lessons were discriminatory. The statements referred to the parents of those attracted to members of the same sex as blameworthy as they had “impede[d] their children’s correct sexual development” and attributed primary responsibility for the spread of STIs to those in “homosexual relations”.⁸⁴

The use of these statements was held to be in violation of the non-discrimination clause of the Charter’s Preamble. The Committee concluded that the material in the textbook was inappropriate and contrary to human dignity, stating that:

By permitting sexual and reproductive health education to become a tool for reinforcing demeaning stereotypes, the authorities have failed to discharge their positive obligation not to discriminate in the provision of such education, and have also failed to take steps to ensure the provision of objective and non-exclusionary health education.⁸⁵

The recognition of an obligation to provide ‘health education’ is important, but the pluralism and gender equality goals of sexuality education are stymied if the content of this education is merely ‘objective.’ In this choice of this language, the Committee regrettably mirrors the emphasis on ‘neutrality’ in the ECtHR decisions. It is also of note that there were statements relating to women in the textbook that were similarly outdated and offensive, such as promoting beliefs about inherent “psychosexual” differences between men and women.⁸⁶ Yet the Committee was not convinced that the Charter’s Preamble was breached in this regard. An opportunity for the Committee to emphasise the state’s role in and obligation to progress gender equality was, unfortunately, missed.⁸⁷

Whilst the Committee’s decision was positive in recognising that states have a duty to resist stereotypes, this is once again a decision which focuses on the harm to pluralism in society rather than the rights of children to education. It critiques “reinforcing demeaning stereotypes”⁸⁸ rather than the lack of sexuality education for children. This is particularly evident in the way that there was no finding against the very problematic gender elements of the programme. It is also evident in the failure to find fault with aspects of the programme such as the background of the educators. Children’s rights are not once mentioned in the determination. Children are not positioned as active agents but instead are presented as passive recipients of the problematic syllabus.⁸⁹

European Convention on Human Rights Case Law Phase 2: A Change in Focus

Towards Children in *A.R. & L.R. v. Switzerland*?

More recently in the 2018 case of *A.R. & L.R. v. Switzerland*⁹⁰ the ECtHR rejected as inadmissible an application from a mother (and her daughter) who claimed the school's refusal to exempt the then 7-year old from 'sex education lessons' interfered with her ECHR rights. In this case, it appears that even to refer to it as such was an exaggeration; 'lessons' consisted merely of responses where children posed relevant questions. Nevertheless, the applicants sought to rely on Article 8 (the right to respect for private and family life), the right to freedom of religion and conscience (Article 9), and the right to freedom from discrimination (Article 14).

Interestingly the applicants stated that they were not against sexuality education in State schools *per se*, but were calling into question its appropriateness at the level of kindergarten and early primary school. The ECtHR rejected the admissibility of the application as the child had never actually attended sexuality education classes at the time in question.

Although the case was deemed inadmissible, the Court did make some determinations about sexuality education. It recognised that one of the aims of sexuality education was the prevention of sexual violence and exploitation.⁹¹ Such violence posed a real threat to the health of children, the ECtHR emphasised, and they had to be protected from it at all ages. The sexuality education of very young children – that is those attending kindergarten or primary school – was therefore justifiable. This was part of the reasoning of the Court that the 'sex education', as practised in the Swiss canton in question, pursued legitimate aims.

The ECtHR also reasoned that national authorities recognised the parents' right to provide for their children's sexuality education and that these lessons were complementary to that as they were not systematic, but merely involved teachers reacting to children's questions as they

arose. The Swiss authorities had therefore not overstepped the margin of appreciation accorded to them by the ECHR.

This case was again a challenge to the state's provision of sexuality education by a parent. Once again, the ECtHR focused on the limited nature of the provision and the conclusion was that it was permissible for the state to provide sexuality education from which children could not be exempted. The extremely limited nature of the education is of particular note. However, there is some real progression from the previous case law evident in the fact that the Court focused on the point that children must be protected from sexual abuse and exploitation, and that sexuality education is a way of achieving this.

Another factor which distinguishes this case somewhat is the age of the children concerned. The ECtHR acknowledges that even young children may need some basic knowledge, though there is no elaboration beyond this. That the children in question were young perhaps indicates that states are becoming more aware of the need to introduce young children to issues around sexuality and consent (and hence the parental perception of the need to take the case). It also potentially represents a more modern approach by the Court to the issue of sexuality education and an appreciation of children's own rights and interests.

V. Distinguishing Sexuality Education as a Right of the Child

There is a theme in available regional and domestic case law that as long as states transmit neutral information, and as long as parents have a right to educate their children elsewhere, sexuality education is at the discretion of the state. This is distinctly at odds with the international implementation bodies, which now clearly and consistently articulate that

children have a right, as individuals, to comprehensive sexuality education which teaches them not just about the practicalities of sex but also about the social and emotional elements of relationships. There is therefore a real lack of understanding about the nature of the right to sexuality education at domestic and regional levels and also a disjoint between the right and the emerging case law.

The lack of attention to the children's rights elements of the cases considered above also points to the need to progress a children's rights approach to litigation and to judgments. Failure to understand the children's rights implications of a case is not confined to the area of sexuality education. Stalford *et al* make the point that judgments concerning children across all jurisdictions routinely take a limited approach to children's rights issues:

Many judgments fail to engage with children's rights issues, confining their adjudication to a factual review of the available evidence rather than a more nuanced understanding of how that evidence might be interpreted in the light of established children's rights norms and research intelligence.⁹²

And yet, the authors continue, information on the law concerning children's rights, as well as inter-disciplinary knowledge on children's social, emotional, cognitive and other capacities and experiences are widely available. These insights must be brought to bear on judicial decision-making.

Stalford *et al* set out that the primary aim of a children's rights-based judgment is to render children more visible in legal matters by better recognising their status as rights-holders and thus ensuring that their voices and interests are factored into the decision-making of courts.

This can be done by (amongst other things) drawing upon the CRC and other human rights instruments, and on theory concerning children's rights.⁹³ One way in which judges can be encouraged to engage in such approaches is by lawyers (and others) presenting children's rights-based arguments.

It may be difficult for practitioners such as lawyers to engage children's rights in relevant cases in a context where courts are not as open to children's rights arguments (for example through the CRC, which may not be incorporated into domestic law) as they are to more narrow points of law based in domestic standards. Fortin states that they may "seem more interested in presenting the courts with evidence which can be slotted into rather vague assertions about a child's welfare than with analysing what specific rights might protect him or her."⁹⁴ As it is assumed that it is in the best interest of children that parents dictate their education this, rather than children's own perspectives, is overwhelmingly the focus of case law concerning sexuality education. To truly appreciate children's realities, there must be a broader appreciation of the need to consider children's position, and their autonomy as individuals, when it comes to questions concerning their education, health and possible liberty. Lawyers who are tasked with defending state sexuality education in relevant cases must therefore emphasise that such education is crucial for each individual child – they simply will not be adequately prepared for life without it.

The shaping of jurisprudence concerning sexuality education will also depend on the nature and frequency of cases taken. Strategic litigation which focuses on the harm to children where they do not have adequate sexuality education may be difficult to initiate in the absence of specific victims. Relevant laws may not explicitly recognise the right of each individual child to sexuality education (note the emphasis of the ECHR on the primacy of

parental rights for example). The introduction of the Third Optional Protocol to the CRC provides however a new avenue for making such a complaint.⁹⁵ This individual complaints mechanism provides the opportunity to engage the relevant CRC articles before an implementation body – the Committee on the Rights of the Child – which has already recognised the right to sexuality education. Such recognition, and the inherent children’s rights focus of the instrument, will undoubtedly shift the focus of any petition taken to prioritise the rights of children themselves. NGOs and activists at domestic level should be encouraged to identify where states are failing to provide sexuality education. Connections must be drawn between these failures, high rates of child abuse and exploitation, and the criminalisation of children and young people for unknowingly engaging in child sexual offences. Where efforts fail at domestic level to tackle this, petitions should be taken to the Committee on the Rights of the Child and elsewhere.

VI. Conclusion

It is unlikely that sexual violence will ever be entirely eliminated but state provision of comprehensive sexuality education can play an important role in reducing its occurrence. The conversations about consent, power dynamics and positive relationships prompted by the #MeToo movement need to inform the development and roll-out of children’s rights-compliant sexuality education curricula from which no child or young person is exempt. No matter what the background, beliefs or ethos of their parents, every child should be equipped with the knowledge of how to protect themselves and of the obligation to respect others. In spite of broad perceptions that parental objections are the main obstacle to widespread implementation of comprehensive sexuality education, it must be acknowledged that resistance appears to derive only from small groups of parents. The arguably more significant

issue is the willingness of states to ensure that comprehensive sexuality education is properly prepared, resourced and delivered, and that schools are supported and obliged to deliver it.

Part of achieving this is to shift the focus of legal efforts and legal determinations where sexuality education is concerned. It is apt that it has been acknowledged that such education furthers public health and facilitates pluralism. Yet greater efforts must now be made to emphasise the importance of educating from the earliest stages about consent and respect. Sexuality education is not just for adolescents. Nor should it be concerned solely with STIs and the biological elements of reproduction. Comprehensive sexuality education is a duty of the state, as all children have a right to education which prepares them to expect positive, respectful relationships. Though such education is certainly the role of parents too (arguably it is primarily the role of parents), the research is clear that many children simply do not receive sexuality education at home and/or that the quality of that education fails to meet human rights standards.

There must be an insistence that states fill the gap not just for public health or pluralism reasons but also to uphold the rights of each individual child. Where this does not happen, cases must be taken at domestic level and failing that to regional/international decision-making bodies. It is crucial when this happens that arguments are made, and judgments rendered, which do not solely focus on pluralism and on public health. There must be an emphasis upon the right of each individual child to education which empowers them in matters concerning sex and relationships.

¹ Ashwini T'Ambe, *Reckoning with the Silences of #MeToo*, 44 FEMINIST STUDIES 197, 201 (2018).

² See Editorial, *Ambiguities and dilemmas around #MeToo: #ForHowLong and #WhereTo*, 25(1) EURO. J. WOMEN'S STUDIES 3 (2018).

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- ³ Jonathan Herring, *Vulnerability, children, and the law*, *LAW AND CHILDHOOD STUDIES: CURRENT LEGAL ISSUES* (2012).
- ⁴ Aoife Daly, Rachel Heah and Kirsty Liddiard, *Vulnerable subjects or autonomous actors: The right to sexuality education for under-18s with disabilities*, 9(3) *GLOBAL S. CH.* 235 (2019).
- ⁵ European Expert Group on Sexuality Education, *Sexuality education – what is it?*, 16(4) *SEX ED.* 427 (2016). The Expert Group emphasises that it does not encourage children and young people to have sex. The term sexuality education will be used in this article to denote this comprehensive approach. The narrower term ‘sex education’ will be used where the term is used in a particular case.
- ⁶ UNESCO, *INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION 1, VOL 1* (2009).
- ⁷ *Id.*
- ⁸ European Expert Group on Sexuality Education, *supra* note 5, at 427.
- ⁹ James J. Ponzetti, Jr., *Sexuality education: Yesterday, today and tomorrow* in *EVIDENCE BASED APPROACHES TO SEXUALITY EDUCATION* (James J. Ponzetti, Jr., ed., 2015).
- ¹⁰ *Id.* at 25.
- ¹¹ Mary Crewe, *Between worlds: releasing sexuality education from bondage* in *EVIDENCE BASED APPROACHES TO SEXUALITY EDUCATION 100* (James J. Ponzetti Jr. ed., 2015).
- ¹² See e.g. Clare Tanton *et al*, *Patterns and Trends in Sources of Information about Sex among Young People in Britain: Evidence from Three National Surveys of Sexual Attitudes and Lifestyles*, *BMJ OPEN* 5:e007834 (2015); UK YOUTH PARLIAMENT, *SRE: ARE YOU GETTING IT?* (2007).
- ¹³ See e.g. RACHEL HEAH, *SEXUALITY EDUCATION IN ENGLAND AND WALES: THE VIEWS OF CHILDREN AND YOUNG PEOPLE* (Unpublished Ph.D. thesis, University of Liverpool, forthcoming 2019).
- ¹⁴ *Id.*
- ¹⁵ UNESCO, *STRATEGY ON EDUCATION FOR HEALTH AND WELL-BEING* 5, 8 (2016).
- ¹⁶ See Janet Helmer *et al*, *Improving sexual health for young people: making sexuality education a priority*, 15(2) *SEX ED.* 158, 165 (2015).
- ¹⁷ UNESCO, *EMERGING EVIDENCE, LESSONS AND PRACTICE IN COMPREHENSIVE SEXUALITY EDUCATION: A GLOBAL REVIEW* 12 (2015).
- ¹⁸ UNESCO, *supra* note 6, at 13-17.
- ¹⁹ Chris Collins *et al*, *ABSTINENCE ONLY VS. COMPREHENSIVE SEX EDUCATION: WHAT ARE THE ARGUMENTS? WHAT IS THE EVIDENCE?* (2002), cited in SAFE PROJECT, *SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS OF YOUNG PEOPLE IN EUROPE* 17 (2007).
- ²⁰ UNESCO, *EMERGING EVIDENCE, supra* note 16, at 19.
- ²¹ *Id.* at 19.
- ²² UN SPECIAL RAPporteur ON THE RIGHT TO EDUCATION, *REPORT TO THE UN GENERAL ASSEMBLY (SEX EDUCATION)* paragraphs 69, 87(d) (UN Doc. A/65/162, 2010).
- ²³ *Id.* at 14, citing Nicole A. Haberland, *The case for addressing gender and power in sexuality and HIV education: A comprehensive review of evaluation studies*, 41(1) *INT. PERSPECTIVES SEXUAL AND REPRODUCTIVE HEALTH* 31 (2015).
- ²⁴ *Id.* at paragraph 47; SAFE PROJECT, *COMPENDIUM ON YOUNG PEOPLE’S SRHR POLICIES IN EUROPE* 8 (2012).
- ²⁵ In Ireland for example a large proportion of schools are religious-run. See SAFE PROJECT, *COMPENDIUM id.* at 51.
- ²⁶ Alison Kershaw, *Teachers ‘embarrassed over sex lessons’*, *INDEP.*, July 23, 2010, available at <https://www.independent.co.uk/news/education/education-news/teachers-embarrassed-over-sex-lessons-2033654.html>. Students have picked up on and critiqued this embarrassment as hindering their education. See Pandora Pound *et al*, *What do young people think about their school-based sex and relationship education? A qualitative synthesis of young people’s views and experiences*, 6(9) *BMJ OPEN* e011329 8-9 (2016).
- ²⁷ Douglas B. Kirby *et al*, *Sex and HIV Education Programs: Their Impact on Sexual Behaviors of Young People Throughout the World*, 40 *J. ADOL. HEALTH* 206 (2007).
- ²⁸ DAVID ARCHARD, *CHILDREN: RIGHTS AND CHILDHOOD* 40 (1995).
- ²⁹ See e.g. <http://www.socialworkerstoolbox.com/the-underwear-rule-guides-for-children-and-parents/>, <https://www.nspcc.org.uk/preventing-abuse/keeping-children-safe/underwear-rule/>, and http://www.underwearrule.org/underwear_en.asp.
- ³⁰ John S. Santelli *et al*, *Abstinence-only-until-marriage: An updated review of US policies and programs and their impact*, 61(3) *J. ADOL. HEALTH* 273, 401, 402 (2017).
- ³¹ UN SPECIAL RAPporteur ON RIGHT TO EDUCATION, *supra* note 22, at paragraph 65.
- ³² UNESCO, *TECHNICAL GUIDANCE, supra* note 6, at 3.
- ³³ Pound *et al, supra* note 26, at 7.

- ³⁴ RICHARD WEISSBOURD *et al*, THE TALK: HOW ADULTS CAN PROMOTE YOUNG PEOPLE'S HEALTHY RELATIONSHIPS AND PREVENT MISOGYNY AND SEXUAL HARASSMENT 17 (2017). Two different surveys were conducted with 1300 students in the first and 2195 in the second.
- ³⁵ Sienna Aguilar, *Sex Education Needs a Lesson in Consent*, HUFF. POST AUST., July 14, 2016, available at https://www.huffingtonpost.com.au/sienna-aguilar/sex-education-needs-a-lesson-in-consent_b_9352420.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAGADk85VwzdNupczg9GF8u-vST9TXyuJgCs_UZePTPuLcDD8s14OKE7x2XZZE8NPTvotk8006MyezEIUOrje2CsueaDMWKSfQ4AIGCzTIN9gKCfspGVSQuD2NgFjn9ImOZaQN13r05d-JXcCOkci2asiOOg08D-rEq3D06K2y3lx.
- ³⁶ UNESCO, TECHNICAL GUIDANCE, *supra* note 6, at 8.
- ³⁷ EUROPEAN COMMISSION, GENDER-BASED VIOLENCE: EUROBAROMETER SPECIAL REPORT 449 65 (2016).
- ³⁸ Sarah R. Edwards *et al*, *Denying Rape but Endorsing Forceful Intercourse: Exploring Differences Among Responders*, 1(4) VIOLENCE & GENDER 188 (2014).
- ³⁹ Marije Stoltenborgh, *et al*, *A global perspective on child sexual abuse: meta-analysis of prevalence around the world*, 16(2) CHILD MALTREATMENT 79 (2011).
- ⁴⁰ UNION OF STUDENTS IRELAND, SAY SOMETHING: A STUDY OF STUDENTS' EXPERIENCES OF HARASSMENT, STALKING, VIOLENCE & SEXUAL ASSAULT 37 (2013).
- ⁴¹ PADRAIG MACNEELA *ET AL*, DEVELOPMENT, IMPLEMENTATION AND EVALUATION OF THE SMART CONSENT WORKSHOP ON SEXUAL CONSENT FOR THIRD LEVEL STUDENTS 24-5 (2017).
- ⁴² Sasha Jones, *States Introduce Sex Education Legislation Following #MeToo Movement* (May 30, 2019), available at http://blogs.edweek.org/teachers/teaching_now/2019/05/states_introduce_sex_ed_legislation_following_me_too_movement.html
- ⁴³ This is in spite of some lone voices from religious organisations arguing against this, see for example Melissa Curvino & Meghan Grizzle Fischer, *Claiming comprehensive sex education is a right does not make it so: A close reading of international law*, 20(1) NEW BIOETHICS 72 (2014).
- ⁴⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights) at paragraph 63, U.N. Doc. E/C.12/GC/22 (May 2, 2016).
- ⁴⁵ UN Committee on the Rights of the Child, General Comment No. 22 (2016) on the implementation of the rights of the child during adolescence at paragraph 61, U.N. Doc. CRC/C/GC/20 (December 6, 2016).
- ⁴⁶ Committee on the Rights of the Child, General Comment No. 1, The Aims of Education, U.N. Doc. CRC/GC/2001/1 (2001).
- ⁴⁷ UN Committee on the Rights of the Child, Annex IX General Comment No. 1 (2001) Article 29 (1): The Aims of Education at paragraph 9, U.N. Doc. CRC/GC/2001/1 (April 17, 2001), available at http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRC_General_Comment_1_en.pdf.
- ⁴⁸ UN SPECIAL RAPPOREUR ON THE RIGHT TO EDUCATION, *supra* note 22 at paragraph 72.
- ⁴⁹ See *e.g.* UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland at paragraph 65, U.N. Doc. CRC/C/GBR/CO/5 (July 12, 2016).
- ⁵⁰ Committee on Economic, Social and Cultural Rights, *supra* note 44, at paragraph 25.
- ⁵¹ See Meghan Campbell, *Equality and the right to education: let's talk about sex* in HUMAN RIGHTS AND EQUALITY IN EDUCATION at 111 (Sandra Fredman *et al* eds., 2018).
- ⁵² UN SPECIAL RAPPOREUR ON THE RIGHT TO EDUCATION, *supra* note 22, at paragraph 76.
- ⁵³ ABBEY HYDE & ETAOINE HOWLETT, UNDERSTANDING TEENAGE SEXUALITY IN IRELAND 33-4 (Crisis Pregnancy Agency, 2004).
- ⁵⁴ Aida Orgocka, *Perceptions of communication and education about sexuality among Muslim immigrant girls in the US*, 4(3) SEX ED. 255 (2004); Juping Yu, *School sex education: views within British-Chinese families*, 10 ASIAN J. NURS. 171 (2007); Neil Selwyn & Eryl Powell, *Sex and relationships education in schools: the views and experiences of young people*, 107(2) HEALTH ED. 219 (2007).
- ⁵⁵ UN Special Rapporteur, *supra* note 22, at paragraph 55.
- ⁵⁶ Julia Hirst, *'It's got to be about enjoying yourself': young people, sexual pleasure, and sex and relationships education*, 13(4) SEX ED. 423, 430 (2013).
- ⁵⁷ Federal Centre for Health Education, *Sexuality Education in Europe and Central Asia: State of the Art and Recent Developments* (Federal Centre for Health Education, 2018).
- ⁵⁸ Sima Kotecha, Birmingham LGBT row: 'Homophobic protests must stop' BBC, June 7, 2019, available at <https://www.bbc.co.uk/news/uk-england-birmingham-48545247>.
- ⁵⁹ UN SPECIAL RAPPOREUR ON THE RIGHT TO EDUCATION, *supra* note 23, at paragraph 5.

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- ⁶⁰ DEPARTMENT OF EDUCATION, RELATIONSHIPS EDUCATION, RELATIONSHIPS AND SEX EDUCATION (RSE) AND HEALTH EDUCATION: GUIDANCE FOR GOVERNING BODIES, PROPRIETORS, HEAD TEACHERS, PRINCIPALS, SENIOR LEADERSHIP TEAMS, TEACHERS 7(Department of Education, London 2018).
- ⁶¹ Aoife Daly, Rachel Heah and Kirsty Liddiard, *Vulnerable subjects or autonomous actors: The right to sexuality education for under-18s with disabilities*, 9(3) GLOBAL S. CH. 235 (2019).
- ⁶² Rachel Williams, *Pupils with learning difficulties are being denied their right to sex education*, THE GUARDIAN, March 23, 2015, available at <https://www.theguardian.com/education/2015/mar/23/learning-difficulties-sex-education-abused>.
- ⁶³ See *Campbell & Cosans v. United Kingdom*, 4 Eur. Ct. H.R. 293, paragraph 37 (1982).
- ⁶⁴ *Kjeldsen, Busk Madsen & Pedersen v. Denmark*, 1 Eur. Ct. H.R. 711, paragraph 52 (1976).
- ⁶⁵ Meghan Campbell, *The challenges of girls' right to education: Let's talk about human rights-based sex education*, 20(8) INT. J. H.R. 1219 (2016).
- ⁶⁶ See *Campbell & Cosans*, *supra* note 63, at paragraph 36, reaffirming *Kjeldsen*, *supra* note 64, at paragraph 52.
- ⁶⁷ Leslie Kantor and Nicole Levitz, *Parents' views on sex education in schools: How much do Democrats and Republicans agree?*, 12(7) PLoS ONE e0180250 (2017).
- ⁶⁸ See *Campbell*, *supra* note 66, at 1223.
- ⁶⁹ AOIFE DALY *et al*, *ENHANCING THE STATUS OF UN TREATY RIGHTS IN DOMESTIC SETTINGS* (2018).
- ⁷⁰ See KATARINA TOMAŠEVSKI, HUMAN RIGHTS OBLIGATIONS: MAKING EDUCATION AVAILABLE, ACCESSIBLE, ACCEPTABLE AND ADAPTABLE, RIGHT TO EDUCATION PRIMERS No. 3 13 (2001).
- ⁷¹ *Kjeldsen*, *supra* note 64, at paragraph 52.
- ⁷² Similarly in *Folgero v. Norway*, 46 Eur. Ct. H.R. 47 (2008) the Court held that states have a positive duty to ensure respect for parents' convictions, and opined that this includes achieving a balance between majority and minority rights and interests.
- ⁷³ *Dojan v. Germany*, App. No. 319/08 (Admissibility), Sept. 13, 2011.
- ⁷⁴ *Campbell*, *supra* note 65, at 1219.
- ⁷⁵ UN SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION, *supra* note 22, at paragraph 76.
- ⁷⁶ *Chamberlain v. Surrey School District No. 36*, 4 S.C.R. 710 (2002). See also the similar cases of *S.L. v. Commission scolaire des Chênes*, 1 S.C.R. 235 (2012) and *E.T. v. Hamilton-Wentworth District School Board ONCA 893* (2017).
- ⁷⁷ *Chamberlain*, *id.* at paragraphs 64-67.
- ⁷⁸ *Id.* at paragraph 79.
- ⁷⁹ *Id.* at paragraph 133.
- ⁸⁰ *Id.* at paragraph 10.
- ⁸¹ *Id.* at paragraph 11.
- ⁸² *Id.* at paragraph 30.
- ⁸³ International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007 (March 30, 2009).
- ⁸⁴ *Id.* at paragraph 60.
- ⁸⁵ *Id.* at paragraph 61.
- ⁸⁶ *Id.* at paragraph 28.
- ⁸⁷ It has been reported that, although the relevant textbooks were dropped, efforts to implement more liberal sexuality education have been strongly resisted by conservative religious groups. Children's Rights International Network, CROATIA, *Sex-ed stalemate after decades of disagreement*, no date, available at <https://archive.crin.org/sites/default/files/croatialsexeducation.pdf>.
- ⁸⁸ Interights, *supra* note 83, at paragraph 61.
- ⁸⁹ *Id.*
- ⁹⁰ *A.R. & L.R. v. Switzerland*, App. No. 22338/15 (Dec. 19, 2017), available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-180402%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-180402%22]}). The judgment is only available in French.
- ⁹¹ *Id.* at paragraph 36: “[e]lle relève que, selon la directive en question, l’un des buts de l’éducation sexuelle est la prévention des violences et de l’exploitation sexuelles.”
- ⁹² Helen Stalford *et al*, *Rewriting Children's Judgments: From Academic Vision to New Practice* 6 (2017).
- ⁹³ *Id.* at 53-54.
- ⁹⁴ Jane Fortin, *Accommodating Children's Rights in a Post Human Rights Act Era*, 69 MOD. L. REV. 299, 303 (2006).
- ⁹⁵ See SONJA GROVER, CHILDREN DEFENDING THEIR HUMAN RIGHTS UNDER THE CRC COMMUNICATIONS PROCEDURE (2015).