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Empowering the Next Generation: Securing the Right to Education in the New Millennium

Does the right to education have a future within the UN? That was the question posed by the late Katarina Tomaševski in a valedictory article written at the end of her six year tenure as Special Rapporteur in 2005 and at a time when the future of the body which had provided her mandate – the UN Commission on Human Rights – remained uncertain.¹ One and a half years later the Commission has been replaced by the Council and Katarina is no longer with us having passed away after a long illness on 4 October 2006. Whether the issues addressed by Tomaševski in her article – the failure of the UN to provide the necessary resources and clarity of purpose to assist experts such as her in fulfilling their mandate – will ultimately be resolved remains to be seen. However, one thing is certain: few individuals have had such an impact on shaping understanding of a particular right as the former Special Rapporteur. Whether it was clarifying the nature and scope of the rights through the innovative ‘four As’ typology (human rights obligations in, to and through education require availability, accessibility, acceptability, adaptability) which has now been adopted by the UN Economic, Social and Cultural Rights Committee as the standard approach (and which is featured in several of our articles) or examining the realisation of the right to education in incisive country reports as well as countless articles and her inspired teaching, Tomaševski was a passionate advocate for the universal enjoyment of the right to education.

The range of articles presented in this issue of the *Bulletin* demonstrate some of the progress that has been made not only in terms of standard setting, but also in obtaining redress for those whose right to education has been violated. They demonstrate how the right to education

can be effectively enforced, how litigation, whilst not a panacea for ensuring human rights in, to and through education, can provide a focal point for broader action and campaigning. The contributions also reflect many of the concerns that Tomaševski highlighted in

Promoting Accurate and Objective Sexuality Education

Christina Zampas and Pardiss Kebriaei

Comprehensive sexual and reproductive health education for young people is alarmingly inadequate or completely lacking in many countries across the globe. Where information is provided, it is often of the most elementary sort – a few hours of lecture on the biological aspects of reproduction as part of a broader subject, for example – or presented by teachers with no specialised training in the subject matter or effective teaching methodologies. Even more worrying are biased and ideologically-driven sexuality education¹ programmes, which are proliferating in classrooms in every region of the world, often in contexts where youth have no good alternative sources of information in schools or elsewhere. Generally speaking, these types of programmes – abstinence-only teaching among them – are characterised by several problematic features, including medically inaccurate and biased information about contraception, abortion and AIDS; messages that discourage the use of condoms, use fear and shame to motivate abstinence outside of marriage, and promote gender stereotypes as fact.² Research shows that such programmes are not only largely ineffective in delaying sexual activity, but are in fact harmful in undermining the use of contraception and safe practices by young people when they do become sexually active. Beyond the health-related harmful consequences of such programmes, abstinence-only-until-marriage programmes in particular blatantly discriminate by their terms against gay and lesbian youth, who cannot legally marry in most countries.

Yet the need for comprehensive, evidence-based sexual and reproductive health education for youth has never been more critical. Early and unwanted pregnancy and motherhood have been recognised as global public health concerns.³ Rates of HIV infection and other sexually transmitted infections (STIs) are growing at alarming rates among young people, with over 40 per cent of new HIV infections occurring among 15-24 year-olds.⁴ Among this group, young women outnumber young men by two to one.⁵ Even if abstinence-only programmes worked in delaying sexual activity until marriage, the very premise that marriage is an effective protection in avoiding HIV is increasingly proving to be a dangerous presupposition. For example, research has shown that young married women have greater rates of HIV infection than their unmarried counterparts in certain contexts.⁶ Recent reports from some countries show that the highest percentage of people contracting HIV/AIDS are married.⁷ In this context,

access to comprehensive information that responds to the realities of adolescents' lives and can help empower and protect them is literally a matter of life and health.

Access to sexuality education as an international human right

United Nations treaty bodies

Access to sexual and reproductive health education is not only imperative public policy, but a legal duty of governments under international law. International human rights treaties provide the legal foundation for the right to sexual and reproductive health education. At the UN level, individual treaty monitoring bodies, which oversee governmental compliance with treaties, have articulated the links between sexual and reproductive health education and the broad guarantees of human rights in regional and international treaties. Concluding observations and general recommendations and comments from the Committee for the Elimination of All Forms of

Discrimination (CEDAW) Committee, the Children's Rights Committee, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights have generally framed the right to sexual education in the context of ensuring the right to health.⁸ All four have criticised states parties for not ensuring access to sexual education and have frequently asked states parties to implement sexual education programmes.⁹ They have often discussed sexual education as a means to reduce maternal mortality, rates of abortion, adolescent pregnancies, and rates of HIV/AIDS.¹⁰ They have asked states to remove barriers hindering access of adolescents to information on HIV preventative measures, such as condoms, and to reintroduce sexual education in schools.¹¹ While the committees have not included very detailed measures on how to improve sexual education, some have identified at least two areas in need of improvement: that sexual education programmes should include information on gender relations and be free of prejudice and discrimination, and that information should be accurate and objective.¹²

UN treaty monitoring bodies have recently addressed the growing trend of inaccurate and unscientifically based information by requiring that sexual and reproductive health education be accurate and objective. For example, the Committee on Economic, Social and Cultural Rights recommends that in order for state parties to comply with this right they should refrain from "...censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information."¹³ In a recent concluding observation to the Philippines, the Children's Rights Committee recommended that the government should continue to "...[p]rovide adolescents with accurate and comprehensive information about HIV/AIDS, including condom use, in schools ..."¹⁴ The Human Rights Committee has also explicitly recom-

mended that the Ministry of Education in Poland "... ensure that schools include accurate and objective sexual education in their curricula.¹⁵

The CEDAW Committee has addressed the need to ensure sexual education free of discrimination, and in particular the specific needs of adolescent girls and women by tackling the unequal gender relations in such programming. The Committee's General Recommendation on Women and Health states: "... [s]tates parties should ensure, without prejudice or discrimination, the right to sexual health information, education and services for all women and girls In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their right to privacy and confidentiality."¹⁶ The CEDAW Committee in a concluding observation to Slovenia explicitly asked the state party to include the topics of gender relations and violence against women in its sexual education programmes.¹⁷

Regional courts

Jurisprudential support for the right to sexual and reproductive health education can also be found in regional human rights treaties, but is less developed. However, it is worth noting one case from a regional human rights body that directly addressed the issue of sexuality education in schools. The European Court of Human Rights, in *Kjeldsen, Busk Madsen and Pederson v Kingdom of Denmark* (1976), held that compulsory sexuality education introduced in state primary schools did not violate the rights of parents of school-age children to education, non-discrimination, privacy, and freedom of religion. The Court decided that the information was provided in an objective and pluralistic manner, and did not constitute indoctrination or disrespect parents' religious or philosophical views. Importantly, the Court noted that the Danish state had a public interest in informing adolescents about sex-related issues. The Court affirmed that "by providing children in good time with explanations [the state] considered useful, [it was] attempting to warn them against phenomena it viewed

as disturbing, for example, the excessive frequency of births out of wedlock, induced abortions and venereal diseases."¹⁸ The Court also gave weight to the fact that those parents who continued to object were free to send their children to private schools or educate them at home.

Biased and ideologically-driven sexuality education programmes, are proliferating in classrooms in every region of the world, often in contexts where youth have no good alternative sources of information in schools or elsewhere.

International policy

International consensus documents and policy guidance issued by United Nations agencies affirm the right to and critical need for comprehensive sexuality education for youth. Key among the consensus documents are the International Conference on Population and Development's (ICPD) twenty-year Programme of Action and its subsequent five- and ten-year reviews,¹⁹ and the Beijing Platform for Action and its five-year review, all of which set forth specific objectives and actions relating to sexuality education. These documents urge governments to provide and support sexual and reproductive health education both as part of their commitment to reproductive health and rights,²⁰ and also as a strategy to address the public health imperatives of reducing adolescent pregnancies and unsafe abortion,²¹ whilst preventing the transmission and spread of STIs and HIV/AIDS among young people.²² The five-year review of the ICPD urgently requires governments to "immediately develop, in partnership with youth... [and] educators, youth-specific HIV education and treatment projects, with special emphasis on developing peer-education programmes."²³ The subsequent review of Beijing expounds on the relationship between sexuality education and reduced risk of STIs and HIV/AIDS: "experience shows that educational programmes for young people can lead to a more positive view on gender relations and gender equality, delayed sexual initiation and

reduced risk of sexually transmitted infections."²⁴

To be effective, reproductive and sexual health education should begin in primary school and continue through all levels of formal and non-formal education.²⁵ Adolescents themselves should be actively involved in planning, implementing and evaluating programmes,²⁶ and schools, as with "all who are in a position to provide guidance to adolescents concerning responsible sexual and reproductive behaviour," should receive specific training.²⁷ These documents specifically recognise the importance of such education for boys and young men in promoting respect for women's self-determination and shared responsibility in matters

of sexuality and reproduction, including the prevention of STIs.²⁸ They also draw special attention to the needs of vulnerable and disadvantaged youth in the design of education programmes.²⁹ Importantly, these documents also contain ammunition against some of the most problematic aspects of biased sexuality education programmes, namely, discriminatory gender stereotypes that often permeate their messages and curricula,³⁰ and misleading and inaccurate information on issues such as the efficacy of contraception.³¹

In its policy recommendations on adolescent health issues, the World Health Organisation echoes the need for sexuality education for adolescents and provides guidance on the appropriate content and implementation of such programmes. Curricula should include information on reproduction and contraception, which should be "described, their modes of action explained, and their advantages and disadvantages openly discussed – including with respect to the prevention of [STIs]."³² Condoms are specifically described as "the single best protective option for many adolescents."³³ In contrast, natural family planning methods are not recommended for adolescents, recognising that "adolescents are very frequently unable to comply with the stringent requirements for the correct and consistent use of [these] methods."³⁴ Similarly discouraged is the abstinence-only approach to sexuality education.³⁵ Appropriate training is also recommended for all teachers of sexuality education "so that

they are well informed about sex and birth control and are able to communicate with adolescents in a confidential manner, and without taking a moralising attitude.”³⁶ Like other international standards, World Health Organisation recommendations similarly call for sexuality education programmes to begin in primary school, elaborating that in developing countries in particular, girls in the first classes of secondary school face the greatest risk of the consequences of sexual activity. Such an approach also ensures that students who are unable to attend secondary school can still have access to sexuality education.³⁷ ■

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- 1 “Sexuality education” refers to education on all issues of a sexual nature and is alternatively called “sex education” or “sex and relationships education”.
- 2 See Sexuality Information and Education Council of the United States (SIECUS), *In Their Own Words: What Abstinence-Only-Until-Marriage Programmes Say* (2005).
- 3 See World Health Organisation (WHO), *Adolescent Pregnancy: Issues in Adolescent Health and Development*, at vi (2004), [hereinafter WHO, *Adolescent Pregnancy*].
- 4 UNICEF, *Facts on Children, HIV and AIDS*, <http://www.unicef.org/media/media_35904.html>
- 5 See Heyzer, Noeleen, Executive Director of UNICEF, quoted in SIECUS, *International Women's Day 2004 Highlights Women's Vulnerability to HIV/AIDS* (2004).
- 6 SIECUS, *'I Swear I Won't! A Brief Explanation of Virginity Pledges* (2005).
- 7 Bagala, Andrew, ‘Uganda: Married Couples Top HIV Infection Rates’, *The Monitor*, 4 December 2006, available at <<http://allafrica.com/stories/200612041050.html>>
- 8 See Committee on the Rights of the Child, *Gen. Comment 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/4 (2003). Committee on Economic, Social, and Cultural Rights, *Gen. Comment 14: The Right to the Highest Attainable Standard to Health*, para. 34, U.N. Doc. E/C.12/2000/4 (2000). Committee on the Elimination of Discrimination against Women, *Gen. Recommendation 24: Women and Health* (1999).
- 9 See *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Burundi*, 02/02/2001, U.N. Doc. A/56/38, para. 62; Democratic Republic of the Congo, 01/02/2000, U.N. Doc. A/55/38, para. 228; Jamaica, 02/02/2001, U.N. Doc. A/56/38, para. 224; Kazakhstan, 02/02/2001, U.N. Doc. A/56/38, para. 106; Lithuania, 16/06/2000, U.N. Doc. A/55/38, para. 159; Mongolia, 02/02/2001, U.N. Doc. A/56/38, para. 274; Nicaragua, 31/07/2001, U.N. Doc. A/56/38, para. 303; Republic of Moldova, 27/06/2000, U.N. Doc. A/55/38, para. 110; Romania, 23/06/2000, U.N. Doc. A/55/38, para. 315; Uzbekistan, 02/02/2001, U.N. Doc. A/56/38, paras. 185–186; Vietnam, 31/07/2001, U.N. Doc. A/56/38, paras. 266–267. *Concluding Observations of the Committee on the Rights of the Child: Bhutan*, 09/07/2001, U.N. Doc. CRC/C/15/Add.157, para. 45; Cambodia, 28/06/2000, U.N. Doc. CRC/C/15/Add.128, para.

- 53; Comoros, 16/10/2000, U.N. Doc. CRC/C/15/Add.141, para. 36; Egypt, 26/01/2001, U.N. Doc. CRC/C/15/Add.145, para. 44; Georgia, 28/06/2000, U.N. Doc. CRC/C/15/Add.124, para. 47; Iran (Islamic Republic of), 28/06/2000, U.N. Doc. CRC/C/15/Add.123, para. 44; Jordan, 02/06/2000, U.N. Doc. CRC/C/15/Add.125, para. 48; Kyrgyzstan, 09/08/2000, U.N. Doc. CRC/C/15/Add.127, para. 46; Latvia, 26/01/2001, U.N. Doc. CRC/C/15/Add.142, paras. 39, 40; Lithuania, 26/01/2001, U.N. Doc. CRC/C/15/Add.146, paras. 39, 40; Saudi Arabia, 26/01/2001, U.N. Doc. CRC/C/15/Add.148, para. 38; Slovakia, 23/10/2000, U.N. Doc. CRC/C/15/Add.140, para. 38; Tajikistan, 16/10/2000, U.N. Doc. CRC/C/15/Add.136, para. 41; Turkey, 09/07/2001, U.N. Doc. CRC/C/15/Add.152, para. 53; The Former Yugoslav Republic of Macedonia, 23/02/2000, U.N. Doc. CRC/C/15/Add.118, para. 31. *Concluding Observations of the Committee on Economic, Social, and Cultural Rights: Bolivia*, 21/05/2001, U.N. Doc. E/C.12/11/Add.60, para. 43; China, 13/05/2005, U.N. Doc. E/C.12/11/Add.107 para. 100; Poland, 19/12/2002, U.N. Doc. E/C.12/11/Add.82, paras. 28, 50; Senegal, 24/09/2001, U.N. Doc. E/C.12/11/Add.62, para. 47; Ukraine, 31/08/2001, U.N. Doc. E/C.12/11/Add.65, para. 31. *Concluding Observations of the Human Rights Committee: Poland*, 02/12/04, U.N. Doc. CCPR/CO/82/POL, para. 9.
- 10 See *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Belize*, 01/07/99, U.N. Doc. A/54/38, paras. 56, 57; Burundi, 02/02/2001, U.N. Doc. A/56/38, para. 62; Chile, 09/07/99, U.N. Doc. A/54/38, paras. 226–227; Dominican Republic, 14/05/98, U.N. Doc. A/53/38, para. 349; Greece, 01/02/99, U.N. Doc. A/55/38, paras. 207–208; Nepal, 01/07/99, U.N. Doc. A/54/38, para. 148; Slovakia, 30/06/98, U.N. Doc. A/53/38/Rev.1, para. 92; Spain, 01/07/99, U.N. Doc. A/54/38, para. 266; United Kingdom of Great Britain and Northern Ireland, 01/07/99, U.N. Doc. A/54/38, paras. 309–310. *Concluding Observations of the Committee on the Rights of the Child: Cambodia*, 28/06/2000, U.N. Doc. CRC/C/15/Add.128, para. 52; Colombia, 16/10/2000, U.N. Doc. CRC/C/15/Add.137, para. 48; Dominican Republic, 21/02/2001, U.N. Doc. CRC/C/15/Add.150, para. 37; Ethiopia, 21/02/2001, U.N. Doc. CRC/C/15/Add.144, para. 61; Grenada, 04/02/2000, U.N. Doc. CRC/C/15/Add.121, para. 22; Kyrgyzstan, 09/08/2000, U.N. Doc. CRC/C/15/Add.127, para. 45; Malta, 02/06/2000, U.N. Doc. CRC/C/15/Add.129, para. 39; Peru, 28/01/2000, U.N. Doc. CRC/C/15/Add.120, para. 24; Russia, 30/09/2005, U.N. Doc. CRC/C/15/Add.274, para. 56; The Former Yugoslav Republic of Macedonia, 23/02/2000, U.N. Doc. CRC/C/15/Add.118, para. 41; Slovakia, 3/10/2000, U.N. Doc. CRC/C/15/Add.140, para. 38; Tajikistan, 16/10/2000, U.N. Doc. CRC/C/15/Add.136, para. 41; Turkey, 09/07/2001, U.N. Doc. CRC/C/15/Add.152, para. 53. *Concluding Observations of the Committee on Economic, Social, and Cultural Rights: Bolivia*, 21/05/2001, U.N. Doc. E/C.12/11/Add.60, para. 43; Honduras, 21/05/2001, U.N. Doc. E/C.12/11/Add.57, para. 27; Libyan Arab Jamahiriya, 25/11/2005, U.N. Doc. E/C.12/LYB/CO/2; Senegal, 31/08/2001, U.N. Doc. E/C.12/11/Add.62, para. 47; Ukraine, 31/08/2001, U.N. Doc. E/C.12/11/Add.65, para. 31.
- 11 See *Concluding Observations of the Committee on Economic, Social, and Cultural Rights: Poland*, 29/07/99, U.N. Doc. CCPR/CO/79/Add.110, para. 11; Zambia, 13/05/2005, U.N. Doc. E/C.12/11/Add.106.
- 12 See, e.g., *Concluding Observations of the Human Rights Committee: Poland*, 82nd Sess., para. 9, U.N. Doc. CCPR/CO/82/POL (2004). Committee on the Elimination of Discrimination against Women, *Report*, para. 120, 16th and 17th Sess., U.N. Doc. A/52/38/Rev.1 (1997).

- 13 Committee on Economic, Social, and Cultural Rights, *Gen. Comment 14: The Right to the Highest Attainable Standard to Health*, para. 34, U.N. Doc. E/C.12/2000/4 (2000).
- 14 *Concluding Observations of the Committee on the Rights of the Child: Philippines*, 39th Sess., para. 65, U.N. Doc. CRC/C/15/Add.259 (2005).
- 15 *Concluding Observations of the Human Rights Committee: Poland*, 82nd Sess., para. 9, U.N. Doc. CCPR/CO/82/POL (2004).
- 16 Committee on the Elimination of Discrimination against Women, *Gen. Recommendation 24: Women and Health* (1999).
- 17 Committee on the Elimination of Discrimination against Women, *Report*, para. 120, 16th and 17th Sess., U.N. Doc. A/52/38/Rev.1 (1997).
- 18 *Kjeldsen, Busk Madsen and Pedersen v Denmark*, ECtHR (ser. A) (1976).
- 19 *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5–13, 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter *ICPD Programme of Action*].
- 20 See *ICPD Programme of Action*, supra note 18, paras. 7.3, 7.37, 7.46; see also *Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development*, U.N. GAOR, 21st Special Sess., New York, United States, June 30 – July 2, 1999, U.N. Doc. A/S-21/5/Add.1 (1999) [hereinafter *ICPD+5 Key Actions Document*], para. 73(a); *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, Beijing, China, Sept. 4–15, 1995, U.N. Doc. A/CONF.157/23 (1993) [hereinafter *Beijing Declaration and Platform for Action*], para. 107(a), (c), (g).
- 21 See *ICPD Programme of Action*, supra note 18, paras. 7.44(a), (b); see also para. 7.47. See also *ICPD +5 Key Actions Document*, supra note 19, paras. 35(b), 73(c), (e).
- 22 See *ICPD Programme of Action*, supra note 18, paras. 8.29(a), 8.31, 8.32; see also para. 7.43; *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*, U.N. GAOR, 23rd Special Sess., New York, United States, June 5–9, 2000, U.N. Doc. A/Res/S-23 (2000) [hereinafter *Beijing +5 Review Document*], para. 44.
- 23 *ICPD +5 Key Actions Document*, supra note 19, para. 68.
- 24 *Beijing +5 Review Document*, supra note 21, para. 44.
- 25 See *ICPD Programme of Action*, supra note 18, paras. 11.9, 11.24.
- 26 See *ibid.*, paras. 6.15, 7.43, 7.47; see also *ICPD +5 Key Actions Document*, para. 73(c).
- 27 *ICPD Programme of Action*, supra note 18, para. 7.48; see also *ICPD +5 Key Actions Document*, supra note 19, para. 73(e).
- 28 See *ICPD Programme of Action*, supra note 18, paras. 7.8, 7.41; see also *Beijing Declaration and Platform for Action*, supra note 19, para. 107(a).
- 29 See *ICPD +5 Key Actions Document*, supra note 19, para. 73(c).
- 30 See *ICPD Programme of Action*, supra note 18, paras. 4.19, 11.13.
- 31 See *ibid.*, para. 7.5(a).
- 32 WHO, *Adolescent Pregnancy*, supra note 2, at 63.
- 33 WHO, *Contraception; Issues in Adolescent Health and Development*, at 11 (2004).
- 34 *Ibid.*, at 34.
- 35 WHO, *Adolescent Pregnancy*, supra note 2, at 13.
- 36 *Ibid.*, at 63.
- 37 *Ibid.*