

REPRODUCTIVE RIGHTS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child strongly protects children's right to access sexual and reproductive health services and their rights to substantive equality and nondiscrimination. For girls, these rights interact in a mutually reinforcing nature: the stigma surrounding sexuality, and the discrimination and inequalities that girls face, can prevent them from accessing sexual and reproductive health services, and their inability to access such services can perpetuate cycles of inequality and discrimination. By explicitly recognizing the linkages between reproductive health and rights and the right to substantive equality and nondiscrimination, the human rights standards could be substantially strengthened in order to provide children, particularly girls, with the distinct protections that they need for the realization of their human rights.

Children's Sexual and Reproductive Rights

The Committee on the Rights of the Child (CRC) has strongly advocated for the realization of children's right to sexual and reproductive health services, urging states to "ensure universal access to a comprehensive package of sexual and reproductive health interventions."¹ To this end, the CRC recognizes that adolescents should have access to short- and long-term contraceptive methods, including condoms, hormonal contraceptives and emergency contraception;² "safe abortion and post-abortion care services, irrespective of whether abortion itself is legal;"³ and maternal health services.⁴ The CRC has urged states to adopt child-sensitive health approaches, including "adolescent-friendly health services which require health practitioners and facilities to be welcoming and sensitive to adolescents, to respect confidentiality and to deliver services that are acceptable to adolescents."⁵ Furthermore, the CRC has strongly condemned and called for the eradication of practices that jeopardize children's reproductive rights, such as child marriage and female genital mutilation.⁶

International and regional human rights bodies have adjudicated several cases addressing children's right to sexual and reproductive health services:

- In *KL v. Peru*, the Human Rights Committee determined that denying abortion services to a child carrying a non-viable pregnancy, which posed a risk to her life and her physical and mental health, violated her rights to privacy; be free from cruel, inhuman and degrading treatment; special protection as a minor; and a legal remedy.⁷
- In *LC v. Peru*, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) found that denying a child urgently needed spinal surgery out of fear that it could harm her pregnancy violated the rights to privacy, freedom from gender stereotyping, health, and to a remedy.⁸
- In *P&S v. Poland*, the European Court of Human Rights (ECtHR) addressed human rights violations stemming from hospital personnel and clergy members intentionally obstructing access to abortion services for a 14-year-old who became pregnant as a result of rape.⁹ Recognizing the petitioner's vulnerability as a child, the court ruled that the state violated her rights to liberty, respect for private and family life, and to be free from inhuman and degrading treatment.¹⁰

Children's Rights to Substantive Equality and Non-Discrimination

The Convention on the Rights of the Child prohibits discrimination of any kind, including on the basis of sex, and obligates states to "take all appropriate measures" to protect children against all forms of discrimination.¹¹ The CRC has explicitly extended the right to nondiscrimination to include both de jure and de facto discrimination.¹² It has made clear that the right to nondiscrimination does not mean that all children should be treated identically¹³ and states must take "special measures in order to diminish or eliminate conditions that cause discrimination."¹⁴ To this end, the CRC has urged states to:

- Eliminate all forms of de facto discrimination against girls;¹⁵

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- Review both laws and administrative regulations to “ensure full respect for the equality between girls and boys in the enjoyment of all rights in the Convention;”¹⁶
- Take “proactive and comprehensive efforts to eliminate de facto discrimination on any grounds and against all vulnerable groups of children, including through public education campaigns to prevent discrimination and combat negative attitudes in society;”¹⁷ and
- Identify both individual and groups of children who may require special measures for the realization of their rights,¹⁸ such as legislative changes, resource allocations, and educational measures.¹⁹

To attain substantive equality for girls, states must take a range of positive measures to remedy the diverse ways that entrenched discrimination results in inequalities for girls. This includes:

- **Overcoming Discriminatory Power Structures:** States should identify and remediate current societal power structures that disproportionately disadvantage girls. Such structural barriers include out-of-pocket fees for social services, which parents with limited resources may be less likely to pay for girls; educational systems that reinforce traditional gender roles or stereotypes; and the expectation that girls will dedicate a disproportionate amount of time to familial obligations, such as childcare and housework.
- **Recognizing Differences:** States must recognize the biological differences between boys and girls, including girls’ ability to become pregnant and bear children, and the resulting different health needs of girls. This includes ensuring that their reproductive capacities do not cause them to miss or drop out of school, that health education adequately covers information on the unique sexual and reproductive health needs of girls, that policies address the specific discrimination girls from marginalized groups face, and that laws and policies do not disadvantage or discriminate against girls who become pregnant.
- **Attaining Equal Outcomes:** States should focus on equal outcomes for girls, particularly girls from marginalized groups, to overcome historical discrimination and ensure that institutions uphold children’s rights. Achieving equal outcomes for girls will require positive measures, such as affirmative action for girls in general and girls from marginalized groups in particular, policies and programs to ensure that girls can participate in educational and extracurricular activities without fear of violence or harassment, and initiatives to encourage girls to be interested in fields and activities that have traditionally been dominated by boys.

Discrimination against Girls Hinders the Realization of their Reproductive Rights

Where states fail to realize girls’ rights to substantive equality and nondiscrimination, it in turn also violates their reproductive rights by impeding their access to sexual and reproductive health services. The CRC recognizes that discrimination against girls can seriously hinder the realization of their right to health and has called on states to pay attention to “to harmful gender-based practices and norms of behaviour that are ingrained in traditions and customs and undermine the right to health.”²⁰ To this end, gender norms and stereotypes can result in girls being denied access to family resources, such as the financial means to pay for health services; receiving less education, and therefore having less information about their sexual and reproductive health and rights; and having greater household responsibilities, resulting in less time to seek and access health services.²¹

The gender-based discrimination that girls face in accessing health services may be particularly exacerbated in the context of sexual and reproductive health services, as a result of stigma and discrimination surrounding girls’ sexuality. This dually jeopardizes girls’ health and rights, as their reproductive capacities mean that they must shoulder the burden of an unplanned

pregnancy. The CRC recognizes that, in the context of adolescent pregnancy, stigma and discrimination can hinder girls' access to education and services.²² Indeed, in many contexts, girls seeking to prevent pregnancy must also endure such stigma and discrimination.

The CRC has called on states to take positive measures to alleviate such inequalities and discrimination, including by adopting policies and programs on children's health that are "grounded in a broad approach to gender equality that ensures young women's full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence."²³ The CRC has urged states to pay particular attention to the different "needs of girls and boys, and the impact of gender-related social norms and values on the health and development of boys and girls."²⁴

Failure to Guarantee Girls' Reproductive Rights Perpetuates Discrimination against Girls and Violates their Right to Substantive Equality

States' failure to realize minors' sexual and reproductive rights disproportionately impacts girls and undermines the realization of girls' other human rights, in violation of their rights to equality and nondiscrimination. Where girls lack access to sexual and reproductive health services, this affects their ability to make meaningful decisions about their lives and their futures. Biologically, girls must physically bear the burden of an unplanned pregnancy. For girls who carry an unplanned pregnancy to term, the physical burden during pregnancy can affect all facets of their lives, including their ability to finish school and seek higher educations.²⁵ Additionally, due to women and girls' socialized role as the primary caregiver, an unplanned pregnancy disproportionately affects girls' lives in terms of both the time spent caregiving and in the resulting limitations to seeking education and employment and the ability to enter public and political life.²⁶

The CRC recognizes that "the realization of the right to health is indispensable for the enjoyment of all the other rights in the Convention,"²⁷ and has explicitly linked access to sexual and reproductive health services with children's rights to life, survival and development (in the context of adolescent childbearing and maternal mortality and morbidity),²⁸ and their right to education (where childbearing prevents or inhibits children from finishing school).²⁹ It has also urged a state to "combat discrimination by, inter alia, ensuring equal access to... health-care facilities."³⁰

Recommendations

By specifically addressing and elaborating greater standards around the unique role that gender plays in girls' access to sexual and reproductive health services and how lack of access to such services perpetuates inequalities and discrimination against girls, the CRC could greatly enhance the realization of girls' right to substantive equality and nondiscrimination and their sexual and reproductive rights. To this end, the CRC should consider:

- Urging states to take affirmative measures to address the structural barriers that girls face in accessing sexual and reproductive health services, including by ensuring that such services are geographically accessible, affordable, and culturally acceptable to girls;
- Addressing boys' and girls' different reproductive health needs and the disproportionate impact that lack of access to reproductive health services has on girls' health and lives. To this end, the CRC should explicitly recognize that the failure to ensure girls access to a full range of sexual and reproductive health services violates their rights to substantive equality and nondiscrimination;

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- Calling on states to guarantee that boys and girls are equally able to access and utilize sexual and reproductive health services, including by taking positive measures to address the underlying inequalities that inhibit girls' access to such services, including lack of education, minimal allocation of financial resources to girls, and stigma and discrimination surrounding girls' sexuality and their reproductive health needs; and
- Urging states to ensure that girls' reproductive capacities do not place them at a disadvantage by guaranteeing that all girls – particularly teenage mothers – have access to the necessary resources in order to pursue their education; access social services, including health services; and participate in public life on an equal basis as boy children.

Endnotes

- ¹ Committee on the Rights of the Child (CRC Committee), *General Comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, (62nd Sess., 2013), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, paras. 53-54, U.N. Doc. CRC/C/GC/15 (2013) [hereinafter CRC Committee, *Gen. Comment No. 15*].
- ² *Id.* para. 70.
- ³ *Id.*
- ⁴ *Id.* paras. 51-57.
- ⁵ *Id.* para. 52.
- ⁶ See Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 24(3), G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) [hereinafter CRC]; see also Committee on the Rights of the Child, *General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child*, (33rd Sess., 2003), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, paras. 24 & 39(g), U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008).
- ⁷ K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, paras. 6.3-6.5, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).
- ⁸ L.C. v. Peru, Committee on the Elimination of Discrimination against Women (CEDAW Committee), Commc'n No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).
- ⁹ P. and S. v. Poland, No. 57375/08 Eur. Ct. H.R. (2008).
- ¹⁰ *Id.*
- ¹¹ CRC, *supra* note 6, art. 2.
- ¹² See CRC Committee, *Concluding Observations: Norway*, para. 19, U.N. Doc. CRC/C/15/Add.263 (2005) ("In the light of article 2 of the Convention, the Committee recommends that the State party continue to intensify its efforts to prevent and eliminate all forms of de facto discrimination against children."); *Singapore*, para. 30(d), U.N. Doc. CRC/C/SGP/CO/2-3 (2011) ("Collect data disaggregated by gender, race, ethnic origin or social background, and disability so as to enable effective monitoring of de facto discrimination").
- ¹³ CRC Committee, *Gen. Comment No. 15, supra* note 1, para. 12.
- ¹⁴ CRC Committee, *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, (34th Sess., 2003), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 12, U.N. Doc. CRC/C/GC/2003/5 (2003) (citing Human Rights Committee, *General Comment No. 18* (1989)).
- ¹⁵ See CRC Committee, *Concluding Observations: Liechtenstein*, para. 21, U.N. Doc. CRC/C/15/Add.143 (2001) ("In light of article 2 and other related articles of the Convention, the Committee recommends that the State party strengthen its administrative measures to eliminate de facto discrimination against girls"); *El Salvador*, para. 28(e), U.N. Doc. CRC/C/SLV/CO/3-4 (2010) ("Intensify its efforts to prevent and eliminate all forms of de facto discrimination against adolescents, children with disabilities, girls, children living in rural and remote areas, children in street situations, indigenous children and children from economically excluded families").
- ¹⁶ CRC Committee, *Concluding Observations: Saudi Arabia*, para. 28, U.N. Doc. CRC/C/SAU/CO/2 (2006).
- ¹⁷ *Id.*
- ¹⁸ CRC Committee, *Gen. Comment No. 15, supra* note 1, para. 12.
- ¹⁹ *Id.*
- ²⁰ *Id.* para. 9.
- ²¹ See Changu Mannathoko & Heather Milkiewicz, *EMPOWERING ADOLESCENT GIRLS THROUGH EDUCATION ELIMINATING EXCLUSION AND DISCRIMINATION 8* (2012) (noting that "Direct costs of schooling (for instance: school fees, exam fees, uniforms, books and stationary supplies) diminish opportunities for children to access and/or remain in school. This contributes to the high number of girls being pushed out of school, especially in favor of boys for whom education is accorded higher priority in many societies. Indirect costs (such as the opportunity cost in terms of lost income or household labor from girls) further diminish girls' participation in education."), available at www.worldwewant2015.org/file/290405/download/31481; International Labour Office, *GENDER EQUALITY AT THE HEART OF DECENT WORK* 61-65 (2009), available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_105119.pdf.
- ²² See, e.g., CRC Committee, *Concluding Observations: Guyana*, para. 50, U.N. Doc. CRC/C/GUY/CO/2-4 (2013).
- ²³ CRC Committee, *Gen. Comment No. 15, supra* note 1, para. 10.
- ²⁴ *Id.* para. 9.
- ²⁵ This is further exacerbated by discriminatory practices such as the expulsion of pregnant schoolgirls. See CENTER FOR REPRODUCTIVE RIGHTS, *FORCED OUT: MANDATORY PREGNANCY TESTING AND THE EXPULSION OF PREGNANT STUDENTS IN TANZANIAN SCHOOLS* (2013); see also Committee on Economic, Social and Cultural Rights, *Concluding Observations: Tanzania*, para. 27, U.N. Doc. E/C.12/TZA/CO/1-3 (2012) (urging the state to abolish mandatory pregnancy testing and expulsion of pregnant girls from school); CRC Committee, *Concluding Observations: Tanzania*, paras. 55-56, U.N. Doc. CRC/C/TZA/CO/2 (2006) (urging the state to prohibit the expulsion of pregnant girls from schools); *Chile*, para. 46, U.N. Doc. CRC/C/15/Add.173 (2002) (urging the state to ensure that pregnant girls can continue their education).
- ²⁶ See CEDAW Committee, *General Recommendation No. 21: Equality in marriage and family relations*, (13th Sess., 1994), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 21, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); CEDAW Committee *Gen. Recommendation No. 23, Political and Public Life* (16 Sess., 1997), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, at 260, para. 10, U.N. Doc. HRI/GEN/1/Rev.6 (2003).
- ²⁷ CRC Committee, *Gen. Comment No. 15, supra* note 1, para. 7.
- ²⁸ See CRC Committee, *Concluding Observations: Namibia*, para. 35, U.N. Doc. CRC/C/NAM/CO/2-3 (2012) (reminding the state of "its obligation to ensure the right to life, survival and development for all children by taking all necessary measures, including addressing the root causes of teenage pregnancies, strengthening support for pregnant adolescents and providing them with adequate sexual and reproductive health services.").
- ²⁹ See CRC Committee, *Concluding Observations: Chile*, para. 46, U.N. Doc. CRC/C/15/Add.173 (2002) (urging the state to "Ensure that measures are effectively implemented in order for pregnant girls to continue attending school both during and after their pregnancy," in light of CRC, Arts. 28 & 29).
- ³⁰ CRC Committee, *Concluding Observations: El Salvador*, para. 28, U.N. Doc. CRC/C/SLV/CO/3-4 (2010).