

**DRAFT GENERAL COMMENT ON THE IMPLEMENTATION OF  
THE RIGHTS OF THE CHILD DURING ADOLESCENCE  
Civil Society Submission<sup>1</sup>**

30 June 2016

The Committee on the Rights of the Child's Draft General Comment on the implementation of the rights of the child during adolescence makes reference to the specific experiences of lesbian, gay, bisexual, trans and intersex adolescents. In order to strengthen these discussions, the above-named organisations offer the suggestions below.

Four aspects of the comments deserve particular attention. Firstly, it is important that the text be inclusive of intersex-related issues and expressly mention the ground of sex characteristics, as distinct from questions of sex characteristics, gender identity, gender expression and sexual orientation.

Secondly, the discussions of evolving capacity in decision-making and consent should ensure that adolescents cannot be denied the ability to access or refuse ~~necessary~~ services and medical interventions based on age limit regulations. These issues affect adolescents with intersex traits as much as they affect infants: physical changes at puberty trigger a spike in diagnoses and interventions, with a deleterious effect on intersex adolescents' ability to stay in school.<sup>2</sup>

Thirdly, the Draft General Comment (GC) should highlight that children should be able to change gender markers and names on legal documents, if necessary, through a simple and transparent administrative process.

Finally, there are a number of documents that would be useful references as sources of the most recent language on various topics, including the report on adolescents of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Committee on the Rights of the Child's General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health.

### **Paragraphs 3 and 61**

Paragraph 3 makes link to Agenda 2030, which should be echoed in 61. Both should reflect the Agenda's language on disaggregated data and include gender identity and sex characteristics. All data collection must be performed in a safe manner, fully respecting the privacy of each adolescent.

- "A significant lack of disaggregated data on age, sex, income, gender, age, race, ethnicity, migratory status, disability, geographic location is available (...)".
  - o "By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status,

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<sup>1</sup> This report is submitted on behalf of five organisations: The International Lesbian, Gay, Bisexual, Trans and Intersex Association – ILGA; The Swedish Federation for Lesbian, Gay, Bisexual, Transgender and Queer Rights – RFSL; ILGA-Europe, ILGA's European region; Organisation Intersex International Australia (OII Australia); and Organisation Intersex International Europe (OII Europe).

<sup>2</sup> Jones T. The needs of students with intersex variations. Sex Education]. 11 Mar 2016;1–17. Available from: <http://www.tandfonline.com/doi/full/10.1080/14681811.2016.1149808>.

disability, geographic location and other characteristics relevant in national contexts.” Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, para 17.18

- “There is a need to reform and update national health information systems to include human rights concepts and variables such as lesbian, gay, bisexual and intersex status” – SR on health report on adolescents, A/HRC/32/32, para 94

### **Paragraph 9**

This paragraph could be more trans and intersex inclusive.

- “the significance of development changes during adolescence, as well as the variations within them, has not yet...”

### **Paragraph 10**

This paragraph could reflect the fact that adolescents may not integrate into their own families and communities. It could also be more trans/gender non-conforming inclusive.

- “(...) young people begin to explore and forge their own individual and community identity, based on a complex ~~integration~~ interaction of their own familial and cultural history, and creation of an emergent sense of self(...).”
- “and creation of an emergent sense of self, often expressed through language, attire/dress/clothing, arts and culture,”
- “the process of construction and expression of identity”

### **Paragraph 12**

This paragraph could be more intersex and trans/gender non-conforming inclusive.

- “Measures are needed to support them to thrive, explore their emerging identities, expressions, bodily diversity, beliefs, sexualities and opportunities, balance risk and safety, build capacity for making positive decisions and life choices, and to successfully navigate the transition into a sustainable livelihood and productive work.”

### **Paragraph 14**

This paragraph could provide more detail, in line with elsewhere in the General Comment.

- “interpersonal injuries, mental ill-health, and suicide, self-harm, eating disorders and depression”
  - See paragraph 63 of the Draft GC: “mental health and psychosocial problems, including suicide, self-harm, eating disorders and depression, are primary causes of ill health, morbidity and mortality among adolescents.”
  - “Research indicates that depression is the primary cause of illness and disability among adolescents and suicide is the third leading cause of death.” (para 67) ... “The risk of experiencing mental ill-health is heightened by poverty and by adverse childhood events, including, for example, sexual and emotional abuse, bullying and parental loss. Adolescents in post-conflict or disaster settings or who are homeless and street-involved, orphaned, lesbian, gay, bisexual, transgender and intersex or involved with the juvenile justice system are also at greater risk.” – SR on health report on adolescents, A/HRC/32/32, para 69

### **Paragraph 21**

The references for this paragraph should reflect more recent documents and include sex characteristics.

- “A number of grounds on which discrimination is proscribed are outlined in article 2 of the Convention, including (...). These also include **sexual orientation, gender identity** and health status, for example HIV status and mental health.” – General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), CRC/C/GC/15, 17 April 2013

- Intersex/sex characteristics are mentioned in Concluding Observations, such as: “The Committee recommends that the State party: (...) (b) Strengthen its efforts to combat negative attitudes and eliminate discrimination against children on the basis of their **actual or perceived sexual orientation, gender identity and sex characteristics.**” – CRC/C/CHL/CO/4-5 (2015), para 25.

### Paragraph 35

The grounds of non-discrimination should be inclusive of sex characteristics (intersex).

- “and others targeted because of their sexual orientation, or gender identity, gender expression or sex characteristics”
  - o Could also refer to homelessness: “Those who face discrimination on the grounds of race, ethnicity, place of origin, socioeconomic status, family status, gender, mental or physical disability, health condition, sexual orientation and/or gender identity and age are more likely to become homeless and, once homeless, experience additional discrimination.” (para 39) “[LGBTI] young people are overrepresented in homeless populations in some countries and face additional stigmatization and social exclusion from their families and communities, and are more vulnerable to violence and more likely to be turned away from shelters.” (para 44) “Homelessness disproportionately affects particular groups, including (...) [LGBT] people.” (para 87) – Report of SR on housing on homelessness, A/HRC/31/54

### Paragraph 36

The paragraph should be more inclusive of the specific experiences of intersex adolescents. In addition, ‘Transgender identity’ is an uncommon term and does not fully reflect the diversity and complexity of gender identities.

- “(...) as psychiatric disorders. It condemns irreversible and non-consensual treatments, including surgeries, performed on intersex persons during their childhood and adolescence because of the natural development of their bodies.”
  - o Concluding Observations, e.g. 2016: CRC/C/GBR/CO/5, CRC/C/NPL/CO/3-5, CRC/C/IRL/CO/3-4, CRC/C/FRA/CO/5, CRC/C/KEN/CO/3-5, and 2015: CRC/C/CHL/CO/4-5, CRC/C/CHE/CO/2-4
- “It urges States to eliminate all the practices referred to above, and to repeal all laws criminalizing or otherwise discriminating against individuals on the basis of their sexual orientation, or gender identity, gender expression or sex characteristics.”
- “The Committee (...) deplores the imposition of treatments to try to change sexual orientation and gender identity, and that ~~transgender identity~~ gender non-conforming identities and same-sex attraction are often pathologized as psychiatric disorders.”

### Paragraph 42

Gender markers are highly relevant in this context. We are also concerned at what appears to be a contradiction between paragraphs 41/43 and 42 (i.e. recognising evolving capacity to make decisions/the need for their consent, and the introduction of a specific age limit). We worry that such an age limit could restrict adolescents’ rights, in particular in the context of name or gender marker changes, access to trans-specific services (e.g. puberty blockers or psychological support).

- “Accordingly, the Committee encourages States to lower ~~introduce~~ minimum legal age limits, at which the right to consent transfers from the parent to the adolescent, in respect of, for example, consent to adoption, change of name and gender marker, applications to family courts, or initiation rites.”
  - o “In areas where age restrictions serve no protective purpose and potentially curb children’s development, freedoms, and even protection (e.g. the freedom to choose or leave a religion, access to complaints mechanisms),

minimum ages should be avoided". Child Rights International Network (CRIN), *Age is Arbitrary: Setting Minimum Ages* (2016).

### Paragraph 43

- "In all cases, whether or not the consent of the parent or guardian is required for a medical treatment or procedure, the voluntary and informed assent of the adolescent should be obtained. Sex-normalising surgeries and treatments, in particular, should be prohibited until children are old enough to provide full, free and informed consent."

### Paragraph 45

The Draft GC should take into account the need to be able to change birth certificates.

- "Lack of birth registration and the inability to alter such documents results in additional complications during adolescence."

### Paragraph 46

- "Adolescents who have not been registered at birth or immediately after should be provided with free late birth registration and documentation (...). Measures should also be put in place to allow adolescents to alter their birth certificates, through easily accessible and transparent administrative procedures in particular the gender markers and names."

### Paragraph 52

This paragraph could make reference to the findings of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

- "They use the online environment, inter alia, to explore basic aspects of identity, such as gender, religion, ethnicity, national origin or sexuality, to learn, participate, express opinions, play, socialize, engage politically and ~~explore~~ discover employment opportunities."
  - o "The ability to search the web, develop ideas and communicate securely may be the only way in which many can explore basic aspects of identity, such as one's gender, religion, ethnicity, national origin or sexuality." – SR on Freedom of Expression, report on encryption, A/HRC/29/32, para 12

### Paragraph 54

This paragraph should take into account that surgeries on intersex children that have been assigned female, are to be identified as female genital mutilation. The Committee has repeatedly identified genital surgery on all intersex children as violating their human rights.

- "Adolescents can be particularly vulnerable to harmful norms and practices, such as, inter alia, forced marriages, female genital mutilation, including interventions performed on intersex adolescents, harmful initiation rites, 'honour' killings, harmful gender stereotypes, and deliberate discriminatory practices."
  - o "United Nations and regional human rights mechanisms have raised concerns with regard to genital surgeries on intersex infants and children for non-medical reasons. The Committee on the Rights of the Child has called upon States to ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, to guarantee bodily integrity, autonomy and self-determination to children concerned and to provide families with intersex children with adequate counselling and support (CRC/C/OPSC/CHE/CO/1)." – Report of the High Commissioner for Human Rights on female genital mutilation, A/HRC/29/20, para 62
  - o "a number of athletes have undergone gonadectomy (removal of reproductive organs) and partial cliteroidectomy (a form of female genital mutilation) in the absence of symptoms or health issues warranting those procedures." – Report of SR on health on sport and healthy lifestyles, A/HRC/32/33, para 56

### Paragraph 63

This paragraph could make reference to the importance of bodily autonomy.

- “The Committee affirms that the factors known to promote resilience and healthy development and protect against mental ill-health, include strong relationships with, and support from key adults in their lives, an adequate standard of living, access to quality secondary education, freedom from violence and discrimination, opportunities for influence and decision-making, including regarding bodily autonomy, mental health awareness, problem solving and coping skills, and safe and healthy local environments.”

#### **Paragraph 64**

This paragraph could reflect the broader language of the report cited below.

- “All adolescents must have access to scientifically validated, confidential, non-judgmental adolescent-responsive and non-discriminatory reproductive and sexual health information and services, available both on and off-line, including (...).”
  - o “Adolescent sexual and reproductive health services must be welcoming, adolescent-friendly, non-judgemental and guarantee privacy and confidentiality.” – SR on health report on adolescents, A/HRC/32/32, para 90

#### **Paragraph 66**

This paragraph could reflect the broader language of the report cited below.

- “Age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards, should be part of the mandatory school curriculum, with special attention given to relationships, sexuality, gender equality and identity, including gender non-conforming identities, the diversity of bodies and sex characteristics, responsible parenthood and sexual behaviour, and preventing early pregnancy and sexually transmitted infections.”
  - o “with special attention given to relationships, sexuality, gender equality and identity and sex characteristics, including non-conforming gender identities, responsible parenthood and sexual behaviour, and preventing early pregnancy and sexually transmitted infections.” – SR on health report on adolescents, A/HRC/32/32, para 91

#### **Paragraph 70**

We have difficulty understanding this paragraph, in particular the idea that some of these activities would be classified as strategies, for example trafficking. There seems to be a mix of strategies (adopted to deal with situations) and impacts (harm done).

- ~~“Enforced or adopted strategies by adolescents to address economic hardship can include~~ Those may lead to school drop-out, early marriage, sexual exploitation, hazardous or exploitative work, or work interfering with education, homelessness, gang membership, trafficking, recruitment into militia, or migration.”

#### **Paragraph 74**

This paragraph should highlight the high drop-out rates of LGBTI adolescents.

- “The Committee notes with concern the numbers of adolescents in marginalised situations who are excluded from the opportunity to make the transition to secondary education, including inter alia, LGBTI adolescents, those adolescents living in poverty, ~~these~~ from ethnic and language minorities, with mental or physical disabilities, who are migrating, in situations of armed conflict or natural disasters, in street situations or those who are working.”

#### **Paragraph 75**

This paragraph could emphasise discrimination by education professionals

- “Proactive measures are necessary to end discrimination of marginalized groups in accessing education, including through cash transfer programmes, respect for minority and indigenous cultures and children from all religious communities, provision of education in refugee camps, and combatting bullying and discriminatory attitudes within the education system.”