

Ref: TIGO ref IOR 40/2012.134

Mr Christian Courtis
Officer-in-Charge
Human Rights and Economic and Social Issues
Section
Office of the High Commissioner for Human
Rights
Palais Des Nations
1211 Geneva 10, Switzerland

3 September 2012

Dear Mr Courtis,

Amnesty International submission on children's right to health

Amnesty International welcomes the opportunity to provide the Office of the High Commissioner for Human Rights with input for its study on Children's Right to Health pursuant to Human Rights Council Resolution 19/37. In this submission, Amnesty International highlights two aspects of children's right to health: the interpretation of the obligation of non-discrimination, including with regard to addressing the specific needs of particular groups of children, and the obligation to provide a comprehensive range of integrated health information and services. Amnesty International's research in a number of countries has found that children's enjoyment of the right to sexual and reproductive health is impaired in various ways: through direct violations by state actors, abuses by non-state actors, and environments that are not supportive – sometimes even disabling – to children's ability to exercise their right to health.

Non-discrimination as freedom from stereotyping and discriminatory norms

A specific concern the Study should address relates to states' laws, policies and practices that coerce girls and boys into conforming to stereotypes and discriminatory norms regarding sexuality, sexual and other forms of partnership, gender identity, reproduction, and parenthood regardless of or against their own wishes and aspirations. State obligations with regard to stereotyping are set out in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), article 5(a), which directs states to take all appropriate measures to modify those social and cultural patterns of conduct which result in prejudices and are based on stereotypes or discriminatory ideas of the sexes. Examples of the harmful and discriminatory effects of stereotyping include: forcing girls impregnated as result of rape to carry the pregnancy to term,¹ not permitting girls and women to decide whether and when to be married,² criminalising sex outside marriage, or criminalising sex between women.³ Gender-based stereotyping is also one of the bases for criminalisation of sex between men.⁴ State obligations to uphold the rights to equality and non-discrimination require states to support the full range of girls' – as

¹ Amnesty International, *The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized* (AMR 43/001/2009)

² Amnesty International, *"Giving life, risking death – Maternal mortality in Burkina Faso"* (AFR 60/001/2009)

³ Amnesty International. *Left without a Choice. Barriers to Reproductive Health in Indonesia* (ASA 21/013/2010)

⁴ See generally Amnesty International, *Love, Hate, and the Law: Decriminalising Homosexuality* (POL 30/003/2008).

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL INTERNATIONAL SECRETARIAT

Peter Benenson House, 1 Easton Street
London WC1X 0DW, United Kingdom

T: +44 (0)20 7413 5500

E: amnestyis@amnesty.org

F: +44 (0)20 7956 1157

W: www.amnesty.org

well as boys' – needs and choices throughout the life cycle, without discrimination, coercion or violence.

Intersectional discrimination

The study should ground its analysis in an intersectional discrimination approach.⁵ As observed by the Committee on the Elimination of Discrimination against Women (CEDAW), certain groups of women and girls, in addition to suffering from discrimination directed against them because they are female, also suffer from distinct forms of discrimination due to the intersection of sex discrimination with discrimination based on "race, ethnic or religious identity, disability, age, class, caste or other factors."⁶ Sexual orientation and gender identity are among these other factors. Such intersectional discrimination impairs women's and girls' access to sexual and reproductive healthcare and their ability to make decisions regarding their sexuality and reproductive lives. Intersecting discrimination can determine the form or nature discrimination takes, the circumstances in which it occurs, the consequences of the discrimination, and the availability of appropriate remedies.

Acknowledging, addressing and eradicating the impact of multiple factors of discrimination is extremely important in the provision of healthcare.⁷ Recognition of the existence and impact of intersecting discrimination, however, is severely lacking in many countries around the world. The result is that girls belonging to minority communities or groups often are invisible in national level strategies to combat gender inequality and racial discrimination, and they are subjected to further discrimination.

Acknowledging and meeting specific needs

States parties' performance to meet their obligation to respect, protect and fulfil the right to health without discrimination of any kind should be assessed from two distinct (but interlinked) perspectives: their provision – in law, policy and practice – of comprehensive health information and services to all children *and* their provision of health information and services to meet the specific health needs of particular groups of children.

In regard of children with specific needs, Amnesty International would like to highlight the following groups which require specific attention:

- ***Lesbian, gay, bisexual, transgender, and intersex children***

Children who do not conform to set gender-roles often face discrimination and other abuse because they are, or are perceived to be, lesbian, gay, bisexual, transgender or intersex (LGBTI). Children in or nearing adolescence are particular targets for such abuse, but younger children are also targeted in this way. This discrimination and abuse leads to violence, harassment, bullying and other forms of ill-treatment which invariably and severely affects their physical and mental health.

The Office of the High Commissioner for Human Rights in its study should build on the Committee on the Rights of the Child's analysis of right to health and the right to freedom from discrimination to strongly condemn harassment and all other forms of violence directed at children because of their real or perceived sexual orientation or gender identity, or because of a failure to conform to expected gender norms.⁸

⁵ DAW, OHCHR, UNIFEM, Gender and Racial Discrimination: Report of the Expert Group Meeting, 2000.

⁶ CEDAW, *General Recommendation No. 25*, para.12; See also Committee on Economic, Social and Cultural Rights, *General Comment 16*, (34th Session, 2005), UN Doc E/C.12/2005/4, para 3.

⁷ Amnesty International, *Peru: Deadly inequalities: Maternal mortality in Peru* (AMR 46/002/2009).

⁸ Committee on the Rights of the Child, *General Comment No.4*, (33rd Session, 2003) UN Doc. CRC/GC/2003/4.

Schools and other educational institutions are often the main venue for bullying, harassment, and other forms of violence against LGBTI children. Such targeting of LGBTI children sometimes results in children and young adults committing suicide. In its study the Office of the High Commissioner for Human Rights should consolidate information on such extreme health outcomes for LGBTI children and highlight State responsibility to combat and eradicate discrimination, harassment and violence against LGBTI children in schools, as a key intervention to improve the mental and physical health of these children.

Sexual and reproductive health information and services continue to be geared towards the experience and needs of those conforming to set gender roles. Harassment, exclusion, discrimination and other abuse of LGBTI children and youth by health personnel because of their real or perceived sexual orientation or identity remain a serious concern in many countries, reflecting the failure to recognize diverse sexual orientations and gender identities in the sexual and reproductive health information and services provided. The study should highlight the need for States to integrate recognition of diverse sexual orientations and gender identities into public policies through public awareness campaigns, education, and training of health personnel.

Further, in some countries, discrimination against LGBTI children and youth is mandated by law: by criminalising sexual relations between members of the same sex; by criminalising sex outside marriage; by the prohibition of same-sex marriage; by mandating the sterilisation of those who wish to change their official gender markers; and by the banning of the ability of transgender children to have their gender recognised by law. The study should identify such laws and policies, and recommend that States review and repeal all laws and policies that have a discriminatory intention or effect on LGBTI children.

- ***Children in detention***

Children in detention constitute several different groups -- babies or infants being held as a consequence of the imprisonment of a parent, and older children who are accused of infringing or found to have infringed the penal law or who are held administratively (for immigration offences, for example). Detention is not an ideal place to raise an infant and efforts should be made to impose non-custodial sentences on parents where this is feasible.⁹ Breast-feeding should be protected and promoted among nursing mothers. Adequate nutrition and sanitary conditions should be guaranteed to all infants living with their parents in detention. Decisions about placement of children in detention should be made with the best interests of the child in mind whether this is inside a prison or outside among alternative carers.

Detention and the treatment of those who have been detained get at the heart of key human rights principles. Articles 9 and 10 of the International Covenant on Civil and Political Rights are clear that the deprivation of liberty must serve a specific public interest, that it cannot be arbitrary (e.g. disproportionate), and that its main purpose must be reformation and rehabilitation. The issue of reformation and rehabilitation take on specific meaning when it comes to children in detention. In addition, international standards are clear that, for children, detention—whether pre-trial or as a sentence—should always be a measure of last resort and for the shortest possible period of time.

Human rights law and standards stipulate that those detained retain all their human rights except for any restrictions that are a direct result of the detention.¹⁰ Prisoners are particularly vulnerable to abuse

⁹ The African Charter on the Rights and Welfare of the Child calls on States Parties at article 30 to "ensure that a non-custodial sentence will always be first considered when sentencing ... mothers [convicted of crimes]. See: http://www.achpr.org/english/_info/child_en.html

¹⁰ United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, paras. 57-58; United Nations (UN) Human Rights Committee, General Comment 21, Article 10, Humane Treatment of Persons Deprived of Liberty (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN

and ill-treatment, making the right to life and the absolute prohibition on torture or cruel, inhuman, or degrading treatment particularly relevant to issues related to detention.

In addition, states have an obligation to ensure medical care for prisoners at least equivalent to that available to the general population.¹¹ This, in some cases, will require States to provide care they would not have to provide for an individual who is able to provide for her- or himself.¹²

The Committee on the Rights of the Child has emphasized these notions in its General Comment 10, stating that children who are deprived of their liberty should be protected from ill-treatment from both staff and other detainees, kept separate from adult prisoners, and provided with access to the determinants of health – for example, food, clean water, fresh air and exercise, clean beds and bedding, and sanitation – and to health care.

The United Nations (UN) Rules for the Protection of Juveniles Deprived of their Liberty further add to this that "[e]very juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated."¹³ Young persons in detention also need information on sexual health and on protection from sexually transmitted infections including HIV.

- ***Children at risk or victims of gender-based violence***

Article 19 of the Convention on the Rights of the Child requires State parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."¹⁴

The Committee on the Rights of the Child in General Comment 13 highlights that violence has various short- and long-term consequences for children's mental and physical health. These consequences are particularly aggravated in context of children who survive rape, as they often experience rejection and blame at the hands of their families or communities. The lack of awareness and the social stigma to which survivors of rape and other forms of sexual are subjected condemns many girls and boys to continued suffering, alone and in secret. Rape by members of the family in particular is shrouded in secrecy. Rape survivors are often ostracized to such an extent that it is a form of discrimination and effectively deprives them of their right to justice and rehabilitation.

Doc. HRI/GEN/1/Rev.7 (1994), paras. 3-4; Basic Principles for the Treatment of Prisoners, adopted December 14, 1990, G.A. Res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990), principle 5.

¹¹ See, e.g., ICESCR, arts. 12(1) and 2.2; ICCPR, arts. 6, 7 and 10(1); Convention against Torture, art. 16. See also Committee on Economic Social and Cultural Rights, General Comment No. 14, para. 34. For a comprehensive discussion of the international legal instruments, international resolutions, and model standards related to detainee health, see Rick Lines, "The Right to Health of Prisoners in International Human Rights Law," *International Journal of Prisoner Mental Health*, vol. 4(1), 2008, pp. 3-53; Rick Lines, "From Equivalence of Standards to Equivalence of Objectives: The Entitlement of Prisoners to Health Care Standards Higher than Those Outside Prisons," *International Journal of Prisoner Health*, vol. 2(4), 2006, pp. 1-12.

¹² See, for example, Human Rights Committee, General Comment No. 21, para. 3 (noting that "Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty").

¹³ UN Rules for the Protection of Juveniles deprived of their liberty, Para.49. Available at: <http://www.un.org/documents/ga/res/45/a45r113.htm>

¹⁴ Convention on the Rights of the Child, 1989, Article 19.

States have an obligation to ensure full reparation for anyone who has been subjected to rape and sexual abuse.¹⁵ This includes providing services that foster the health, self-respect, autonomy and dignity of survivors and ensure their physical and psychological recovery and social reintegration. According to the World Health Organization's Guidelines for the Medico-Legal Care for Victims of Sexual Violence: "Victims of sexual assault require comprehensive, gender sensitive health services in order to cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event."¹⁶

These needs are all the more urgent for child victims of sexual violence. In this connection, the Committee on the Rights of the Child has emphasised that "States must see their role as fulfilling clear legal obligations to each and every child,"¹⁷ following four general principles: the primary consideration of the child's best interest, the right to non-discrimination, the right to life and development, and the right of the child to be heard.¹⁸ These principles are not only rights in themselves but also must be considered in the interpretation and implementation of all human rights contained in the Convention on the Rights of the Child, including the right to health.

Governments often fail to invest in information programmes and services that survivors of rape and sexual abuse need. The care and support that survivors receive has an enormous impact on the long-term consequences of rape and sexual abuse. The sooner the assistance is provided, the better the chances of reducing the long-term psychological and physical damage to survivors, which, in the case of children, is paramount.

Children survivors of rape need special care and assistance to enable them put their lives back on track and in this regard states should ensure that they have access to a comprehensive range of support and services to enable them to put their lives back on track and to pursue the paths they have chosen, for example by continuing their education. Timely and appropriate support can make all the difference to survivors' life chances. Amnesty International research highlights the importance of having all options available to rape and sexual abuse survivors in order to deal with the consequences of rape and abuse in the way that is best for them, including the option of therapeutic abortion.¹⁹

Adolescents, health, and autonomous decision-making

The Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights have both put special emphasis on the sexual and reproductive content of the right to health for adolescents.²⁰ The Committee on the Rights of the Child has specified that "those [adolescent girls]

¹⁵ UN Doc CRC/GC/2003/4, CRC General Comment Number 4, at paras 12, 23 and 37 and, further, Articles 3, 19, 24 and 39 of the Convention. A framework of due diligence in relation to violence against women has been elaborated by the Committee on the Elimination of Discrimination against Women in General Recommendation 19 and also in the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para"

¹⁶ World Health Organization, Guidelines for Medico-Legal Care for Victims of Sexual Violence, p. 9.

¹⁷ Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, U.N. Doc. CRC/GC/2003/5 (2003) 11.

¹⁸ Committee on the Rights of the Child, *General Comment No. 12: The Right of the Child to Be Heard*, U.N. Doc. CRC/C/GC/12 (2009) ¶ 2. See also Committee on the Rights of the Child, 43d sess., *Day of General Discussion on the Right of the Child to Be Heard*, 29 September 2006, 2, 6.

¹⁹ Amnesty International, *Listen to their voices and act: stop rape and sexual abuse of girls in Nicaragua*, (AMR 43/008/2010).

²⁰ Convention on the Rights of the Child, G.A. Res. 44/25, entered into force September 2, 1990 and ratified by Argentina on December 4, 1990; International Covenant on Economic, Social and Cultural Rights (ICESCR), GA res. 2200A (XXI), entered into force January 3, 1976, and ratified by Argentina on August 8, 1986; Committee on Economic, Social and Cultural Rights, "The right to the highest attainable standard of health (General Comments), General Comment 14," August 11, 2000, U.N. Doc. E/C.12/2000/4, para. 23; and Committee on the Rights of

who become pregnant should have access to health services that are sensitive to their rights and particular needs."²¹

Furthermore, the Committee on the Rights of the Child has indicated that, while parents or legal guardians have a role to play in creating a trusting and safe environment for adolescents to exercise their health rights, the best interests of the child must always be a primary consideration.²² The Committee has been particularly pointed on access to information in this regard: "[S]tates parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs). In addition, States parties should ensure that they have access to appropriate information, regardless of ... whether their parents or guardians consent."²³

The Committee also underscored the need for states to enact legal guarantees to ensure "the possibility of medical treatment without parental consent."²⁴ In its handbook on the implementation of the CRC, UNICEF analyzes this idea: "The child's right to receive medical counselling without parental consent is vital in cases in which the child's views and/or interests are distinct from, or may be in conflict with, those of parents -- for example in cases of violence and abuse by parents and other family members."²⁵

The UNICEF handbook adds that a child may have a right to receive independent medical counselling before he or she is deemed capable of consenting independently to medical treatment, but that, in any case, the child's best interest and provision of the necessary protection and care should be central guiding principles.²⁶

In this sense, the Office of the High Commissioner for Human Rights should, in its study, highlight that the state's obligations regarding the right to be heard of all children apply with regard to their health. It is particularly important that parental opinions about children's health are not assumed to always be in the child's best interests and that the state maintain structures to allow for the best interests of the child to be a principal consideration when it comes to children's right and health.

Comprehensive and integrated health information and services

The Office of the High Commissioner for Human Rights in its study emphasise States' obligation to ensure a comprehensive and integrated approach to the provision of sexual and reproductive health information and services.

the Child, "General Comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child," July 1, 2003, U.N. Doc CRC/GC/2003/4, in particular paras. 16, 26, 28, 30, 31, 39(c), and 40(a).

²¹ Committee on the Rights of the Child, "General Comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child," July 1, 2003, U.N. Doc CRC/GC/2003/4, para. 31.

²² *Ibid.*, para. 32.

²³ *Ibid.*, para. 28

²⁴ Committee on the Rights of the Child, "General Comment No. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child," July 1, 2003, U.N. Doc CRC/GC/2003/4, para. 9.

²⁵ Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, (New York: UNICEF, 2002), p. 8.

²⁶ *Ibid.* pp.8-9.

As the former UN Special Rapporteur on the right to education Vernor Muñoz has noted: "There is no valid excuse for not providing people with the comprehensive sexual education that they need in order to lead a dignified and healthy life."²⁷ The proposed General Comment gives the Committee the opportunity to affirm that, likewise, there can be no valid excuse for states for not taking appropriate steps to provide children with a comprehensive range of sexual and reproductive health information and services.

Selective approaches – for instance, those that include prevention of unwanted pregnancy and post-abortion care but neglect the provision of safe abortion services to the full extent of the law and (where necessary) legal and policy reform – violate human rights and lead to detrimental outcomes in terms of individuals' health and decision-making power and autonomy. Equally, approaches that exclude some groups – for instance, girls or young persons generally, those who are unmarried, or LGBTI individuals – violate the human rights to non-discrimination and equality.

Amnesty International's research on laws and policies on sexual and reproductive rights in different countries²⁸ makes clear the need for strong guidance on non-selectivity. Even where laws and policies are grounded in recognition of the resulting public health problems, many still omit or address only inadequately or in contradictory ways issues considered politically or culturally 'sensitive', despite evidence of the resulting human rights violations.

Governments must ensure that young girls as well as boys can according to their evolving capacities exercise their rights to sexual and reproductive health, including their rights to have access to a comprehensive range of effective information and services, to be free from discrimination, violence and coercion and to make decisions regarding their sexuality and reproductive lives. These rights must be protected by law. National legislation must not infringe on these rights by imposing such discriminatory restrictions.

We thank you for this opportunity to raise issues surrounding children's right to health and look forward to contributing to future discussions around these issues.

Yours sincerely



Michael Bochenek
Director, Law and Policy Programme

²⁷ UN Special Rapporteur on the Right to Education, Report to the UN General Assembly, Un Doc. A/65/162, para 15.

²⁸ Amnesty International, *Out of reach. The cost of maternal health in Sierra Leone* (AFR 51/005/2009); Amnesty International, *The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized* (AMR 43/001/2009); Amnesty International, *Left without a choice. Barriers to reproductive health in Indonesia* (ASA 21/013/2010); Amnesty International, *'I am at the lowest end of all'. Rural women living with HIV face human rights abuses in South Africa* (AFR 53/001/2008).