**CENTER FOR REPRODUCTIVE RIGHTS COMMENTS ON THE CONCEPT NOTE FOR A GENERAL COMMENT ON CHILDREN’S RIGHTS IN RELATION TO THE DIGITAL ENVIRONMENT**

**MAY 15, 2019**

# **Introduction**

The Center for Reproductive Rights (the Center) appreciates the opportunity to provide comments on the concept note for General Comment on children’s rights in relation to the digital environment (the General Comment) which is being developed by the UN Committee on the Rights of the Child (the Committee)

In accordance with the Committee’s call to stakeholders to submit comments, the Center is submitting this separate memorandum with comments which are organized according to specific paragraphs in the concept note and general information on digital environment, access to sexual and reproductive health information and adolescents. We commend the Committee on the proposed structure which includes a specific focus on access to information and freedom of expression and thought, and the right to education and digital literacy. We hope that these comments will be useful in further strengthening the concept note and in development of the General Comment. Please do not hesitate to contact us with any questions or for further clarification at [oafulukwe@reprorights.org](mailto:oafulukwe@reprorights.org) or +1 917 637 3635.

## **About the Center**

The Center is a non-profit legal advocacy organization dedicated to promoting and defending reproductive rights worldwide. The Center uses the law at the national, regional, and international levels to advance reproductive freedom as a fundamental right that all governments are legally obligated to protect, respect and fulfil. The Center has strengthened reproductive health laws and policies across the globe by working with more than 100 organizations in fifty nations in Africa, Asia, Europe, Latin American, the Caribbean, and the United States, and through in-depth engagement with UN and regional human rights bodies.

# **Comments on Proposed Structure**

## **Access to information and freedom of expression and thought**

Article 13 of the Convention on the Right of Child (CRC) provides for the *‘right to freedom of expression; including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice’*. The right to information includes the right to sexual and reproductive health information. Seeking and accessing sexual and reproductive health information is essential to enjoyment of sexual and reproductive health and rights by adolescents. Comprehensive sexuality education is critical for informing adolescents about sexual and reproductive health services, their right to access such services and the right to make decisions about their sexuality and reproduction free from violence, undue influence or coercion.[[1]](#footnote-1) International human rights mechanisms have reinforced the need for states to provide sexual and reproductive health information to adolescents to enable them to exercise their right to sexual and reproductive health and rights. General Comment No.22 reaffirms the right to all individuals including adolescents to evidence-based information on all aspects of sexual and reproductive health, including maternal health, contraceptives, family planning, sexually transmitted infections, HIV prevention, safe abortion and post-abortion care, infertility and fertility options, and reproductive cancer.[[2]](#footnote-2) The Special rapporteur on the right to health emphasizes the need for states to ‘guarantee access to confidential, adolescent-responsive and non-discriminatory sexual and reproductive health information’.[[3]](#footnote-3) The Special rapporteur on the right opinion and freedom of expression has consistently emphasized the right to sexual and reproductive health information by adolescents in all forms including on digital platform.[[4]](#footnote-4) In efforts to domesticate and implement these recommendations, states have enacted laws and adopted policies on access to information, and adolescent sexual and reproductive health policy to guide and facilitate implementation of adolescent sexual and reproductive health and rights.[[5]](#footnote-5)

Yet, globally adolescents lack of access to sexual and reproductive information including in digital media remain a key contributor to unwanted pregnancies and unsafe abortion. The Committee in its general comment on the rights of adolescents acknowledges that ‘the potential of adolescents is widely compromised because States parties do not recognize or invest in the measures needed for them to enjoy their rights’.[[6]](#footnote-6) Evidence shows that lack of information has contributed to low uptake of sexual and reproductive health services among adolescents.[[7]](#footnote-7) Restrictive policies that limit access to comprehensive sexuality education, third party consent that impacts on confidentiality and general stigma remain key barriers to sexual and reproductive health information.[[8]](#footnote-8)Additionally, there is generally a lack of comprehensive material with information around sexual and reproductive health for all target groups including adolescents with disabilities and those in conflict settings.

Internet is an indispensable tool in promoting human rights.[[9]](#footnote-9) Research shows that new innovations and technology, including mobiles and internet, have enormous potential for increasing access to sexual and reproductive health and rights.[[10]](#footnote-10) In 2018, the Center and Trust Indigenous for Culture and Health ( TICAH) conducted a baseline survey on access to the right to sexual and reproductive health information by women and girls. [[11]](#footnote-11)The study sought to determine whether women and girls have access and accurate understanding of sexual and reproductive health and rights, and whether there are any gaps in the provision of information on sexual reproductive health. The study targeted women and adolescents aged 10-19 years in and out of schools. Preliminary findings show that adolescent girls seek sexual and reproductive health information either from their friends, family or from digital platforms.[[12]](#footnote-12) It is however to be noted that there is a variance on access to internet, mobile phones by adolescents in urban and those in rural areas, adolescents from lower wealth quintile and those from high wealth quintile, with access to digital media being higher to those in high wealth quintile and those from urban areas. Majority of adolescent girls from urban areas reported to have used the internet or mobile phones to search for sexual and reproductive health information compared to those from rural areas. Key platforms visited included Facebook.com and google.com This preferred channel was mainly because of confidentiality and acceptability by adolescent girls.

Despite digital media being a preferred source of sexual and reproductive health information by adolescents, restrictive policies and adverse administrative actions that restrict content remain a key barrier. For instance, in 2017, the Tanzania Communications Authority, barred Radio and Television broadcast of *‘Ondoa Vikwazo Asome’* campaign on gender-based violence against school going children. This programme had been produced and sponsored by a non-governmental organization that advocates for the right to education. The aim of the programme was to: to raise public awareness on the barriers to girls’ education, stimulate public debate and discussion and mobilize community support to address barriers to girls’ education; influence the government to publish and implement the long-awaited re-entry guidelines so that teen mothers can be allowed to go back to school and promote a gender sensitive, protective and friendly learning environment.[[13]](#footnote-13)

Similar events took place in Kenya in 2018. In August, Marie Stopes Kenya embarked on a nine-week public awareness campaign on comprehensive reproductive health services. This campaign was jointly undertaken with a local media group to, among other things, highlight the statistics and dangers of unsafe abortion, abortion stigma and discrimination of women and girls who have undergone unsafe abortion and directing members of the public in need of pregnancy crisis counselling to call the Marie Stopes Kenya Customer Care Helpline. The campaign ran in different platforms including: social media (Twitter and Facebook) using Hashtag *‘UkonaBol’* (Are you pregnant?), radio talk shows and advertisements.

On 11th September 2018, the Kenya Classification Board arbitrarily banned a radio advert by Marie Stopes citing violation of article 26 (4) of the Constitution [[14]](#footnote-14) and for targeting adolescent girls by giving them alternatives to unwanted or unplanned pregnancies. These orders were later reaffirmed by the Kenya Medical Practitioners and Dentist Board ruling in *Ann Kioko -vs- Marie* *Stopes Kenya* directing the provider to “pull down the ‘misleading’ information on its website and any other information channels with immediate effect and to ensure that any future information on its website and all other media shall conform with the provisions of the Medical Practitioners and Dentists (Practitioners and Health Facilities) Advertising) Rules, 2016”.[[15]](#footnote-15)

In response, on 30th November 2018, the Center for Reproductive Rights filed a petition at the High Court of Kenya, on behalf of Marie Stopes, challenging the constitutionality of the decision and its impact on enjoyment of fundamental rights including the right to comprehensive, accurate, evidence-based sexual and reproductive health information by adolescents.[[16]](#footnote-16)The Center challenges government’s action to restrict the campaign content, for not following due processes and for banning promotional campaigns aimed at empowering adolescents to make informed decisions on their sexual and reproductive health. Court hearing of interested party applications to be enjoined in the case will held at the High Court of Kenya in July 2019.

The Special rapporteur on the promotion and protection of the right to freedom of opinion and expression has emphasized that content control should follow due process and that independent judicial process must be used to determine the legality of the information.[[17]](#footnote-17) The Special rapporteur further reiterates that child protection arguments have increasingly been used to restrict the right of children access to information.[[18]](#footnote-18)Additionally, vague and broad definitions of ‘harmful information’ can restrict adolescents’ access to SR information and exacerbate vulnerabilities to risky behavior. [[19]](#footnote-19)

In light of this, the Center recommends that the General Comment:

* *Explicitly recognizes the interrelationship between digital environment and adolescents’ access to sexual and reproductive health information, and obligates state parties to ensure access to sexual and reproductive health information through digital media;*
* *Emphasizes digital divide and unequal access to digital environment for adolescents from lower socio-economic status, those in rural areas and in conflict settings, and obligate states to ensure equal access to digital environment;*
* *Emphasizes accessible digital environment to allow access to sexual and reproductive health information by adolescents with disabilities;*
* *Explicitly recognizes that states should only seek to restrict content including on sexual and reproductive health pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy****.***

# **General measures of implementation by State parties needed to realise children’s rights in relation to the digital environment**

## **Meaningful participation**

Article 12 of the CRC recognizes children’s capacity to form their own views and to express them freely in all matters affecting them and giving them due weight in accordance with age and maturity. Participation of children in the design, implementation, monitoring and evaluation of laws and policies related to digital environment is crucial. The Center recommends that the General Comment*recognizes the obligation for states to guarantee adolescents meaningful participation in design, implementation, monitoring and evaluation of laws, policies and programmes related to digital environment*.

## **Harmonization of national laws and policies with relevant international human rights standards**

An enabling legal and policy framework is key for children’s access to digital environment. Inconsistent national laws and policies remain a key barrier to exercise and enjoyment of fundamental rights including sexual and reproductive health and rights. For instance, vagueness in defining ‘harmful information’ can prevent adolescents from gaining access to information that can support them to make informed choices about their sexual and reproductive health. The Center recommends that the General Comment *reaffirms states obligation to harmonize national laws and policies to guarantee access to digital environment. Appropriate safeguards should be put in place to protect adolescents from abuse and misinformation.* *Such safeguards may include empowering adolescents through trainings on responsible use of technologies and establishing**regulatory norms in line with the international standards related to the right to freedom of expression and access to information to protect children from harm.*

1. Center for Reproductive Rights, Capacity and Consent: empowering adolescents to exercise their reproductive rights (2017) [↑](#footnote-ref-1)
2. Committee on Economic and Social 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)’, E/C.12/GC/22, para 18. [↑](#footnote-ref-2)
3. Report of the Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/32/32, para 90. [↑](#footnote-ref-3)
4. Report of the Special rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/69/335 (21 August 2014). [↑](#footnote-ref-4)
5. See for instance, The Republic of Kenya, Ministry of Health, National Adolescent and Reproductive Health Policy, Ministry of Rwanda, National Family Planning and Adolescent Sexual and Reproductive Health (FP/ASRH) Strategic Plan (2018–2024) JULY 2018; The Republic of Uganda, Ministry of Health, The National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights. [↑](#footnote-ref-5)
6. Committee on the Rights of the Child, General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20 (6 December 2016), para 3. [↑](#footnote-ref-6)
7. Center for Reproductive Rights, The Stakes are High: the tragic impact of unsafe abortion and inadequate access to Contraception in Uganda (2013), at 55; The Center for Reproductive Rights, Capacity and Consent’: Empowering Adolescents to Exercise their Reproductive Rights (2017). [↑](#footnote-ref-7)
8. Center for Reproductive Rights, ‘Capacity and Consent’: Empowering Adolescents to Exercise their Reproductive Rights (2017), at 8. [↑](#footnote-ref-8)
9. Report of the Special rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/69/335 (21 August 2014), para 4. [↑](#footnote-ref-9)
10. Health & Education Advice and Resource, ‘increasing access to sexual and reproductive health and rights via new innovations and technologies in Africa (2016). [↑](#footnote-ref-10)
11. Interviews conducted between July 23rd and 8th August in five counties namely Nairobi, Kilifi, Kericho, Homa Bay and Bungoma. [↑](#footnote-ref-11)
12. *Ibid.* [↑](#footnote-ref-12)
13. Jamhuri ya Muungano wa Tanzania, Mamlaka ya Mawasiliano Tanzania, ‘Tangazo la Haki Elimu linalorushwa na vituo vya utangazi, Kumb. Na BA.61/355/02/27(25 Septemba, 2017); ITV-Independent. [↑](#footnote-ref-13)
14. Article 26 (4) of the Constitution of Kenya, 2010 provides ‘Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law’. [↑](#footnote-ref-14)
15. Copy of the ruling in file with the Center for Reproductive Rights. [↑](#footnote-ref-15)
16. Petition No of 2018, Network of adolescents and youth of Africa & Jackline Mary Karanja versus the Attorney General & 4 others. [↑](#footnote-ref-16)
17. Report of the Special rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/38/35, (6th April 2018) Presented during the 38th session of the Human Rights Council. [↑](#footnote-ref-17)
18. Report of the Special rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/69/335 (21 August 2014), para 52. [↑](#footnote-ref-18)
19. Id, para 49. [↑](#footnote-ref-19)