

Inputs for the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Submitted by the Child Rights International Network - CRIN (www.crin.org)

About CRIN

CRIN is a creative think tank that produces new and dynamic perspectives on human rights issues, with a focus on children's rights. We challenge the status quo because the norms that dictate children's place in society need radical change. Through research, artwork and our vision for the future, we encourage people to think critically about the world and start their own conversations.

Introduction

This submission focuses on question 2 of the Independent expert's questionnaire addressing the root causes and structural factors responsible for marginalisation and socio-cultural and economic exclusion of people on the basis of their sexual orientation and/or gender identity. This submission particularly addresses attempts to reframe and repurpose the rights of children to limit, excuse or justify violations of human rights and disguise homophobic, xenophobic and misogynistic views. It also reasserts a response to structural factors that result in violence and discrimination on the basis of their sexual orientation and gender identity that is based on the rights of children as enshrined in the Convention on the Rights of the Child.

The challenge of "family rights"

Under the guise of protecting children, the family or national security, the so-called "family rights" advocates are spreading discourse against reproductive rights, sexuality education, LGBTI rights and gender equality. Attempts to restrictively define what a family is have been seen in different settings, from the national level¹ to the Human Rights Council itself where several relevant resolutions have been adopted in the recent years.² These reforms attempt to shift the focus of human rights from individuals to families, particularly limiting rights protections to "traditional" forms of families and undermining the realisation of the rights of all children, regardless of who their parents are. The hostility to the term "various forms of the

¹ Romania's referendum threatens children's rights, CRIN, Sept. 2018; available at: <https://archive.crin.org/en/library/news-archive/romania-referendum-threatens-childrens-rights.html>

² HRC Resolution [A/HRC/RES/26/11](#) of 16 July 2014, HRC Resolution [A/HRC/RES/29/22](#) of 22 July 2015, HRC Resolution [A/HRC/32/L.35](#) of 27 June 2016 and [A/HRC/35/L.21](#) of 19 June 2017. Furthermore, a panel discussion on the issue was held in September 2014 and an OHCHR report (A/HRC/31/37) was presented in March 2016.

family”, which has been at the heart of the negotiations at the Council, is a hostility to the rights of children who find themselves born to less “traditional” forms of family.³

Children are individual rights holders entitled to all the rights set out within the Convention on the Rights of the Child as well as the other international human rights treaties. In the context of the protection of children against violence and discrimination based on sexual orientation and gender identity, there are a number of significant applications addressed in this submission.

Sex education and access to information

This ‘family protection’ rhetoric has a harmful effect on many children’s rights who are those of LGBT parents or who are identifying themselves as LGBT persons. It also contributes to the stereotyping and stigmatisation of LGBT people.

Comprehensive sex, sexuality and relationships education

Comprehensive sex, sexuality and relationships education is one of the most important ways to help children avert risks, make informed decisions about their sexual and reproductive health and sexuality and develop skills to form healthy relationships based on trust and respect.⁴ Denying children this comprehensive education violates their rights and may lead to negative health consequences, sexual violence, school drop out and prevent the development of tolerance and understanding of sexual orientation and gender identities. This education is vital for all groups of children. This applies equally to LGBTI children, and comprehensive sex education, tailored to children of differing sexualities, is necessary if children are to understand how to best protect themselves from sexually transmitted infections and develop healthy relationships as they grow up.

Access to information

The right to freedom of expression under the Convention on the Rights of the Child includes the right of children to seek, receive and impart information and ideas of all kinds. Combined with the right to education, to health and non-discrimination within the Convention, this right entitles children to access age appropriate information about sexual orientation and gender identity.⁵ Lack of objective information at a young age can lead to long-term negative effects on children’s physical and mental health. Limiting access to information on these issues, in

³ Claiming back rights: the “family rights” fallacy, CRIN, June 2017; available at; <https://archive.crin.org/en/library/publications/claiming-back-rights-family-rights-fallacy>

⁴ The Committee on the Rights of the Child recommended that “ age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards and developed with adolescents, should be part of the mandatory school curriculum and reach out-of-school adolescents”, UN Committee on the Rights of the Child, General Comment No. 20, para. 61. The CRC also recommended the implementation of “effective prevention programmes, including measures aimed at changing cultural views about adolescents’ need (...) and addressing cultural and other taboos surrounding adolescent sexuality”; UN Committee on the Rights of the Child, General Comment No. 4, para. 30.

⁵ Convention on the Rights of the Child, Articles 13, 17, 28, 29 and 2 respectively.

the name of protection is a misinterpretation of the protection rights under the Convention on the Rights of the Child and can have a profoundly negative effect on children’s physical and mental health.

The most prominent misapplications of the protection of children in this context have been reforms across Eastern Europe and Central Asia to ban, “homosexual propaganda”. A significant number of countries across the region have enacted or considered legislation to restrict imparting information that gives a positive or neutral image of homosexuality in settings where children may come across that information.⁶ Though less overtly discriminatory, overactive internet filters that aim to restrict children accessing sexual material may in practice restrict children’s access to age appropriate information about sex, sexuality and relationships.⁷

Right to health and access to health care services

Children are entitled to be actively involved in their own health-care from the earliest possible age.⁸ LGBTI children should be able to access sexual and reproductive health services and make decisions about their own healthcare when they have the capacity to do so. However, the argument of protection of the ‘innocence’ of children is often mis-used by conservative groups, including within religious communities, to prevent the access to information and the access to services. According to the Committee on the Rights of the Child, “the right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit”. This access must be confidential and without parental consent, “irrespective of the child’s age, where this is needed for the child’s safety or well-being” or “where this is assessed by the professionals working with the child to be in the child’s best interests”.⁹ These principles have clear applications for children experiencing violence or abuse at home, but also in seeking reproductive health education or services. In the Committee’s views, particular efforts need to be made to overcome barriers of stigma and fear experienced by particular groups of children, including LGBTI adolescents, in gaining access to such services.¹⁰

⁶ CRIN, “Laws restricting children’s access to information”, March 2014. Available at: <https://archive.crin.org/en/library/publications/censorship-laws-restricting-childrens-access-information.html>.

⁷ CRIN, Access Denied: Protect rights - unblock children’s access to information, p. 7.

⁸ CRIN submission to the High-level Working Group on Health & Human Rights of Women, Children & Adolescents, Nov. 2016. Available at: https://www.crin.org/sites/default/files/clin_wg_health_submission_11_16.pdf

⁹ UN Committee on the Rights of the Child, General Comment No. 12, para. 101 and General Comment No. 15, para. 31

¹⁰ UN Committee on the Rights of the Child, General Comment No. 20, para. 60.