

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
OL CAN 4/2018

19 December 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 37/12, 35/6, 26/17, 34/18, 33/9, 32/2 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning changes to the sexuality education curriculum of the Province of Ontario.

According to the information received:

In July 2018, the Ontario Minister of Education, Lisa Thompson, announced that in September 2018 the Province's schools would be returning to teaching a sexuality education curriculum first promulgated in 1998, replacing the one adopted in 2015. Between July and August 2018, several adjustments were made to provincial legislation in order to effect this change. In August 2018, the Premier of Ontario, Doug Ford, declared that any teachers who continued teaching the curriculum of 2015 would be sanctioned. This decision has led to protests and demonstrations by students, teachers and parents' associations.

The curriculum of 1998 reportedly lacks a number of the necessary elements of a comprehensive and non-discriminatory sexuality education programme. There are significant differences between the approach of the two curricula to key issues, including stereotypes, sexual orientation and gender identity, reproductive health and sexually transmitted diseases. These differences include:

- A detailed and scientific description of the reproductive process and the parts of the body involved that is omitted from the 1998 curriculum but was included in 2015.

- A reliance on sexual abstinence as the only method of sexual protection suggested by the 1998 curriculum for grade 7, while the 2015 curriculum contains a more comprehensive identification of diseases transmitted by sexual contact and lists methods of protection.
- Discussion in the curriculum of 2015 of differences among people such as colour, race, disability, sexual orientation and gender identity and the need for acceptance and appreciation of diversity along with further discussion around sexual orientation and gender identity in the curriculum for grades 6-8, and the inclusion of the words “gay”, “lesbian”, “transgender”, and “cyberbullying” that are lacking in the 1998 curriculum,
- The introduction in the curriculum of 2015 for grades 6 and 8 of the concept of consent. This concept is not explained in the 1998 curriculum.

It appears that of the 969,053 girl and adolescent girl students in the Ontario school system, up to 80% report having experienced some form of sexual harassment in the school environment. In addition, 11.2% of the student population of Ontario identifies as LGBT.

We wish to express our concern that the reinstatement of the 1998 curriculum appears to represent a retrogression in terms of the State’s commitment to employ a comprehensive sexuality education curriculum and run contrary to the State’s obligations to promote gender equality, non-discrimination, the right to equality of women and girls, the right to the highest attainable standard of health and to the prohibition of sexual and gender-based violence. We are equally concerned that the reinstatement of the 1998 curriculum is inconsistent with the right to freedom of expression, as it will infringe upon the right to information of students, in particular with respect to information about health and sexual education that is non-discriminatory and scientific. We are also concerned at the proposal to sanction teachers who teach the 2015 curriculum. While teachers in principle are bound to teach in accordance with the curriculum in force, sanctioning teachers for teaching a curriculum in line with international human rights standards would, in our view, represent a disproportionate measure and as such represent an undue infringement on their right to freedom of expression.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) (ratified by Canada on 19 May 1974), provides in Article 13 that education should be aimed at the full development of the human person and the sense of their dignity, and should strengthen respect for human rights and fundamental freedoms.

In this connection, in its General Comment 14, the Committee on Economic, Social and Cultural Rights interprets the right to health, established in article 12, as an inclusive right which extends not only to timely and appropriate health care but also to access to health-related education and information, including on sexual and reproductive health (para. 11). Accordingly, States are under an obligation to respect the right to health

by, *inter alia*, abstaining from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as abstaining from preventing people's participation in health-related matters (para. 34). Obligations of the right to health further include the promotion of health education, as well as information campaigns, in particular with respect to sexual and reproductive health (para. 36).

In its General Comment 22 (2016) on the right to sexual and reproductive health, the Committee on Economic, Social and Cultural Rights further states that the right to sexual and reproductive health, combined with the right to education and the right to non-discrimination and equality between men and women, entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate (para. 9). All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health (art. 18). Such information must be provided in a manner consistent with the needs of the individual and the community, taking into consideration, for example, age, gender, language ability, educational level, disability, sexual orientation, gender identity and intersex status. States violate the obligation to fulfil when they fail to take measures to ensure that up-to-date, accurate information on sexual and reproductive health is publicly available and accessible to all individuals, in appropriate languages and formats, and to ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their required curricula (para. 63). The World Health Organization has also highlighted the need for comprehensive and evidence-based sexuality education that takes into account student diversity.¹ In the same vein, the Special Rapporteur in the field of cultural rights stressed that the promotion and defense of non-sexist education, in accordance with international standards, and of non-discrimination and full equality for women and girls in education, are among the most important measures governments can take to defeat fundamentalism and extremism (A/72/155, para. 91).

With regard to the 1998 curriculum's omission of key details relating to sexual and reproductive health, we would like to recall to your Excellency's Government that the right to health involves States' duty to prevent, treat and control epidemic, endemic, occupational and other diseases which, according to the Committee on Economic, Social and Cultural Rights (General Comment 14, para 16) requires the establishment of prevention and education programmes for behaviour-related health concerns such as those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as gender equity.

In Article 15 1 (b) the ICESCR provides for the right of everyone to enjoy the benefits of scientific progress and its applications. In her report on this right (A/HRC/20/26), the Special Rapporteur in the field of cultural rights stressed that access to scientific knowledge increases the range of available options to choose a life with

¹ WHO recommendations on adolescent sexual and reproductive health and rights, available at <http://www.who.int/reproductivehealth/publications/adolescent-srhr-who-recommendations/en/>

dignity, thereby strengthening people's capacity for self-determination and empowerment (paras. 19-20). The right to have access to scientific knowledge implies a right to science education, understood as a right to be introduced to and informed about main scientific discoveries and their applications, regardless of frontiers. It also entails education instilling a spirit of scientific inquiry (para. 27).

Moreover, article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Canada on 10 December 1981) guarantees women and girls' right to access specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

The Committee on the Elimination of all forms of Discrimination against Women has emphasized in its General Recommendation No. 22 that States are obliged to ensure that adolescents have full access to appropriate information on sexual and reproductive health, including family planning and contraceptives, and on the dangers of early pregnancy (para. 44). The Committee urges States to take affirmative measures to eradicate social barriers in terms of norms or beliefs that inhibit individuals of different ages and genders, women, girls and adolescents from autonomously exercising their right to sexual and reproductive health (para. 48).

Similarly, in a recent report focusing on the right to health of adolescents, the Special Rapporteur on the right to health stressed that lack of access to safe reproductive health services and information contributes to adolescent girls being among the most at risk of dying or suffering from serious or lifelong injuries associated with early pregnancies and childbirth (A/HRC/32/32, para. 5). The Special Rapporteur recommended that States should introduce measures to raise adolescents' awareness of their rights to sexual and reproductive health and to services and goods at the family, school and community levels and insisted that age-appropriate, comprehensive and inclusive sexuality education, based on scientific evidence and human rights, should be part of the mandatory school curriculum, with special attention given, inter alia, to preventing early pregnancy and sexually transmitted infections (Ibid., para. 91). Further, in its report focusing on discrimination against women with regard to health and safety, the Working Group on the issue of discrimination against women in law and in practice emphasizes the need for access to unbiased, quality education, including evidence-based comprehensive sexuality education, to ensure access to health care (A/HRC/32/44, para. 95). The Working Group emphasized that States have an obligation to allow information about health matters to flow freely, without State interference on moral or other grounds, and to allow non-State actors to disseminate information, including in relation to sexuality and sexual and reproductive health services (para. 96).

With regard to the 1998 curriculum's exclusion of discussion of consent in sexual relations, we would like to remind Your Excellency's Government that the Committee on the Elimination of Discrimination against Women in its general recommendation No. 19 (1992), explains that gender-based violence against women, including sexual violence, impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the

Elimination of All forms of Discrimination Against Women, whether perpetrated by a State official or a private citizen, in public or private life. In the United Nations Declaration on the Elimination of Violence against Women, States commit to taking measures to prevent such violence, including through appropriate educational measures.

We also wish to express our deep concern that the declarations from the Minister of Education and the Premier of Ontario seem consistent with a worrying global trend of attempts to reinforce gender stereotypes and roll back progress that has been made in achieving gender equality. Article 5(1) of the Convention on the Elimination of Discrimination against Women commits States Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

With regard to the exclusion of references to sexual orientation and gender identity from the 1998 curriculum, as well as the exclusion of references to disability status, we would like to underline to your Excellency's Government its obligations under the Convention on the Rights of the Child (CRC) (ratified by Canada on 13 December 1991). Article 2 of the CRC declares that States Parties should take appropriate measures to ensure that children are ensured access to Convention rights free of any form of discrimination, including that based on sex, disability, and any other status, as well as that based on the child's personal opinion and beliefs, while article 28 guarantees the right to education. In its General Comment on the implementation of the rights of the child during adolescence (CRC/C/GC/20, 2016), the Committee observes that adolescents who are lesbian, gay, bisexual, transgender and intersex commonly face a lack of access to sexual and reproductive health services and information (para. 33). It underscores that there should be no barriers to commodities, information and counselling on sexual and reproductive health and rights, and particular efforts need to be made to overcome barriers of stigma and fear experienced by, for example, adolescent girls, girls with disabilities and lesbian, gay, bisexual, transgender and intersex adolescents, in gaining access to such services (para. 60). All adolescents should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education, available both online and in person (para. 59). The Committee further notes 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 (para. 61).

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the former United Nations High Commissioner for Human Rights has observed that limiting or obstructing information related to sexuality or using materials that contain stereotypes and prejudices can contribute to violence and expose young LGBT persons to health risks. He emphasized that States have an obligation to, inter alia, provide comprehensive, age-

appropriate sexuality education as a tool for combating discrimination (A/HRC/29/23, para. 57 and 79(f)).

Further, we recall to your Excellency's Government articles 5, 6 and 7 of the Convention on the Rights of Persons with Disabilities (CRPD) (ratified by Canada on 11 March 2010). These articles set forth obligations of States Parties to ensure the equal treatment of persons with disabilities and the protection against any form of discrimination based on gender or age. Article 24 of the CRPD states that State Parties should ensure quality of education based on dignity for persons with disabilities. In its General Comment No. 4, the Committee on the Rights of Persons with Disabilities clarifies that the term quality includes the sexual education of students with disabilities, while in its General Comment No. 3 concerning women with disabilities, the Committee observes the particular impact that gender stereotypes and multiple and intersecting forms of discrimination can have for persons with disabilities. Further, the Special Rapporteur on the rights of persons with disabilities has emphasized the importance of comprehensive and non-discriminatory sexuality education to protecting the human rights of women and girls with disabilities (A/72/133, paras. 44-46). Accurate information about sexuality, sexual and reproductive health needs and rights of girls and young women with disabilities must be part of education programmes within the school system and made available in accessible formats (A/72/133, para. 62 (e)).

We would also like to recall that article 1 of the Ontario Human Rights Code states: "Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability."

Finally, we wish to express our grave concern that measures taken to threaten or punish teachers who persist in teaching the 2015 curriculum appear to infringe on the rights to freedom of opinion and expression, as they impede the free exchange of information on matters of interest to the general public. We would like to recall Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) (ratified by Canada on 19 May 1976), which set forth fundamental principles with regard to the freedom of opinion and expression, including providing that everyone shall have the right to freedom of expression; this right shall include 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 his choice.

In this vein, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognize the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 4 and 19 (3) of the ICCPR and 29 (2) of the Universal Declaration of Human Rights. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and

proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

Additionally, in its General Comment N° 13, the Committee on Economic, Social and Cultural Rights emphasized that staff and students throughout the education sector are entitled to academic freedom. Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to fulfil their functions without discrimination or fear of repression by the State or any other actor.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the actions taken by the Federal Government of Canada to ensure that the State, including in Provincial jurisdictions, comply with its international human rights obligations, notably in terms of Economic, Social and Cultural Rights, including the rights to non-discrimination, health and education.
3. Please explain measures taken to ensure that all individuals and groups have access to comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate information on all aspects of sexual and reproductive health, including gender equality, sexual and gender-based violence, and the issue of consent..
4. Please provide information on the measures taken to ensure that school sexuality education programmes are inclusive of girls and young women with disabilities and of LGBT adolescents and youth and their specific needs, and that they are made available in accessible and alternative communication formats.
5. Please provide details of the decision-making process that led to the reversion to the 1998 curriculum, including efforts to ensure that the voices of students, teachers, and parents were represented.
6. Please provide details regarding the threatened consequences for teachers reported teaching the 2015 curriculum, and the measures that are in place in Ontario Province to ensure that teachers have adequate redress for violations of their rights under article 19 of the ICCPR and article 13 of the ICESCR.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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