

## **Submission of the Child Rights International Network (CRIN) to the OHCHR Study on Children's Right to Health (Human Rights Council Resolution 19/37)**

The Convention on the Rights of the Child (CRC) primarily recognises children's health rights under article 24, but children's rights under the Convention are interrelated and cannot be viewed in isolation. This submission will focus on the health rights of children in relation to: the best interest of the child (article 3), the right to be heard (article 12), and the principle of non-discrimination (article 2).

### **Children's right to health and civil and political rights**

Children are entitled to be actively involved in their own health-care from the earliest possible age. The CRC recognises the value of a child's views and the need to give them weight in accordance with the age and maturity of the child. This approach clearly endorses the need to reject strict age requirements with regards to children's health-care rights and instead adopt a more flexible approach that takes account of individual characteristics of the child. Children should be listened to, their views should be taken seriously and their right to privacy and respect for confidentiality should be recognised.

#### ***Right to be heard***

Article 12 of the CRC focuses on children's right to be listened to and taken seriously, and highlights the entitlement of all children to comment on all matters affecting them and the obligation to extend due regard and consideration to the views of children. The appropriate method of ensuring that a child's views are heard will vary from child to child and should be assessed on a case by case basis. For children who have the capacity to make decisions about their care, the respect for their views may be determinative of how they ought to be treated, an approach sanctioned by the Committee on the Rights of the Child in its General Comment No. 4. In such circumstances a parent, or anyone else, need only be informed of the child's decision if to do so would be in the best interests of the child.<sup>i</sup>

#### ***Right to privacy in respect for confidentiality***

Children also have the right to privacy and respect for confidentiality under the CRC, which provides that "no child shall be subjected to arbitrary or unlawful interference with his or her privacy ... or correspondence".<sup>ii</sup> With respect to health-care, this includes the right of the child to confidentiality in seeking medical advice, to access medical records and control who else can access those records. The right to confidential advice and counselling can extend to the right to withhold medical information from everyone except the medical professional involved, including parents, a requirement recognised by the Committee on the Rights of the Child's General Comment 12 on the child's right to be heard. This right is particularly important where the child's safety or well-being is at stake, where the right to confidential medical counselling and advice without parental consent should be applied irrespective of age.<sup>iii</sup> This has obvious applications for children experiencing violence or abuse at home, but also in seeking reproductive health education or services.

The issue of confidentiality is separate to that of decisions over the child's care. Where a child lacks the capacity to make a determination about his or her care, it may frequently become necessary for medical professionals to discuss a child's care with parents or carers, but this does not override the child's right to confidential advice and counselling.

#### ***Right to access information***

Children have the right to access information; article 17 of the CRC includes a general obligation to ensure that the child has access to information and material from diverse sources, especially those aimed at promoting well-

being and physical and mental health. Article 24(2)(e) requires that State parties take appropriate measures to ensure that children are informed about their health and various specific health issues.

Children should receive education on sexual and reproductive health. Sexual and reproductive health education in school is one of the most important ways to help children avert risks, improve their reproductive health and make informed decisions regarding their sexual and reproductive health lives. Health facilities should also provide information on sexual and reproductive health.

#### *Access to information and consent*

Children should receive appropriate information in order to be able to give their informed consent to treatment and medication. The prescription of drugs is often an important component of health care. But over the past several years, lawsuits and investigations have cropped up around the world that raise concerns about not only testing drugs on children, but administering untested or unnecessary drugs on children.

In the summer of 2011, for instance, pharmaceutical giant Pfizer began making payments<sup>iv</sup> to families of Nigerian children who died of meningitis following a controversial drug trial marred by allegations of lack of consent.

Professional associations have reported a considerable increase in the number of children diagnosed with behavioural difficulties being prescribed powerful drugs and sometimes in conjunction with antidepressants. For over 60 years, methylphenidate hydrochloride – or Ritalin, by its commercial name – which has the same pharmaceutical profile as cocaine (although one study<sup>v</sup> found it to have a more potent effect on the brain), has been used to calm hyperactive children. But for over a decade, professionals have called into question the safety of, and need for, Ritalin and other similar drugs such as Adderall or Concerta, when used on children diagnosed with ADHD.

Part of the problem, however, is that since the 1980s when ADHD was first classed as a medical condition, it has since been represented as a “brain disease”, according to child neurologist and active opponent to the diagnosis of ADHD Fred Baughman. This perception has made it “logical for the public to think that a pill is going to be the solution,” which he adds, “is to deceive the public [as] it pre-empt[s] [their] right to informed consent in every single case.”<sup>vi</sup>

#### *Access to information and LGBT rights*

Legislation and policy-making aimed at limiting children’s access to information about LGBT issues is increasing in prevalence. In Ukraine, two Bills have been moving through the Parliament throughout 2012 that, if enacted, would institute a ban on the production of publications “promoting” homosexuality as well as on messages, articles or appeals spreading in any form “the call for homosexual lifestyle” in the mass media.<sup>vii</sup> In September 2012, the Russian Supreme Court also upheld a local ban on “gay propaganda”, though in doing so the court limited the application of the ban.<sup>viii</sup>

The CRC’s protection against discrimination does not expressly include sexual orientation, but in its General Comment No. 4, the Committee did expressly refer to discrimination on the basis of sexual orientation as among the prohibited forms of discrimination.<sup>ix</sup> Such laws as those indicated above clearly have a discriminatory and harmful effect on the rights of LGBT children to equal protection under the CRC, but they also have a harmful effect with regards to access to health information.

As noted above sexual and reproductive health education in school is one of the most important ways to help children avert risks, and make informed decisions regarding their sexual and reproductive health. This applies equally to LGBT children, and limiting access to information on these issues can have a profoundly negative effect on children’s physical and mental health. With regards to sexual health, it is important that LGBT children

understand the risks of sexual activity and the measures that can be taken to limit those risks. The dangers of sexually transmitted infections and the relative merits of various forms of contraception is important here, as is discussion over the emotional implications and dimensions of sexual relationships.

To this end, the Committee on the Rights of the Child has stressed the need to “develop effective prevention programmes, including measures aimed at changing cultural views about adolescent’s need for contraception and sexually transmitted diseases protection and addressing cultural and other taboos surrounding adolescent sexuality”.<sup>x</sup> Within this is an implied need to address the stigmatisation of LGBT children, and to ensure the taboo that surrounds LGBT issues for children is combated.

### **Access to remedies**

Appropriate and effective complaints mechanisms, including the right to compensation, should be available for children who become victims of any medical intervention, drug treatment and/or any form of violence or abuse that may have happened before or during their visit to health facility. A free 24-hour helpline should be put in place and made available to children to give them a chance to talk to someone to share their experience and discuss their options.

More importantly, children should know of the existence of those complaints mechanisms and the way to use them. Health facilities should provide children with information about their rights and all means of challenging any violation to their rights. Steps should immediately be taken to protect child victims from further harm and to link them with services they may need to reach a full physical and psychological recovery.

### **Harmful traditional practices**

Harmful traditional practices, perpetrated by parents, relatives, religious and community leaders and other adults, kill thousands of children around the world each year. Article 24(3) of the Convention on the Rights of the Child requires State Parties to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

Article 21 of the African Charter on the Rights and Welfare of the Child obliges State Parties to:

“...take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child”.

Article 5 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), adopted in 2003, requires States to “prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards.”

Laws should be enacted which prohibit harmful traditional practices. In its General Comment number 4 on Adolescent Health, the Committee on the Rights of the Child states that “States Parties should take all effective measures to eliminate all acts and activities which threaten the right to life of adolescents, including honour killings”.

Many harmful traditional practices have been widely denounced, great strides have been made in combating female genital mutilation, for example, however others remain relatively unchallenged and undiscussed. Of those practices that are most complex, controversial and that elicit strong emotional responses are those in which the best interests of the child may conflict with the religious convictions of a child’s parents. For example, the denial of life saving treatment on the basis of religious belief has been a persistent but underreported phenomenon with regards to children’s health rights. As of July 2011, the Canadian Medical Association indicated that 19 out of 50 States in the U.S.A. retained laws that allowed faith healing exemptions to child abuse and neglect felonies.<sup>xi</sup>

### **Male Circumcision - A child-rights focused approach**

A German district court ruled in June 2012 that children's rights should be upheld above the religious freedoms of parents. The decision came in relation to a complaint involving a boy from a Muslim family who had suffered bleeding after his parents agreed for him to be circumcised. In response to the incident, the Cologne district court ruled that male circumcision performed as a ritual conflicts with the child's best interests as the parents' right to religious upbringing of their children, when weighed against the child's right to physical integrity and self-determination, has no priority.<sup>xii</sup>

The court judgement set in motion a much needed debate on male circumcision, as well as a new reflection on the voice of children in the matter, a voice until now kept silent. Until recently, male circumcision was only challenged when performed in an unhygienic way, by non-medically trained persons, and without adequate pain relief. Now, however, the debate has expanded to include children's civil rights and the health and psychological implications forced circumcision can have for boys into their adulthood.

The argument endorsed by the Cologne court has a parallel in the CRC. Article 14 of the Convention requires states to "respect the right of the child to freedom of thought, conscience and religion", and to "respect the rights and duties of the parents ... [or] legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child". Parental rights in relation to the religion of their children clearly relate to direction rather than determination, so the parental religious rights do not extend to the determination of a child's religion, and so would not extend to irreversible decisions on the basis of religion or conscience. The recognition of the need to respect the evolving capacities of the child also highlights the need to respect a boy's right to make his own decisions as he grows up, and militates against making permanent decisions about his religious convictions.

As discussed already, in all actions concerning children by welfare institutions, including those involved in health-care, the best interests of the child shall be a primary consideration, and the views of the child must be given weight in accordance with the age and maturity of the child. Any decision relating to health measures should be taken with reference to these factors.

Debate over the practice and legality of male circumcision has spread to Norway,<sup>xiii</sup> the Netherlands<sup>xiv</sup> and Denmark<sup>xv</sup>, it is time that international human rights mechanisms started debating the practice from a child rights perspective.

### **Children and access to drug treatment and harm reduction services**

UN policy has coalesced around the idea of drug dependence as "a multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease",<sup>xvi</sup> a problem requiring a health response rather than recourse to the criminal justice system. Adequate drug treatment and harm reduction strategies for children, however, are notable by their absence.

Young people are excluded from harm reduction services in every region of the world with very few youth friendly needle and syringe exchange programmes (NSP) or opioid substitution therapy (OST) programmes. For example, around 14 to 16 per cent of NSPs and voluntary counselling and testing (VCT) clients in four cities in Georgia are under 18.<sup>xvii</sup> Children face the same barriers to accessing harm reduction services as adults, such as stigma, discrimination and criminalisation – together with further legal barriers that impede access to such services, such as age restrictions and lack of anonymity and confidentiality (parental consent for services such as voluntary drug treatment and HIV testing).

Some recent progress has been made at the UN level: in 2009, the Committee on the Rights of the Child recommended that Sweden "ensure the provision of necessary evidence-based support, recovery and reintegration services to all children affected by substance abuse, including drug users under 18 years of age and children suffering as a result of their parents' drug abuse".<sup>xviii</sup> In 2011, the Committee on the Rights of the Child issued recommendations to the Government of Ukraine calling for "specialised and youth-friendly drug dependence treatment and harm reduction services for children and young people," and amending "laws that criminalise children for possession or use of drugs" which may "impede access to such services".<sup>xix</sup>

However, at the international-level, the nine core harm reduction interventions recommended by the WHO, UNODC and UNAIDS are not child-focused, and it appears that key issues regarding children, injecting drug users and people living with HIV may be falling between the priority areas of different international organisations such as UNAIDS, UNICEF, UNESCO and the WHO.<sup>xxi</sup>

Removing the barriers caused by legal age restrictions and rules of confidentiality should be a priority, especially in those regions of the world where the growing HIV epidemics rates are attributed to injecting drug use. Removing such restrictions is an important first step towards developing youth-focused services, where children can make an informed decision as to which treatment is most suitable.

#### *Children deprived of their liberty*

States have an obligation to provide the highest attainable standard of health and health facilities to children, and this is particularly important for children detained by the state. Children in detention are particularly vulnerable as a result of the controls over their movement and communication, restrictions which can make it difficult to access medical advice and care. The Committee on the Rights of the Child emphasised this need in requiring that all children deprived of their liberty "shall receive adequate medical care throughout [his or her] stay in the facility, which should be provided, where possible, by health facilities and services of the community".<sup>xxii</sup> This recognition of the importance of treatment in the community highlights that prisons and other places of detention do not provide a therapeutic environment, and cannot replace mainstream medical care.

In many national criminal justice systems, children with drug or alcohol dependencies represent a significant proportion of the detained juvenile population, and health resources within detention are manifestly insufficient. For this reason, special focus shall be placed in this submission on drug related health problems facing children, particularly those in detention.

According to UN policy, drug use is to be treated as a health problem and "interventions for drug dependent people in the criminal justice system should address treatment as an alternative to incarceration"<sup>xxiii</sup>. Therefore for drug-dependent children who are in conflict with the law courts should propose drug treatment as an alternative to imprisonment.

When a child is in detention already, access to adequate health and psychosocial services, including opioid substitution therapy, HIV diagnostics and treatment, and medical treatment for children in prison with their mothers, should be applied. Governments need to make sure that adequate treatment services are ensured for children who use drugs in the same way as for adults.<sup>xxiv</sup> Medical and psychological assistance must be provided to everyone in detention, regardless of age and be available in pretrial detention.

Governments must ensure that the number of people imprisoned for non-violent drug crimes is reduced in order to reduce the harm to individuals, families and communities associated with imprisonment.

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- <sup>i</sup> UN Committee on the Rights of the Child, General Comment No. 4 (2003), para. 32
- <sup>ii</sup> UN Committee on the Rights of the Child, Art. 16
- <sup>iii</sup> UN Committee on the Rights of the Child, General Comment No. 12 (2009), para. 101
- <sup>iv</sup> See CRIN, “Bad medicine for children’s rights” 20 December 2011 (<http://crin.org/resources/infodetail.asp?id=26985>).
- <sup>v</sup> See <http://www.guardian.co.uk/uk/2001/sep/09/health.medicalscience>.
- <sup>vi</sup> CRIN, “Children’s rights and the other kind of drug use”, 16 May 2012 (<http://www.crin.org/resources/infoDetail.asp?ID=28448>.)
- <sup>vii</sup> Article 19, “Ukraine: Bills that ban homosexual ‘propaganda’ fast-tracked without due process” 3 July 2012 (<http://www.crin.org/resources/infodetail.asp?ID=28910>)
- <sup>viii</sup> Jurist, “Russia: Supreme Court rules on ‘gay propaganda’ ban” 18 September 2012 (<http://www.crin.org/resources/infodetail.asp?ID=29406>)
- <sup>ix</sup> UN Committee on the Rights of the Child, General Comment No. 4 (2003), para. 6
- <sup>x</sup> UN Committee on the Rights of the Child, General Comment No. 4, para. 30
- <sup>xi</sup> Canadian Medical Association, “Too much leniency io ‘faith healing’parents” 11 July 2011 (<http://crin.org/resources/infodetail.asp?id=25433>)
- <sup>xii</sup> Cologne Regional Court, Wa. 151 Ns 169/11
- <sup>xiii</sup> BBC, “Tensions continue over circumcision debate” 3 November 2011 (<http://www.crin.org/resources/infoDetail.asp?ID=26547>)
- <sup>xiv</sup> CRIN, “Norway: Ombudsman proposes setting minimum age for male circumcision” 2 September 2011 (<http://www.crin.org/resources/infodetail.asp?id=25991>)
- <sup>xv</sup> CRIN, “Denmark: Plan to ban all circumcision” 20 November 2008 (<http://www.crin.org/violence/search/closeup.asp?infold=19016>)
- <sup>xvi</sup> UNODC, WHO (2008). Discussion paper, principles of drug dependence treatment. Geneva: UNODC, WHO Introduction.
- <sup>xvii</sup> Eurasian Harm Reduction Network (EHRN). Young people & injecting drug use in selected countries of Central and Eastern Europe. Vilnius, 2009, 27.
- <sup>xviii</sup> UN Committee on the Rights of the Child, Concluding Observations: Sweden, UN doc No. CRC/C/SWE/CO/4, 12 June 2009
- <sup>xix</sup> CRC, Fifty-sixth session, 17 January – 4 February 2011, Concluding observations: Ukraine
- <sup>xx</sup>
- <sup>xxi</sup> Adam Fletcher, *Excluding Youth? A Global Review of Harm Reduction Services for Young People*, Global State of Harm Reduction 2012, Harm Reduction International, 144.
- <sup>xxii</sup> UN Committee on the Rights of the Child, General Comment No. 10 (2007), para. 89
- <sup>xxiii</sup> UNODC, WHO (2008). Discussion paper, principles of drug dependence treatment. Geneva: UNODC, WHO Principle 6
- <sup>xxiv</sup> Eurasian Harm Reduction Network (EHRN). Young people & injecting drug use in selected countries of Central and Eastern Europe. Vilnius, 2009, 44.