

Realisation of Children's Rights under the UN Convention on the Rights of the Child to, in, and through Sexuality Education

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Abstract

Through the framework of the Convention of the Rights of the Child (UNCRC), this paper argues that quality sexuality education is fundamental to the realisation of rights for children and young people, particularly those related to their identity, sexual lives and relationships. Beyond the right to education itself and sexual health, sexuality education supports the realisation of a wide range of children's rights including wellbeing, protection, participation, identity and equality. The paper argues

for the specific ways in which quality sex education supports the realisation of such rights and argues for the universal need for such education to be participative to allow children and young people to make empowered decisions about their sexuality and relationships with others.

Keywords

sex education – Convention of the Rights of the Child – well-being – gender – teacher education

Access to quality sexuality education is a fundamental right for children and young people; beyond the right to education in itself, sexuality education supports the realisation of a wide range of children's rights, from health and wellbeing, to protection, participation, identity and equality. Formal schooling is an important place and space for such education to occur given its near-universal provision. Through engagement with topics such as respect, consent, decision-making, gender, sexual orientation and equality, children and young people are not only empowered to make positive decisions about their relationships and their sexual behaviours (UNFPA, 2014) but also to flourish in a school culture which, through the provision of comprehensive sexuality education, promotes equality, non-discrimination and sexual wellbeing.

1 The United Nations Convention on the Rights of the Child (CRC)

Whilst a number of human rights instruments have argued for a rights-based approach to sexuality education, none explicitly require mandatory sexuality education for all children and young people (Curvino and Fischer, 2014); and there is no legal or academic consensus on whether states are obliged to provide mandatory sexuality education (Miškolci *et al.*, 2020; Campbell, 2016; Cumper, 2004). Campbell (2016) argues that there is an inter-woven commitment to high-quality sex education in crucial UN human rights treaties and that the provision of human right-based sex education is a necessary and positive obligation on the state to fulfil its human rights commitments in this domain. The United Nations Convention on the Rights of the Child (UNCRC) (United Nations, 1989) is recognised as one such treaty. With near universal ratification, the CRC is seen as the most far-reaching and widely supported legal framework of rights for children and young people (Freeman, 2007; Hammarberg, 1990).

Indeed, the United Nations Special Rapporteur has recommended comprehensive sex education as mandatory, available to all without discrimination from the early stages of life, and that this education should take a holistic, scientific and pluralistic perspective (the UN Special Rapporteur on the Right to Education, 2010). Whilst there is considerable potential for the CRC to serve as a valuable framework for the promotion of comprehensive sex education, it is important to recognise that, despite near universal ratification, the CRC is a product of significant negotiation and, as such, represents both consensus and contradiction (Quennerstedt *et al.*, 2018) and its creation negotiated several points of conflict, including around areas of salience to sexuality education (Johnson, 1992; Price Cohen, 1990). The imperfections of the product of this process, the CRC itself, are also clearly named. Freeman (2000, 2009) recognises the lack of children's participation in the drafting of the framework, but also notes the significantly limited gender perspective within, and indeed the exclusion of matters of sexuality. Furthermore, Freeman (2000) argues the issues faced by marginalised children, including risks of sexual violence, are not appropriately considered. With these issues recognised, there is clearly a need both to develop the CRC and galvanise the means of implementation (Freeman, 2000). Although there is no direct guaranteed route between domestic and international human rights, the CRC has its own sophisticated and influential accountability system. Through the periodic reporting process, individual communications and inquiry procedures mean that the treaty bodies can constructively engage with the state on sexuality education and hold it accountable for failing to meet its human rights commitments (Campbell, 2016). Within the Irish context, the Committee on the Rights of the Child's Concluding observations on the combined third and fourth periodic reports recognise 'severe lack of access to sexual and reproductive health education' (Committee on the Rights of the Child, 2017: 13) and, alongside concerns about sexual health and discrimination based on sexual orientation and gender, the need for a more comprehensive provision of relationships and sexuality education to children and young people.

Overall whilst there appears to be broad support for sexuality education and robust arguments in support of the right to sexuality education, its provision remains highly context-dependant and frequently politically charged. Globally, disparities exist in terms of the content and approaches to school-based sexuality education delivered. Furthermore, some states that provide sexuality education do not provide for equal access for all children and allow for a parental or school veto. Nonetheless, despite the disparity of approaches to sex education globally, the most conducive to a rights approach is arguably Comprehensive Sex Education (CSE). CSE is a curriculum-based process

of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality, delivered in a manner that is scientifically accurate, incremental, age- and developmentally appropriate (UNESCO, 2018). There are also growing references to a 'rights-based approach to sexuality education', defined as the intersection of four elements: an underlying principle that youth have sexual rights; an expansion of programmatic goals beyond reducing unintended pregnancy and STI; the broadening of curricula to include issues of gender norms, sexual orientation, sexual expression and pleasure, violence, and individual rights and responsibilities in relationships; and a participatory teaching strategy that engages youth in critical thinking about their sexuality and sexual choices (Berglas et al., 2014).

In this paper we argue that the CRC (United Nations, 1989) offers an important framework for pursuing children and young people's right to quality, comprehensive sexuality education. Whilst the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (United Nations, 1999) contains an express right of adolescents to sexuality education, in using the CRC, an argument can be made for the importance of developmentally-appropriate sexuality education not just in adolescence but across all of childhood. Furthermore, this paper argues not only for the right to comprehensive sexuality education, but also recognises how such education can act as an enabler for a number of other rights set out in the CRC. In using the CRC framework, sexuality education can support a wide range of overlapping rights of children and young people, including their rights to education (Articles 28 and 29), health and wellbeing (Article 24), protection from abuse and exploitation (Article 3), self-determination (Article 2), identity (Article 8), non-discrimination/equality (Article 12), and freedom of thought, conscience and religion (Article 14). Furthermore, the General Principles that the CRC is available for all children without discrimination (Article 2), that the best interests of the child should guide associated actions (Article 3), that all children have the right to life, survival and development (Article 6), and that children's views must be considered in matters affecting them (Article 12) are particularly important in relation to the availability, content and approach to sexuality education which is adapted by the state signatories of the CRC.

2 Education Rights

Education rights are particularly important to the argument for sexuality education. Howe and Covell (2005), drawing on the work of Verhellen (1994), argue that the CRC addresses education rights in three significant ways: as the

right *to* education, rights *in* education and rights *through* education. This offers a particularly useful framework for considering the intersection of children's rights and sex education: whether or not sex education is recognised as a central component of a child's right to education and provided to all children; how those children's rights corresponding to sexual and relationship issues are addressed and recognised in education and, in particular, in the provision of sex education; and how children's rights to identity, equality, health and protection are promoted through high quality sex education.

2.1 *Rights to Sexuality Education*

The right to education addresses two main objectives: first, education plays a key role in empowering individuals to take more control over their lives, including, among other things, breaking cycles of discrimination and disadvantage and promoting human rights norms; and second, it aims to endure the holistic development of the child (Campbell, 2016). Two Articles within the CRC are pertinent to the right *to* education. Article 28 addresses access to education, rights-respecting disciplinary procedures within schools, and universal education. Article 29 provides a more holistic overview of educational provision which supports 'the development of the child's personality, talents and mental and physical abilities to their fullest potential' (United Nations, 1989: 9). The Article directs State Parties towards education which develops a respect for human rights, cultural identity and nature within the context of peaceful co-existence. Article 29 is particularly pertinent to sexuality education where the quality, content and delivery of this education can have a significant bearing on how children and young people view themselves, their identity and the manner in which they relate to others.

2.2 *Rights in Education*

Children must be recognised as social agents and active participants in their education (Monk, 2002). Rights *in* education refers to the extent that children are supported as active participants and decision-makers in the development and implementation of the sexuality education curriculum. Howe and Covell (2005) argue that rights *in* education are exemplified in several Articles listing: Articles 2 (non-discrimination), 12 (right to express views in matters affecting them), 13 (freedom of expression), 14 (freedom of thought, conscience and religion) and 15 (freedom of association and peaceful assembly). The value of consulting with young people as experts in their own experience and as key stakeholders in the development and implementation of sex education is well argued (e.g., Giordano and Ross, 2012) and sexuality education is likely to be most effective when the current beliefs and practices of children and young

people are taken into consideration (Temple-Smith *et al.*, 2016). For example, children and young people have expressed that they want to have sexuality education provided to them through school (Tanton *et al.*, 2015). Research also suggests that the inclusion of dialogical and participatory strategies in CSE contributes to positive outcomes, including self-exploration, increased sexual health self-efficacy, increased knowledge, and perceived increased comfort dealing with issues of sexuality (McCaffree and Matlock, 2001). At the same time, young people have described the sexuality education they received as being out of touch with young people's lives as well as being heteronormative and gendered (Pound *et al.*, 2016).

2.3 *Rights through Sexuality Education: Protection from Abuse and Exploitation*

Rights *through* education are generally quite broad, spanning the areas of health, protection, wellbeing, identity and equality. CSE plays an important role in the protection of children and young people from abuse and exploitation. Such rights are outlined in the CRC, including Article 19 which states that States Parties shall take all appropriate educational measures to protect the child from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse and Article 34 which makes more specific provision for the protection of children from sexual exploitation. When children learn about equality and respect in relationships, they are in a better position to recognise abusive persons and situations (European Expert Group on Sexuality Education, 2016). In the 2018 case of *A.R. & L.R. v. Switzerland*, the ECHR recognised that one of the main aims of sexuality education was the prevention of sexual violence and exploitation (Cranmer, 2018; Daly and O'Sullivan, 2020). Education on the prevention of child sex abuse works on the premise that children are less likely to be abused when they have increased knowledge, awareness, and comfort levels with disclosing inappropriate experiences. It has been argued that children, as young as three years of age can effectively be taught self-protection skills and discussion about child sex abuse should come in the form of healthy sexuality, adapted for the developmental and cognitive level of the child (Kenny *et al.*, 2008). Research on the efficacy of abuse protection programmes suggests that successful prevention education includes teaching children on how to identify and resist inappropriate touching and learning the proper names for their genitals (Kenny *et al.*, 2008). Knowledge of the correct terminology for genitalia is critical for disclosure of abuse and others' response to abuse as it means that children can effectively communicate inappropriate experiences and be specific in their verbal labelling (Boyle and Lutzker, 2005).

The protective role of CSE continues throughout development. In recent years there has been increasing discourse on the inclusion of consent in sex education programmes, reflecting the growing consensus that sex education must acknowledge that the risks of sex extend beyond disease or unplanned pregnancy to include assault (Gilbert, 2018). Research suggests that young people may not have the sexual communication self-efficacy to talk about sexual issues relevant to consent (MacNeela *et al.*, 2017). CSE can emphasise rights to bodily integrity and autonomy, teach the laws on sexual consent, link gender-based violence to human rights, and encourage young people critically to reflect on gender relations (Campbell, 2016). The UNFPA (2014) include power in relationships, consent and decision making, sexual coercion, and intimate-partner and gender-based violence in their operationalisation of CSE (Haberland and Rogow, 2015). While research suggests that CSE programmes can play a role in the reduction of dating violence acceptance (e.g., Whittaker *et al.*, 2014), a broader question is whether this approach implies that the responsibility is on the child or young person not to be victimised rather than on the offender not to offend. Daly and O'Sullivan (2020) have argued that although efforts must be made not to frame sexuality as something threatening, protection from sexual abuse and violence must be one of the aims of sexuality education and connections should be drawn between the failures to provide sexuality education, high rates of child abuse and exploitation and the criminalisation of young people for unknowingly engaging in child sexual offences.

2.4 *Rights through Sexuality Education: Sexual Health*

Sexuality education can also play a role in the optimisation of sexual health and plays a powerful preventative role in maternal mortality and adverse sexual health outcomes, including experiences of unwanted pregnancy and STIs. Article 24(2)(f) of the CRC requires states to 'develop preventive healthcare, guidance for parents and family planning, education and services' and the Committee notes that 'adolescent girls should have access to information on the harm ... early pregnancy can cause' (CRC Committee, para. 31). The UN Special Rapporteur on the Right to Education goes so far as to hold that access to sex education may be a question of life or death (The UN Special Rapporteur on the Right to Education, 2010). The WHO (2016) reported the main causes of mortality among adolescents as pregnancy, childbirth, HIV and suicide (WHO, 2016), many of which are targeted in CSE. Indeed, the absence of unintended pregnancies and STIs, and the use of effective contraceptive measures, are often criteria for the evaluation of the effectiveness of sexuality education programmes. In a review of 22 systematic reviews in this area, sexuality education was associated with a range of sexual health benefits including delayed sexual

initiation, reduced number of sexual partners, reduced number of adolescent pregnancies and reduced incidences of HIV and STIs (UNESCO, 2016). These protective effects are considered to be long term and associated with reduced adverse sexual health outcomes beyond adolescence and into adulthood (Bourke *et al.*, 2014; Bourke *et al.*, 2015). This education must also go beyond the focus on contraception and pregnancy also to focus on broader gynaecological issues to support girls and women to feel informed and empowered with regards to their gynaecological health.

Together with its protective role, CSE should also be participatory. A sole focus on the protective role of CSE may impact on the child and young person's autonomy and participation rights. Although the UNCRC attempts to weave together both protectionist and participatory elements and the rights of protection and participation are often seen as a continuum (Cherney, 2010), they have the potential to conflict with one another (Bourke *et al.*, 2020; Peterson-Badali and Ruck, 2008). Indeed, there is a concern that the extension of a child's participation rights may be done at the expense of their protection rights (Doek, 2019; Peterson-Badali and Ruck, 2008; Ruck and Horn, 2008). The 'intent to protect minors' was used in the argument for a restriction on free speech in *Handyside v. United Kingdom* in the 1976 case regarding confiscation of a sex education book. 'Protecting childhood innocence' has also frequently been cited by protesters as a rationale to limit access to CSE. Among parents, childhood innocence has often been equated with non-sexuality and sexual ignorance in children (McGinn *et al.*, 2016). Although children are entitled to protections associated with their youth and relative vulnerability, erring too far on the side of protection denies children the right to education, inhibits opportunities to develop their capacities for participation and self-determination, and could potentially heighten their risk of adverse sexual health outcomes (Lansdown, 2010). Indeed, Archard (1995) argues that the ideology of innocence does not protect children from sex, but rather it can expose them to a sexuality in the face of which innocence is debilitating. This highlights the need for sexuality education to be scientifically accurate, non-judgmental, age-appropriate, complete and implemented as part of a carefully phased process (European Expert Group on Sexuality Education, 2016).

2.5 *Rights through Sexuality Education: Wellbeing and Development*

The inter-relationship between wellbeing and education is unequivocal (Hargreaves *et al.*, 2018; Thorburn, 2018; O'Brien and the Human Development Team; 2008) and sexuality education also plays a critical role beyond influencing physical outcomes to the realisation of optimal wellbeing across the life

course (Allen and Rasmussen, 2017; UNESCO, 2015, 2018; Vanwesenbeeck *et al.*, 2016). UN Sustainable Development Goal 3 identifies universal access to sexual and reproductive health information and education as integral to improving the sexual health and well-being for all, at all ages (United Nations, 2015). CSE programmes are generally framed not only to educate on sexual health outcomes, such as STIs and pregnancy, but also on sexual expression, pleasure, healthy respectful relationships and overall flourishing and wellbeing (Berglas *et al.*, 2014; Halpern, 2010; Harden, 2014; Schalet, 2011).

Sexual development is viewed as both an essential and complex aspect of human development (Ponzetti, 2016) and an acknowledgment of young people as sexual beings is essential to CSE (Smith *et al.*, 2015). Getting the right start in terms of education on sexual development is of paramount importance for sexual health and wellbeing across lifespan and it has been argued that failing to do this has resulted in violation of children and young people's developmental rights (Bay-Cheng, 2013). Tolman and McClelland note a sea-change in how adolescent sexuality has more recently come to be conceptualised as a 'normal and expected aspect of adolescent development and part of adolescence is the very broad task of navigating how to become a healthy sexual adult' (2011: 251). These authors call for more explicit integration of both positive aspects and risk management in CSE and argue that both develop in tandem at the individual, relational and cultural levels into the overarching concept of sexuality development in adolescence (Tolman and McClelland, 2011). CSE should start early to support this sexual development and through a developmental process equip and empower children and young people to enjoy their sexuality, have fulfilling relationships and have autonomy over their sexual health and well-being (Ketting *et al.*, 2016). Research has supported this relationship between sexual self-concept and identity and well-being (Hensel *et al.*, 2011; Muise *et al.*, 2010).

2.5.1 CSE for Wellbeing and Development: Pleasure

Increasingly, calls have been made for a rights-based, comprehensive sex education which focuses on sexual development and pleasure (Ingham, 2005; Kiely, 2005; Allen and Rasmussen, 2017; Lamb and Gilbert, 2019). Such education would address cultural norms and power dynamics, support young people's agency necessary to make empowered decisions about their sexual health, and empower adolescents whose sexual experiences diverge from perceived norms (Rohrbach *et al.*, 2015; Bonjour and Van der Lugt, 2018; Unis and Sällström, 2020). Hirst (2013) argues that by emphasising pleasure of sexuality in CSE, young people may be more empowered to reject sexual activities they are not comfortable with, that cause anxiety, or that they may not enjoy.

Despite these aims, it has been argued that the predominant public health approach to sexuality education views sexual activity as an act to be controlled within the religious or cultural context, leaving pleasure and positive sexual experiences often under-acknowledged or invisible (Ingham, 2005, Fine 1988; Fine and McClelland, 2006, 2016). Such relative silencing in terms of pleasure results in reinforcing the reproductive, and hence the heterosexual, priority of sexual activity and could indeed lead to counterproductive effects on adolescent's sexual behaviour (Allen, 2007; Bonjour and Van der Vlugt, 2018). A failure to provide information about pleasure, desire and the practice of sexual activity reduce the agency of the young person to make empowered decisions about their sexual health (Aggleton and Campbell, 2000). Research suggests that an "open and flexible" approach to adolescent sexual behaviour which focuses on positive aspects of sex and relationships, communication and empathy, alongside sexual responsibilities found lower frequencies of unwanted pregnancies and STIs and a later sexual debut (Berne and Huberman, 2000).

2.5.2 CSE for Wellbeing and Development: Gender Equality

CSE plays a critical role in terms of gender equality and challenging notions of gender norms, gender stereotypes and power dynamics in society. Campbell (2016) argues that although many of the obstacles that limit sex education applies equally to boys and men and disadvantaged groups, there is a subset of obstacles that uniquely engage the gender relations between men and women. The sexual and reproductive benefits conferred by CSE (e.g., UNESCO, 2016) have enhanced benefits for females as women and girls are more likely to experience disempowerment in their sexual lives and suffer the unequal impact of sexual and reproductive ill-health (Campbell, 2016; Glasier *et al.*, 2006). Complications of pregnancy and childbirth are the second leading cause of death among 15–19-year-old women (WHO, 2015). Worldwide, eighty-five million pregnancies, representing 40 per cent of all pregnancies, were unintended (Sedgh *et al.*, 2014) with girls and women often suffering the consequences of such pregnancies, including delayed prenatal care, poorer maternal mental health, lower mother-child relationship quality and increased risk of the mother experiencing physical violence during pregnancy (Logan *et al.*, 2007). Young women also carry the significant burden of STIs' (Slater and Robinson, 2014). Compounding this further is the gender dimension found in the lack of information in sexuality education and such education being used to entrench gender roles where family values, marriage and reproduction are emphasised over gender equality (Campbell, 2016). As noted above, comprehensive sexuality education does not only serve to protect against adversity

and sexual exploitation, it can also empower girls and women to be in control of their relationships and sexual lives throughout their lifespan, allowing them to make informed decisions about their sexual well-being, behaviours and pregnancy.

The analysis of gender norms and reflections on gender inequality are important parts of contemporary sexuality education (European Expert Group on Sexuality Education, 2016). Gender plays an important role for children as they begin to understand group belonging (Ruble *et al.*, 2007), which is critical to young children's secure development (Kohlberg, 1966). Supporting children's understanding of gender as a social category is important as it is typically the first collective social identity that children learn and is associated with a range of stereotypes used by children and adults to make inferences about others (Ruble *et al.*, 2007). Even as early as preschool age, children demonstrate knowledge of gender stereotypes (Martin and Ruble, 2004; Martin *et al.*, 2002). From three to four years of age, gender identity takes on particular meaning for children as they become aware that their social worlds are divided into two categories, male and female, and where they belong in these categories. They begin to focus on the differences between individuals and form strong rules or expectations for how each gender behaves and looks (Martin *et al.*, 2002; Halim and Ruble, 2010). Sexuality education, presented in an appropriate and timely manner, can challenge existing societal gender stereotypes and the prevailing socially-accepted dichotomy of gender, and ensure children develop nuanced, egalitarian and respectful beliefs about gender. Research bears this out, as a relationship has been found between CSE and decreased traditional gender role attitudes and increased egalitarian attitudes for both boys and girls, with the effect being stronger for boys than girls (Whittaker *et al.*, 2014). Research also suggests that sexuality education which is gender and sexual minority inclusive has been found to be a 'resource of resilience', leading to positive identity development which can buffer against the stressors related to growing up in heteronormative/heterosexist social environments (Bruce *et al.*, 2015). Nonetheless, it has been argued that despite the increasing use of a rights and gender equality approach to sexuality education, the education field has only gradually and inconsistently adopted this approach (Haberland and Rogow, 2015; Ketting and Ivanova, 2018). For example, drawing on the findings of a systematic review, Haberland (2015) reports that less than half of the sexuality and HIV education evaluations included a gender and power component and those programmes that did include these elements were found to be associated with positive sexual health outcomes, in contrast with those that did not include these elements.

2.5.3 CSE for Wellbeing and Development: Sexual Minority Equality

CSE also plays an important role in supporting children and young people's understanding of sexual orientation, particularly for sexual minority youth for whom it may be an integral part of their identity. Research indicates that children begin to feel the same sex sexual attraction aged around 7 to 9 years, and first self-labelling at 16 to 17 years for males and females, respectively (Savin-Williams and Diamond, 2000), although more recent research has indicated from 9–11 years for age of first awareness and 13–15 years as age of LGB identification (D'Augelli *et al.*, 2010). This supports the necessity for CSE to address such issues at these important developmental milestones. Health promotion programmes tailored for LGBT youth have been found to be associated with higher levels of connectedness to LGBT community, higher Coming-Out Self-Efficacy, less internalised homophobia, and a higher sense of belonging (Mustanski *et al.*, 2015) and inclusive sexuality education has been found to lead to positive identity development which can influence sexual minority youth's experiences of stressors related to growing up in heteronormative/heterosexist social environments (Bruce *et al.*, 2015).

Sexual minority youth are found to experience a number of health disparities, which has been suggested to be a result of their exposure to stigma and discrimination, especially enacted stigma (Saewyc, 2011). For example, studies have shown that LGBT adolescents are more likely to be targeted for violence than heterosexual adolescents (Coker *et al.*, 2010) and pervasive school harassment due to transgender identity (McGuire *et al.*, 2010). Addressing the problems associated with gender and sexual orientation stereotyping and discrimination within sexuality education from a school-wide perspective may play a role in alleviating these problems through the provision of education relevant to LGBT issues, which can reduce stigma and create a safe and supportive school environment. Indeed, LGBTQ-inclusive curricula have been found to be associated with greater connectedness, higher reports of safety at the individual and school levels, lower levels of bullying and victimisation at the school level, and improved mental health (McGuire *et al.*, 2010; Proulx *et al.*, 2019; Snapp *et al.*, 2015).

3 Challenges to the Provision of Comprehensive Sexuality Education

Despite the clear importance of school-based CSE in the realisation of these rights and the international guidelines and frameworks that call for mandatory CSE, there exists a number of challenges to its implementation. In particular, there are significant discrepancies in the content and delivery of sex education

(e.g., Ketting *et al.*, 2021). When sex education is provided, it frequently falls short of the international standards, is not accurate or comprehensive (Campbell, 2016). Much sexuality education tends to focus on the biological and sexual health aspects rather than on the social and emotional aspects of sexuality and personal relationships (Parker *et al.*, 2009). Further CSE is often not seen as having the same status as other curricular area subjects in school (Maunsell *et al.*, 2021).

3.1 *Parental and Societal Resistance and Legal Challenges*

Sexuality education is hugely influenced and informed by the socio-political and historical landscape of the jurisdiction in which it is being provided, which poses challenges for the development, discourse and practice of sexuality education (Alldred and David, 2007; Campbell, 2016; Sherlock, 2012). In particular, resistance to the provision of CSE has frequently come from conservative religious and cultural influences that can have a significant impact on what is delivered in schools (The UN Special Rapporteur on the Right to Education, 2010). This is often seen in the form of parental objection. A historical analysis of resistance to sexuality education in Mexico found a steady rise of opposition to sexuality education from parents and faith-based organisations as well as opposition to many human rights issues including abortion and LGBTI rights, at the same time as an increase in more organised and well-financed actors (Chandra-Mouli *et al.*, 2018). Strong objections to CSE from both parents and faith-based schools have emerged across jurisdictions including Canada, Peru, the United Kingdom (UK), Senegal and El Salvador. For example, a significant parent protest was held in Birmingham, UK in 2019 against the inclusion of homosexuality as part of an overall programme designed to promote LGBT equality and challenge homophobia in primary schools. This resulted in a High Court injunction being required to curtail the protests, which were driven predominantly from conservative religious parent groups. In 2018 a significant review of the existing RSE programme, including a public consultation, was announced in Ireland. This came after a series of public events where RSE was highlighted, including consent marches after some high-profile sexual assault and rape trials, the passing of the repeal of the eighth amendment (abortion), and the global #MeToo movement. The review called for the necessary legislative amendments required to remove the role of ethos, an oft cited barrier to the objective and factual delivery of the RSE in Irish schools where almost 90 per cent are under the patronage of the Catholic Church. At the same time, the UN Committee on the Rights of the Child Report for Ireland (2016) expressed concern at the severe lack of access to sexual and reproductive health education for adolescents and the discrimination of lesbian,

gay, bisexual, transgender and intersex children and young people in Ireland (Committee on the Rights of the Child, 2017).

Many countries continue to have a parental “opt out” clause in their provision of sexuality education, thus hampering the accessibility of CSE for all children. This opt-out possibility is particularly problematic where groups such as children with disabilities deemed to be problematic for sexuality education run the risk of missing out on such education (Daly *et al.*, 2019). The various legal challenges to their provision of sexuality education in public schools across jurisdictions by conservative or religious parents and organisations have frequently been argued on the basis that it interfered with parental educational rights (e.g., *Campbell & Cosans v. United Kingdom*; *Kjeldsen, Busk Madsen & Pedersen v. Denmark*; *Folgero v. Norway*; *A.R. & L.R. v. Switzerland*; *Dojan v. Germany*; *Chamberlain v. Surrey School District*; *S.L. v. Commission Scolaire des Chênes.*), and the state’s legitimate interest in providing sexuality education has been confirmed (Daly and O’Sullivan, 2020), perhaps highlighting the argument that parental rights are not absolute, but instead legitimate only to the extent that they are exercised in accordance with the child’s best interests (Lundy, 2005; Hale *et al.*, 2008). However, Daly and O’Sullivan (2020) argue that much of the prevailing arguments in these cases have focused on balancing the position of parent and state and the benefit to the state of educational programmes which encourage pluralist values rather than on a children’s rights to sexuality education.

3.2 *Teacher Professional Development: Preparing Teachers to Teach CSE*

Challenges also exist in the professional development of teachers to deliver sexuality education from a rights perspective (Maunsell *et al.*, 2021). The potential of teacher education to respond to the opportunities and challenges presented in the area of sexuality education is significant and upheld internationally as crucial to its success (WHO, 2017). Giroux has described teachers as ‘public intellectuals’ who produce and legitimise ‘various political, economic and social interests through the pedagogies they endorse and utilise’ (2013: 171). Nonetheless, one of the key gaps repeatedly highlighted in respect of the consistent delivery of comprehensive sex education in schools, is that of teachers’ competence and confidence and teacher education which emphasises subject-specific content/pedagogies alone rather than also addressing other less tangible factors (Depaepe and Konig, 2018; Maunsell *et al.*, 2021). To effect change in teachers’ competence and confidence to teach RSE, teacher education needs to target both explicit and implicit attitudes, while acknowledging that intentionally addressing teachers’ implicit attitudes presents a deep challenge for both teachers and teacher educators (Bourke and Maunsell, 2016).

This challenge must, nonetheless, be addressed, given that teachers' implicit beliefs about their competence and confidence in delivering sex education were found to result in a tendency to avoid controversial issues (Niens *et al.*, 2013) while teacher education which improved teachers' skills and comfort were found to enhance implementation quality and fidelity (Ennett *et al.*, 2011 cited in Coyle *et al.*, 2016). Poor confidence and competence can result in certain topics pertinent to comprehensive sexuality education not being taught and more fact-based information on physical health being privileged over a critical evaluation of these facts or positive sexuality (Hargreaves *et al.*, 2018; Lamb, 2013; Shannon and Smith, 2015).

3.3 *Schools as Institutions*

A further challenge is the manner in which education systems and schools as institutions act in relation to children's rights. Although schools may support and exercise children's rights, there is also significant evidence of the harm that education systems, schools and teachers may do to the rights and wellbeing of children. Harber (2001) identified schools as places where breaches of children's rights have occurred, including the perpetration of violence, including sexual violence. Fineran (2002) also notes that children may experience sexual harassment and unwanted sexual advances from peers within schools and such sexual harassment and sexual violence presents a significant damage to the wellbeing and educational achievement of children who experience and observe such behaviours. Children identifying as gay, lesbian or bisexual are recognised as particularly susceptible to sexual harassment and violence (Fineran, 2002). Similarly, Horn *et al.* (2016) identify that although the CRC supports children's right to be free from discrimination, harm and victimisation, in certain contexts these freedoms are violated. This may be where countries criminalise gender identity and sexual orientation, but may also frequently involve violations within state institutions, including schools. The omission of sexual identity from schools may also represent a significant barrier to particular groups of children. O'Higgins-Norman (2009), drawing on Epstein and Johnson (1998), argues that the desexualisation of schooling inhibits the possibility of classroom engagement with sexual orientation which increases the risk of social isolation and lessens the opportunity for addressing stereotypes. These researchers argue that homophobic bullying is perceived to be an accepted facet of school life not addressed by educators (O'Higgins-Norman, 2009).

Schools may also fail to act as enablers of children's rights. It is highly unlikely that children are in a position to uphold and protect their own and others' rights unless they have a clear understanding of these rights and

schools can play a critical role in ensuring this understanding. Article 42 requires State Parties to ‘make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike’. However, it has been argued that schools often fail in their responsibility to ensure that Article 42, as a cornerstone of the CRC, is realised and in doing so schools fail children (Covell *et al.*, 2017). Lowcock and Cross (2011) have noted some of these challenges, including supporting children’s expression of views and involvement in educational policy. Furthermore, although schools can act as a vehicle for the realisation of such universal rights, given the universal access to education, this is contextually dependant. Children and young people who are educationally disadvantaged or marginalised are not afforded these opportunities for rights realisations that CSE can provide, including early school leavers (Maunsell, 2007), students with high levels of absenteeism, students with disabilities (Daly *et al.*, 2019) and girls who experience inequality in their access to education (Campbell, 2016). While states who have ratified the treaty have a responsibility to ensure the realisation of rights through the creation of political and economic environments which guarantee the full provision of comprehensive education, Campbell (2016) has argued that there is a lack of sufficient accountability structures and enforcement mechanisms to ensure states uphold their obligation to provide CSE and conservative socio-cultural and religious norms can influence the extent to which rights are enabled by the education system. Schools exist as part of a broader network of resourcing, collaboration and partnership across government and wider society (UNICEF, 2007). Furthermore, despite broad acceptance of the CRC, it is not without criticism, including its typically Westernised understandings of childhood (Nieuwenhuys, 2009).

4 Conclusion

Education broadly has been identified as being significantly lacking the recognition of children’s rights (Monk, 2002); although the principle of the right to education is well established, the precise nature of the right and how that right is actually fulfilled is problematic (Lundy, 2005). Sexuality education is arguably an area of the curriculum most vulnerable to the impingement of children’s rights, particularly given the multiples parties with a stake in this context, including parents, the child and the general public interest (Lundy, 2005). This right tends to come into conflict with traditional moralist and conservative groups leading to sex education being a particularly politicised area of the curriculum and one which frequently ends up as the subject of various

legal challenges. The conceptualisation of child innocence and normative social views of children as non-sexual are often cited as an argument against its provision which ignores the pragmatic recognition of sexual behaviour among young people and the benefit of developmentally appropriate education for lifelong sexual health and wellbeing (Monk, 2001). Sexuality education is also deserving of special attention, given its potential to enable a myriad of rights beyond just the right to education, including health and development, protection against abuse, identity, and non-discrimination and equality. Here we have used the CRC to argue for the privileged position of comprehensive sexuality education as an enabler of rights *to, in, and through* education. As a legally binding agreement, the CRC integrates children's civic, social, political, economic and cultural rights, and commits national governments to guarantee children's rights. The CRC has considerable potential to impact and influence governments' definition, shaping and implementation of education policy (Lundy, 2012). The General Principles are particularly relevant to sexuality education as it ensures that rights are available for all children without discrimination, that the best interests of the child should guide actions, that all children have the right to life, survival and development and that children's views must be considered in matters affecting them. Thus, although children's rights are not always principled but also pragmatic and contingent on social and political calculations as to what is and is not seen as appropriate child behaviour and education (Hale *et al.*, 2008), school-based sexuality education does have enormous transformative potential to realise children's rights when provided from a comprehensive, critical, pluralist, objective and rights perspective, with universal provision, recognising the equal importance of educating for the realisation of wellbeing as well as prevention of ill-health.

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