



**UN Human Rights Council
22nd session: 25 February – 22 March 2013**

SOGI & Poverty issues

A/HRC/22/24

Report of the Secretary-General on the question of the realization in all countries of economic, social and cultural rights

IV. Activities of special procedures on women's economic, social and cultural rights

A. Special Rapporteur on the human right to safe drinking water and sanitation

34. The Special Rapporteur on the human right to safe drinking water and sanitation has explained in her recent report (A/HRC/21/42) **on stigma and the realization of the human rights to water and sanitation, how the intersection of different attributes can compound the discrimination faced by certain groups or persons, such as being a woman and a sex worker, a woman infected with HIV/AIDS or a woman belonging to a certain marginalized group**, such as the Dalits. The stigma these groups of women face greatly affects their access to water supply and sanitation. Menstruating women suffer stigma and menstruation remains taboo in many countries. Women often lack appropriate facilities and the necessary privacy to change or wash during menstruation, and cultural perceptions that menstruating women are “contaminated” or “impure” lead to reduced mobility or even seclusion, as well as dietary restrictions and restricted access to water resources and food. The taboos and deeply rooted practices also have a negative impact on girls' right to education, since girls can be absent from school during menstruation, either because there are no appropriate facilities at school or because they are isolated by their family owing to prejudice.

C. Special Rapporteur on the right to education

39. The former Special Rapporteur on the right to education submitted a report to the General Assembly on the human right to sexual education in 2010 (A/65/162). In the report, the former Special Rapporteur places the right to sexual education in the context of patriarchy and control of sexuality. He explains the interdependence of sexuality, health and education and the relationship of this right to other rights from a gender and diversity perspective. In this report, he concluded that (para. 77):



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The right to sexual education is particularly important to women's and girls' empowerment and to ensuring that they enjoy their human rights. It is therefore one of the best tools for dealing with the consequences of the system of patriarchal domination by changing social and cultural patterns of behaviour that affect men and women and tend to perpetuate discrimination and violence against women.

40. The report strongly recommends that Governments institute comprehensive sexual education programmes from primary school onwards and train and support teachers accordingly (para. 87 (b)–(e)).

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A/HRC/22/31

Report of the United Nations High Commissioner for Human Rights on the right of the child to the enjoyment of the highest attainable standard of health

IV. Health issues relating to children requiring attention
E. Sexual and reproductive health

52. A continuum of adolescent-friendly HIV-related services should be made universally available, such as HIV prevention, voluntary counselling and testing, care, treatment and support services. Post-exposure prophylaxis should be available to victims of sexual assault. Due attention should be given to ensuring the confidentiality of HIV test results and other related information.

53. In some places, social and cultural values may limit access to information and services. For example, comprehensive sexuality education is considered inappropriate in some settings, where abstinence-only sexual education is provided. **Where traditional views on sexuality prevail, access to sexual and reproductive health services can be limited for some segments of the populations, including adolescents.** Parental and spousal consent laws may deny adolescents their right to have access to sexual and reproductive health information.



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A/HRC/22/53

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez

Interpretative and guiding principles

3. Stigmatized identities

36. In a 2011 report (A/HRC/19/41), the United Nations High Commissioner for Human Rights examined discriminatory laws and practices and acts of violence against individuals based on sexual orientation and gender identity in health-care settings. She observed that a pattern of human rights violations emerged that demanded a response. With the adoption in June 2011 of resolution 17/19, the Human Rights Council formally expressed its “grave concern” regarding violence and discrimination based on sexual orientation and gender identity.

38. In the context of prioritizing informed consent as a critical element of a voluntary counselling, testing and treatment continuum, the Special Rapporteur on the right to health has also observed that special attention should be paid to vulnerable groups. Principles 17 and 18 of the Yogyakarta Principles, for instance, highlight the importance of safeguarding informed consent of sexual minorities. Health-care providers must be cognizant of, and adapt to, the specific needs of lesbian, gay, bisexual, transgender and intersex persons (A/64/272, para. 46). The Committee on Economic, Social and Cultural Rights has indicated that the International Covenant on Economic, Social and Cultural Rights proscribes any discrimination in access to health-care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of sexual orientation and gender identity.

4. Lesbian, gay, bisexual, transgender and intersex persons

76. The Pan American Health Organization (PAHO) has concluded that homophobic ill-treatment on the part of health professionals is unacceptable and should be proscribed and denounced. There is an abundance of accounts and testimonies of persons being denied medical



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treatment, subjected to verbal abuse and public humiliation, psychiatric evaluation, a variety of forced procedures such as sterilization, State-sponsored forcible anal examinations for the prosecution of suspected homosexual activities, and invasive virginity examinations conducted by health-care providers, hormone therapy and genital-normalizing surgeries under the guise of so called “reparative therapies”. These procedures are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma (A/HRC/14/20, para. 23). The Committee on the Elimination of Discrimination against Women expressed concern about lesbian, bisexual, transgender and intersex women as “victims of abuses and mistreatment by health service providers” (A/HRC/19/41, para. 56).

77. Children who are born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization, involuntary genital normalizing surgery, performed without their informed consent, or that of their parents, “in an attempt to fix their sex”, leaving them with permanent, irreversible infertility and causing severe mental suffering.

78. In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender. In Europe, 29 States require sterilization procedures to recognize the legal gender of transgender persons. In 11 States where there is no legislation regulating legal recognition of gender, enforced sterilization is still practised. As at 2008, in the United States of America, 20 states required a transgender person to undergo “gender-confirming surgery” or “gender reassignment surgery” before being able to change their legal sex. In Canada, only the province of Ontario does not enforce “transsexual surgery” in order to rectify the recorded sex on birth certificates. Some domestic courts have found that not only does enforced surgery result in permanent sterility and irreversible changes to the body, and interfere in family and reproductive life, it also amounts to a severe and irreversible intrusion into a person’s physical integrity. In 2012, the Swedish

Administrative Court of Appeals ruled that a forced sterilization requirement to intrude into someone’s physical integrity could not be seen as voluntary. In 2011, the Constitutional Court in Germany ruled that the requirement of gender reassignment surgery violated the right to physical integrity and self-determination. In 2009, the Austrian Administrative High Court also held that mandatory gender reassignment, as a condition for legal recognition of gender identity, was unlawful. In 2009, the former Commissioner for Human Rights of the Council of Europe observed that “[the involuntary sterilization] requirements



clearly run counter to the respect for the physical integrity of the person”.

79. The mandate has noted that “members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place.” “Medically worthless” practices of subjecting men suspected of homosexual conduct to non-consensual anal examinations to “prove” their homosexuality¹¹⁶ have been condemned by the Committee against Torture, the Special Rapporteur on the question of torture and the Working Group on Arbitrary Detention, which have held that the practice contravenes the prohibition of torture and ill-treatment (A/HRC/19/41, para. 37).

V. Conclusions and recommendations

3. Lesbian, gay, bisexual, transgender and intersex persons

88. The Special Rapporteur calls upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, “reparative therapies” or “conversion therapies”, when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.

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