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Exploring the Intersections of the Convention on the Rights of the Child General Principles and Diverse Sexes, Genders and Sexualities in Education

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Abstract: Using a rights framework underpinned by the general principles of the Convention on the Rights of the Child of; best interests, participation/respect for the child's views, non-discrimination and life, survival and development, this paper outlines four key tensions for rights realisation in the context of diverse sexes, genders and sexualities in education. Children are commonly acknowledged as being more knowledgeable than previous generations about sexual orientation and gender identity and expression. Gender and sexuality are relevant in young people's daily lives as the Western world is increasingly acknowledging children's exposure, access and awareness to such knowledge. Even so, diverse sexes, genders and sexualities are still largely considered taboo and controversial in formal schooling contexts. Emerging tensions in contemporary education practices related to diverse sexes, genders and sexualities due to pervading opinions about its appropriateness need interrogation and discussion. Conceptualisations of childhood innocence and heteronormativity are used to analyse tensions between the Convention and the reality of the complexities involved in actualising children's rights in this context of diversity. Through its general principles, a way forward is offered to value and embrace the rights of children to learn about diversity in safe and inclusive educational environments.

Keywords: child rights; sexuality education; United Nations Convention on the Rights of the Child (UNCRC); best interests; non-discrimination; participation; development; right to life; education; general principles

1. Introduction

The following sections focus on the determinations of a child's best interests, the concept of children's participation in education decision-making and the possibility for indirect discrimination if a child is denied the ability to access information and education about diverse sexes, genders and sexualities. Possible implications for an individual's life, survival and development are also considered. It is not the intent of this paper to provide definitive answers to the when and how of sexuality education. Instead, this paper seeks a rights focused exploration of the provisions and practicalities of sexuality education for children, particularly in the context of diverse sexes, genders and sexualities. In doing so, this paper contributes to the discussion about comprehensive sexuality education for children from a rights lens and engages conceptualisations of childhood and childhood innocence¹

¹ Childhood innocence in this context is positioned as a socially constructed concept that presumes children do not have sexual knowledge (Robinson 2008)

(Gittins 1998; Robinson 2008), and heteronormativity² (Warner 1991) to explore the terrain of children's rights in the context of education regarding diverse sexes, genders and sexualities.

The United Nations Convention on the Rights of the Child [hereafter 'the Convention' or 'UNCRC'] (United Nations 1989) is an international mandate consisting of 54 articles that stipulates the rights afforded to children along with the States parties' obligations around their assurance. The Convention is supported³ by four 'general principles' that are also aligned to specific articles through; non-discrimination (Article 2), best interests of the child (Article 3), right to life, survival and development (Article 6) and respect for the child's views (Article 12) (United Nations 2003a). These general principles should canvas all Articles in the Convention, and form the basis of the analysis used in this paper (see Section 3 below). Additionally, in the context of a discussion enmeshed within education, education rights have particular relevance. The right to education is provided through the Universal Declaration of Human Rights (United Nations 1948) and is further elaborated as being "both a human right in itself and an indispensable means of realising other human rights" (United Nations 1999). In the Convention on the Rights of the Child, education rights are often discussed in relation to the right to education (Article 28) and the aims of education (Article 29).

The right to education encompasses more than the provision or access to education. The right to education is also a means to better assure the realisation of other rights. In this way, access to information (Article 17) is critical to inform rights-based content acquisition as part of an individual's rights *in* education, *through* education. Education rights also incorporate guarantees around self-determination, participation and protection. The right to information is, therefore, critical in assuring rights realisation in education. While a human rights framework mandates the indivisibility, interrelatedness, equality and interconnectedness of all rights (United Nations 1948), the interrelationship between (the right to) education and (the right to) information as a means of rights realisation are, therefore, intertwined in the context of a discussion about comprehensive sexuality education.

Due to the wide availability of web-enabled devices, children currently have the ability for unprecedented access to information. While presenting numerous opportunities, this unparalleled information availability also poses several challenges. Historically, adults have been the gatekeepers for much of the knowledge provided to children. Now, with access to virtually limitless information at their fingertips through web-enabled devices, children's knowledge can (and often does) extend beyond the walls of the home or classroom. Even though the Committee on the Rights of the Child may have not been aware of the rapid technological advances that would enable children access to limitless information (Gillett-Swan and Coppock 2016; Livingstone and O'Neill 2014), the aim in enshrining the right to information was to "... ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health" (Article 17, United Nations 1989). In doing so, children's access to and participation in information exchange were to be enabled and protected. The contemporary relevance of the awareness of each child's right to information via a variety of sources is particularly salient with the current development of a proposed General Comment on children's rights regarding the digital environment. This proposed General Comment seeks specific commentary concerning "key groups of rights to be realised in a digital world ... [including] access to information and freedom of expression and thought" (United Nations 2019, paragraph 5). In the context of a discussion about comprehensive sexuality education, children's somewhat uncontained access to information, including information typically reserved for adults such as sex and sexuality, means those responsible for educating children have less discretion in their ability to determine the knowledge base that children bring to the learning context. Educators have numerous

² Heteronormativity assumes heterosexuality as the only normal construction of sexuality (Warner 1991)

³ These general principles did not form the basis of the development of the Convention and were identified after it came into force (see Lundy and Byrne 2017; United Nations 2003a).

influences when determining content needed to adequately prepare children for adulthood including obligations underpinned by protection and provision imperatives.

Parents and carers of children typically think sexuality education is important and relevant to children of school age, but concerns of conflicts between home values and the content for learning at school continue to impede on the implementation of comprehensive sexuality education (Robinson et al. 2017). Sexuality education begins with families in homes and other early childhood environments prior to children starting school where they ask questions and explore sexuality concepts: For example, children talking about kissing, (heterosexual) marriage and love (see Blaise 2010). Sexuality education continues into formal education contexts via the curriculum, prior knowledge and through topics that children raise themselves. Primary schools are places where teachers reveal they encounter a range of scenarios in which diverse sexualities arise including but not limited to: Children discussing same-sex 'love' feelings, questions about sexual acts, homophobic/transphobic bullying and harassment, gender and sexuality diverse families (van Leent and Ryan 2015).

Comprehensive sexuality education (CSE) has been a contested topic for some time across multiple contexts (for example, the United States of America, the United Kingdom, Europe, Australia, New Zealand); from the curriculum and policy development to reconciling divergent perspectives of parents/carers and the public. Teachers and schools are unsure (van Leent 2017) and parents continue to have conflicting views (Ferfolja and Ullman 2017; Robinson et al. 2017). Children's perspectives on comprehensive sexuality education, particularly primary aged children, are typically left out of the conversation; they are not afforded the right to fully participate or engage in conversations concerning their learning about controversial or sensitive topics such as diverse genders and sexualities.

Whether deliberately or accidentally, many children may already be accessing variably reliable information about sex, gender and sexuality (including pornography) through families, friends, literature, advertising and the Internet (Robinson 2012). Learning about genders and sexualities via the Internet is not the best way for children to learn about these topics (Wensley and Campbell 2012). While conclusive evidence on defining content for CSE and/or understanding best practice is limited and varied, countries such as the Netherlands claim better outcomes resulting from their sexuality education programs typically delivered in formal schooling contexts, compared with other nations such as the United States. These claims are evidenced by lower rates of teen pregnancy (Ferguson et al. 2008) and from incorporating sensitive topics including diverse genders and sexualities from the early years of education throughout formal schooling into adulthood (Bonjour and van der Vlugt 2018). Education systems have an increasingly difficult position in negotiating responsibility to contribute to children's learning about sex, genders and sexualities as they attempt to balance and reconcile children's prior knowledge, evidence-based research on best practice, potentially differing cultural and religious beliefs, curriculum, national laws and international rights obligations. This complexity provides the context for the subsequent exploration of the intersection between rights obligations and practice in the context of diverse sexes, genders and sexualities in education.

2. Background and Conceptual Framework

The conceptual framework for this paper is underpinned by understandings of sex, gender and sexuality as socially constructed, including the history of sexuality (Foucault [1976] 2008), notions of childhood innocence (Gittins 1998; Wyness 2015) and heteronormativity (Warner 1991). This framework is used to analyse the four general principles of The Convention on the Rights of the Child with respect to children's rights on diverse sexes, genders and sexualities. The examples provided also draw on some of the key global documents from the United Nations, Europe and Australia that may influence Western education in this regard.

Sexual and gender identity development is different for everyone and can change throughout a person's life. However, some research has indicated that children know about and identify with a sexuality (including diverse sexualities) during the primary school years (Herdt and McClintock 2000; Hillier et al. 2010; Michaelson 2008). Despite many individuals' gender and sexuality awareness

evolving and developing during childhood, non-heteronormative identities are typically suppressed at school (European Agency for Fundamental Rights 2013). Concepts such as heteronormativity (Warner 1991) and childhood innocence (Gittins 1998) work to espouse broad cultural views in which children are defined by not knowing about sexualities, as possessing sexed and gendered qualities at birth that naturally evolve, and in which innocence is maintained by not knowing about concepts such as sex, gender, and sexuality (sexual orientation and gender identity/expression). Learning about concepts of diversity in relation to sex, gender and sexuality may be thought of by some adults as a challenge to healthy childhood boundaries and that increased exposure to content about gender and sexuality challenges a natural state of childhood innocence. However, such perspectives on children, childhood and childhood innocence are reductive to children's agency (Wyness 2015).

Understanding the terms sex, genders and sexualities establishes the contextual background and foregrounds the discussion as these terms are used often throughout the paper. 'Sex' typically refers to the biological reference of a person: Male, female, intersex. Often a sex is assigned and recorded officially at birth based on visible genitalia. However, this practice does not entail people considering a person's chromosomal makeup or reproductive organs, which also contribute to the assignment of a person's sex. Similarly, gender is assigned prior to or at birth based on assumptions about genitalia. Gender identity might be understood as a person's innermost concept of self as male, female, both or neither. Gender expression is an external presentation denoted by attributes such as hair, behaviour or clothing, among other things. One's gender identity and/or expression can be the same or different from their sex or gender assigned at birth (Telfer et al. 2018). The plurality of the terms acknowledges the range of human diversity that comes with each construct and acknowledges that diversity expands as they intersect.

The terms diverse sex, genders and sexualities encompass multiple understandings that are complex and separate yet interwoven. Sexuality is "multivariable" (Vrangalova and Savin-Williams 2010, p. 92) and can be defined by criteria such as attraction (feelings/desires), behaviour or identity (Riley 2010). Sexuality is not limited to binary notions or identities (Renold 2002) but also includes orientations (Janssen 2008) or sexual desire through language and actions (Blaise 2009). Sexuality is not just about sexual acts. It may be, but it is not necessarily singular or stagnant. Instead, it should be considered a complex interweaving of multiple intersections of identities including but not limited to time, place, culture and religion. Sexuality consists of the interplay between individual, social and biological aspects of meaning as experienced subjectively and is "part of the human need for both intimacy and privacy" (UNICEF 2017, p. 17).

In terms of sexuality education, UNICEF (2017, p. 16) defines it as, "a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality." This involves a focus on "equip[ping] children and young people with knowledge, skills, attitudes and values that will empower them to: Realize their health, well-being and dignity, develop respectful social and sexual relationships, consider how their choices affect their own well-being and that of others, and understand and ensure the protection of their rights throughout their lives" (UNICEF 2017, p. 16). Even so, those that espouse heteronormative assumptions imply that heterosexuality is the normal and is often the only representation of sexuality (Letts et al. 1999). The normality of heterosexual discourse leads to the invisibility of non-heteronormative sexualities—particularly in education. For example, while teachers using heterosexual examples in primary⁴ school is not thought of as 'sexual', the same kinds of discussions using non-heterosexual examples may be viewed as sexual: Inappropriate, irrelevant, or interrupting childhood innocence. As such, non-heteronormative sexualities are often assumed to be 'non-existent' for children. This assumption can be particularly problematic for children who may be questioning their sexuality or who already identify with diverse sexualities, as a lack of

⁴ For consistency, when educational stage is mentioned throughout this article, the following international equivalences apply: early childhood including contexts prior to formal schooling, primary/elementary, secondary/high, tertiary/higher.

direct engagement with this subject-matter perpetuates its marginalized positioning. A tension then emerges in reconciling diverse perceptions of childhood, including contemporary discourses that view childhood as being ‘in crisis’ (Wyness 2015, p. 69). Such discourses influence and shape conceptions of children’s agency (Wyness 2015).

The constructed idea of childhood innocence is one that attempts to separate the construction of the adult as separate to the child (Gittins 1998). As Wyness (2015, p. 42) describes, “[t]hese global concerns [of premature sexuality] thus exemplifies a dominant adult gaze that emphasizes notions of innocence and cognitive immaturity. Within these terms, children are in a vulnerable position, easily influenced and corrupted, with limited capacities to resist the alleged ubiquity of these messages. This is a powerful public and global discourse with *little or no acknowledgement that children themselves may have particular conceptions of sexualization and thus little sense that children are able to understand this ‘sexualized wallpaper’ in different terms*” (emphasis added). Such perspectives emphasise a deficit view of children and their agentic capacity. Relative to adults, children are structurally marginalised, which can perpetuate power differentials and hierarchies between them. The interconnectedness between power and individual agency provides opportunity for everyday education practices such as routines and governance to either stifle or enable children’s ability to exercise their rights (Gillett-Swan and Sargeant 2019). In educational contexts, children’s ability to achieve personal power may be further inhibited by the very nature, organisation and structure of schools (Oswell 2013). Many current western educational systems, when considered from a Foucauldian educational standpoint, further emphasise the ways in which disciplinary practices and institutional governance can both impose power on and restrict children’s power (Foucault [1976] 2008). Knowledge of sexuality, particularly notions of diverse sexualities, is typically thought of as ‘adult knowledge’, yet a plethora of research reveals that children not only know about heterosexuality but also know about diverse sexualities (Epstein 1997; Robinson 2008).

However, as UNICEF (2017, p. 17) describes, “sexuality is linked to power” and this may be one of the reasons for the apparent contention in constructions of childhood innocence and sexuality education, as education is also about power. Education settings such as schools are able to impose normative structures such as heteronormativity and childhood innocence. These effects can be exacerbated depending on contexts such as religious or cultural standpoints. Schools control children’s expressions of diverse sexes, genders and sexualities through the absence of discourse or such content being considered ‘taboo’, ‘inappropriate’, or ‘not suitable for school’ as ways of leveraging political and social power. It is in such contexts that children may experience restrictions on exerting power about their personal identities based on sex, gender and sexuality and on their access to knowledge of diverse sexes, genders and sexualities. However, comprehensive sexuality education might offer a shift in the outcomes of such social and political power and its relationship to diverse sexes, genders and sexualities (UNICEF 2017).

3. Discussion

The Convention on the Rights of the Child (United Nations 1989) is supported⁵ by four ‘general principles’ that are also aligned to specific articles within the Convention through; non-discrimination (Article 2), best interests of the child (Article 3), right to life, survival and development (Article 6), and respect for the child’s views (Article 12) (United Nations 2003a). While a human rights framework mandates the indivisibility, interrelatedness, equality and interconnectedness of all rights (United Nations 1948), as Lundy and Byrne (2017, p. 54) explain, the establishment of these general principles infers “that they were intended to enjoy an additional status over and above the other substantive rights. The title ‘general principles’... suggests first that the articles have a ‘general’ application, applying

⁵ These general principles did not form the basis of the development of the Convention and were identified after it came into force (see Lundy and Byrne 2017; United Nations 2003a).

across all aspects of the Convention and thus children's rights and lives." Citing paragraph 14 of the implementation measures (United Nations 2003a), Lundy and Byrne (2017, p. 54) go on to describe how "these provisions are not just rights in themselves but should be considered across the implementation of other CRC articles." As the general principles hold some level of 'additional status' in considering the Convention in its entirety, they also serve as a useful framework to consider the rights of the child to an education inclusive of diverse sexes, genders and sexualities in context. The following sections consider the general principles as related to diverse sexes, genders and sexualities. The four principles are introduced out of numerical order for the purposes of leading with 'best interests' as a platform for the subsequent discussion with the aim of demonstrating the integrated components of the four principles. In doing so, the discussion about intersections between the general principles of the Convention and diverse sexes, genders and sexualities in education is elevated beyond popular justifications provided for its exclusion. Commencing with 'best interests', the following sections analyse the four 'general principles' in the context of diverse sexes, genders and sexualities in education.

3.1. Best Interests

The 'best interests of the child as the primary consideration' is provided for through Article 3 of the Convention on the Rights of the Child (United Nations 1989). However, as Vandenhoe (2017, p. 26) states, "the meaning of best interests of the child has remained indeterminate and opaque, so that it tends to be invoked from different sides to justify sometimes opposing decisions." As such, tensions arise when trying to define the best interests of the child, where different stakeholders may be advocating different and divergent perspectives. The complexity of these tensions has also been recognised in justifying attempts to reconcile sometimes divergent and seemingly irreconcilable perspectives on matters such as religion and culture in education. However, as noted by the United Nations, "[a]lthough preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration, *practices that are inconsistent or incompatible with the rights established in the Convention are not in the child's best interests*. Cultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention" (2013, paragraph 57, *emphasis added*). This assertion may, therefore, provide some level of clarity in considering whether the cultural and/or religious traditions are in apparent competition with some of children's other rights that may be in their 'best interests'.

The 'best interests' justification is a common fallback position in avoiding sensitive or seemingly controversial topics in educational decisions. Paternalistic protectionism underpins the actions and decisions of often well-meaning and well-intentioned adults seeking to provide what they consider necessary additional safeguarding of children from exposure to certain information. This concern is indeed warranted, as evidenced through the recent Australian Royal Commission into Institutional Responses to Child Sexual abuse highlighting "almost one in three of all survivors [of child sexual abuse] ... told us they were sexually abused in a school setting as a child" (Commonwealth of Australia 2017, p. 10). The Royal Commission findings highlight children's potential vulnerability in settings and contexts that are supposed to keep them safe. The Royal Commission also found "when children experienced forms of abuse and neglect in schools other than sexual abuse, their ability to disclose sexual abuse was reduced and sexual abuse could become normalised." (Commonwealth of Australia 2017, p. 11). Such normalising practices that may permeate the culture of a school are potentially counter to an environment seeking to assure that the best interests of the child are the primary consideration. Quality education involving comprehensive sexuality education to better ensure the protection of each child from abuse, and/or the identification of abuse should they or others be exposed to it, is what should be in focus for children's best interests in this example.

A case in point where the Royal Commission determined, "many survivors of school-based abuse said they did not disclose the sexual abuse because they did not know or were uncertain that what had happened to them was abusive...*some children were not taught to identify sexual abuse because they*

lacked access to appropriately tailored sex education." (Commonwealth of Australia 2017, p. 15; *emphasis added*). Children may depend on adults to assure they are equipped with appropriate information and knowledge to reduce threats to their safety, as they may not know what they do not know. The United Nations further affirms children's relative vulnerability in assuring their best interests are a primary consideration as "[c]hildren have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked" (United Nations 2013, paragraph 37). Comprehensive sexuality education that focuses on the best interests of the child must acknowledge that learning about diverse genders and sexualities is not just about providing children with access to information, but also an understanding that comprehensive sexuality education in itself is fundamental to safeguarding children.

Recommendations stemming from the Royal Commission include "prevention education for children delivered through preschool, school and other institutional settings should aim to increase knowledge and build skills to help reduce the risks of sexual abuse. Education should be integrated into existing school curricula and should make links with related education areas such as respectful relationships and sexuality, and be mandatory for all preschools and schools" (Commonwealth of Australia 2017, p. 20.) Whilst these recommendations are welcomed, school culture and teachers' capacity and/or abilities to ensure comprehensive sexuality education is delivered is complicated and bound up in their personal views, school ethos and broader cultural practices (van Leent 2017). Cultural taboos, such as talking about or making visible 'sex', contribute to schooling cultures and teacher practices that perpetuate the silencing of topics such as child sexual abuse (Goldschmidt-Gjerløw 2019) as well as other topics such as diverse sexes, genders and sexualities. Consequently, such silences can further complicate the visibility of each child's best interests. The Royal Commission findings are not unique to Australia, with many similar issues being raised internationally, such as in Norway, relating to the educational implications of cultural taboos associated with child sexual abuse (Goldschmidt-Gjerløw 2019).

While there is complexity associated with best interest assessments when there are apparent tensions between rights that seem to contest with one another, the United Nations affirms the necessity for including the child's views and recognition of children's diverse identities in these determinations. The United Nations acknowledges that "[c]hildren are not a homogenous group and therefore diversity must be taken into account when assessing their best interests...includ[ing] [identity] characteristics such as sex, [and] sexual orientation..." (United Nations 2013, paragraph 55). To support and enable the realisation of the child's rights under a best interests mandate requires specific attention to ensuring the care, protection and safety of the child does not by default outweigh the child's right to have "access to adequate information that is essential for their health and development . . ." (United Nations 2013, paragraph 78) such as provided through comprehensive sexuality education. A key tension in the recommendations in relation to the discussion presented in this paper is that young children may not have yet developed their own understanding of themselves based on sex, gender and/or sexuality, but they may have family and friends who do. They may not be able to 'realise' their diversity or express their uniqueness. They may not want to disclose their intersex status, for example, or their sexual orientation even if it is established for them as a way of being or if it is safe and acceptable to do so. A child's capacity or choice to express a sex, gender or sexuality identity should be understood when considering the best interests of the child and implementing obligations afforded through the Convention. In doing so, respect for the child's views and enabling their views to be heard is paramount.

3.2. Participation and Respect for the Child's Views

Children have the right to participate in decision making on matters affecting their lives, including learning about diverse sexes, genders and sexualities. The right to express their views and for these views to be taken seriously is provided through Article 12 of the Convention (United Nations 1989).

This is in addition to the notion of participation and more specifically ‘respect for the child’s views’ being a core principle of the Convention itself. Heteronormative schooling contexts and notions of the need to protect childhood innocence mean that children are often not afforded the right to participate in such decisions even if it is considered to be in their best interests. These structures impede the possibilities for children to participate. As Woodhead (2010) affirms, “participation isn’t just about adults ‘allowing’ children to offer their perspectives, according to adults’ view of their ‘evolving capacities’, their ‘age and maturity’ or their ‘best interests’. It can also involve young people confronting adult authority, challenging adult assumptions about their competence to speak and make decisions about issues that concern them. If we are to develop fully the potential for children and young people to participate in society, we may need to move beyond ‘listening’ and ‘giving children a say’, and to focus more directly on the meaning of participation in everyday life” (p. xxii). In the context of diverse sexes, genders and sexualities, children have the right to participate in the development of curriculum and learning approaches. They have rights to access opportunities in which they can actively participate in voicing their opinions on matters affecting their lives such as their gender and sexuality development.

The United Nations (2009, paragraph 74) reiterates the importance of active and meaningful involvement and participation of children in decision-making about matters affecting them in that, “there can be no correct application of Article 3 [best interests] if the components of Article 12 [voice] are not respected. Likewise, Article 3 reinforces the functionality of Article 12, facilitating the essential role of children in all decisions affecting their lives.” In elaborating on Article 12, the United Nations further describes, “...Article 12 imposes an obligation on States parties to introduce the legal framework and mechanisms necessary to facilitate the active involvement of the child in all actions affecting the child and in decision-making and to fulfil the obligation to give due weight to those views once expressed” (2009, paragraph 81). This mandate still stands when applied to sensitive or controversial topics such as sexuality education. A default response of failing to engage with children directly on matters such as this could be argued as complicit to inaction.

As Howe and Covell (2013, p. 21) explain, inaction also constitutes a ‘best interests’ decision, “...the term *all actions* [Article 3, UNCRC, emphasis in original] is sufficiently broad to include inaction as well as action . . . The decision to refrain from action is part of action.” In this way, ignoring or refusing to engage with the complexities associated with comprehensive sexuality education reflects the pervasiveness of heteronormativity. It is assumed all children are heterosexual and that knowledge about diverse genders and sexualities is not suitable for children. Howe and Covell (2013, p. 22) go on to describe that “decision-makers are not to decide simply on the basis of what *they* think is best for children. They are obligated to take into account the views of children . . . ” as per obligations relating to Article 12 (United Nations 1989). However, willingness to engage with children and young people on these matters may not be the only inhibitor. As discussed earlier, cultural norms that impact adult comfort levels discussing and incorporating sensitive or uncomfortable topics such as sexuality (Taylor et al. 2015), directly impacts the enactment and realisation of a child’s rights. Even if children are willing to challenge cultural norms, question power relations and have the platform to do so, children’s voice alone may do little to further their opportunity for active participation and involvement if adults feel ill-equipped to address and explore these types of topics themselves. The complexities for educators and children to negotiate and create comprehensive sexuality education, including the incorporation of diverse sexes, genders and sexualities as part of education can and should be, “fused with points of tension and contradiction” (Coll et al. 2018, p. 169).

Humans are complex, and the inclusion of children in such discussions about their right to participate in developing knowledge on matters such as sexuality which affect their lives should at least be carefully considered and not absent, silenced or without action. Children who may or may not be able, or want to articulate their sex, gender and/or sexual identities and expressions may experience tensions with their potential involvement in education decision-making about comprehensive sexuality education through the possibility of needing to self-identify in order to participate. Their participation

may identify them as an individual questioning their identity or already identifying as diverse before they are ready to disclose this information to others. Potential implications associated with self-identification may include discrimination or other threats to an individual's identity, health, and holistic development. A challenge for schools, teachers, parents, researchers, and policy makers remains in how to ensure children and young people are included in conversations about matters that affect them without placing them at additional risk of discrimination or threats to their life, survival or development. This does not mean the possible implications of identifying to enable participation should automatically outweigh each child's right to express their views. Instead, the challenge is in how these complex perspectives are then reconciled in a rights-respecting way.

Furthermore, as education is a right and a means to realise other rights, placing limits on the education content and/or curriculum children have access to may also be a form of indirect discrimination and further inhibit an individual's ability to develop "to their fullest potential" as afforded through Article 29(1) (United Nations 1989). Other rights such as, "[A]rticle 13, on the right to freedom of expression, and Article 17, on access to information, are crucial prerequisites for the effective exercise of the right to be heard" (United Nations 2009, paragraph 80). In this way, restricting opportunities for children and young people to directly contribute to guiding the content, direction and focus of sexuality education, including imposing barriers on their access to CSE and associated information, may constitute being a further inhibitor to enacting a child's participatory rights in practice. As highlighted in the previous section, the 'best interests' principle provides further complexity in ensuring children are involved in this process through having their views and opinions heard and taken into consideration on all matters affecting them. As discussed in the next section, if this does not occur, children may also experience discrimination based on their sex, gender or sexuality due to positioning of 'difference' through heteronormative schooling context and cultural norms that are reinforced by the power of adults to exclude or perpetuate deviations from heteronormative views as non-normalised, therefore othering children in potentially harmful ways who do not fit within cultural norms.

3.3. Non-Discrimination

The right to be free from discrimination of any kind is provided through Article 2 of the Convention (United Nations 1989). The concept of non-discrimination in the context of discussions relating to children's rights and diverse sexes, genders and sexualities in education has increasingly emerged as a distinct focus area for the United Nations Committee on the Rights of the Child over time. While all children have the right to be free from discrimination, Lesbian, Gay, Bisexual, Trans, Intersex (LGBTI) children experience greater discrimination in schools based on sexual orientation, gender identity and gender expression than their heterosexual counterparts experience (UNESCO 2019). This emphasises the pertinence of discussing the information contained within comprehensive sexuality education as particularly important as a means to address some of the discrimination that they may experience. Sandberg (2015), also a former member of the Committee, highlights some apparent inconsistencies in the Committee's engagement with LGBTI⁶ children as a distinct group in the variability with which these children are specifically distinguished/differentiated as a distinct group or as having distinct needs relative to other identifications. Even so, it could be argued that not being mentioned consistently as a distinct group does not preclude its application or relevance (Isailovic 2017). In this way, the right to non-discrimination does not discriminate in who or how it applies.

Highlighting diverse sexes, genders and sexualities as an example for children's rights is particularly relevant for such a distinct group: LGBTI children. As Sandberg (2015) argues, gender and sexual diversity contribute to one's identity. Discrimination based on sexual orientation or gender identity and expression in education contexts is a growing global phenomenon.

⁶ LGBTI: Lesbian, Gay, Bisexual, Trans, Intersex.

Such discrimination including negative comments, suspicion about LGBTI 'status' or perpetration of violence (European Agency for Fundamental Rights 2013) has become such an issue that multiple United Nations Committees have been required to reiterate States obligations to "enact comprehensive non-discrimination legislative and other measures, including grounds of sexual orientation and gender identity, to prohibit and prevent discrimination in private spheres and diminish attitudes that cause and perpetuate discrimination...includ[ing] the obligation of states to address bullying, harassment and hate-speech in the educational setting" (Isailovic 2017, p. 202). While the argument for the rights of young people who identify with diverse sexual orientations, gender identities or forms of expression are in focus, *all* young people (and their families and extended networks) including those who are perceived LGBTI (European Agency for Fundamental Rights 2013, p. 12) are denied rights when such gendered and sexualised discrimination exists. For example, as Isailovic (2017, p. 203) argues, "[o]ne could also infer for instance that problematic curricula or policies and practices that create, tolerate or contribute to the creation of a hostile environment can be challenged using the Committee's observation in relation to gender equality." Specifically, the Committee describes that "[g]ender discrimination can be reinforced by practices such as a curriculum, which is inconsistent with the principles of gender equality" (United Nations 2001, paragraph 10). While Isailovic acknowledges that the Committee "does not refer *explicitly* to LGBTI children or adults and does not tackle issues such as sexuality education, or the respect for the sexual orientation and gender identity of the parents or children's teachers", what it does highlight is how the absence of diversity based on sex, gender and/or sexuality impacts non-discrimination and children's rights more broadly than the instances presented.

The importance of curriculum content as a barrier to rights realisation in the context of diverse sexes, genders and sexualities, has been identified as a key commitment regarding LGBTI student protections in educational institutions (UNESCO 2016). As Jones (2018, p. 5) states, "inclusive curricula providing age-appropriate, non-judgemental, human rights-based and accurate information on gender non-conforming behaviours" form part of this commitment and offers clear guidance for those responsible for developing and implementing the curriculum in educational environments. The United Nations further reiterates the importance of this imperative "[i]n all educational environments, including educational programmes in the early years . . . [t]eaching and learning must take into account life conditions and prospects of the children. For this reason, education authorities have to include the children's and their parents' views in the planning of curricula and school programmes" (United Nations 2009, paragraph 107). In this way, failure to seek and include children's perspectives on comprehensive sex education could be considered a form of discrimination against children, if the choice is then made to exclude diverse and inclusive sexuality education from the education curriculum.

In addition to a child's right to express their views in all matters affecting them, they also have the right to "seek, receive and impart information and ideas of all kinds" (Article 13). The tension arises in the restrictions applied in exercising this right "such as are provided by law and are necessary . . . for the respect of the rights or reputations of others" (Article 13). Children also have the right to access "information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health" (Article 17). While on the one hand, this affords the individual the right to access information, it also encourages States parties' responsibilities to protect the child from "information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18" (Article 17). The tension arises in terms of who decides what constitutes materials "injurious to his or her well-being" and the extent that these materials may perpetuate indirect discrimination where information about topics deemed sensitive or controversial are censored from children. In doing so, children's ability to make informed decisions or to be educated about the complexity of human diversity may then be stifled. This may be further exacerbated when adults themselves are less informed or uncomfortable with certain topics, thus the information received presents a biased or incomplete picture. Such examples include parental discomfort in how to explain (Stone et al. 2013); or teacher discomfort and knowledge (Goldschmidt-Gjerløw 2019). This is also raised as a concern by

the Committee on the Rights of the Child in relation to the treatment of, and potential discrimination against LGBTI children in this way. An example is provided where a States party “prohibit[ed] ‘propaganda of unconventional sexual relationships’, . . . [as this] encourages the stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, including children, and children from LGBTI families” (Sandberg 2015, p. 341). While not all contexts will go thus far as prohibiting materials and content representing non-heteronormative viewpoints, as established in previous sections, comprehensive sexuality education “...can help young people reflect on social norms, cultural values and traditional beliefs, in order to better understand and manage their relationships with peers, parents, teachers, other adults and their communities” (UNICEF 2017, p. 12). In this way, access to information supports the general principle of non-discrimination through being equipped with the necessary information to make informed choices and decisions about themselves and their actions, as well as fostering respect for others in all their uniqueness and promotion of tolerance and equality for all.

As affirmed by the United Nations General Assembly, “[s]exual education is the basic tool for ending discriminations against persons of diverse sexual orientations” (United Nations General Assembly 2010, paragraph 21), which makes it an important endeavour. In doing so, sexual education can further cultivate and foster tolerance, understanding, peace and equality between all people, supporting human rights education in the process. The connection between discrimination and violence towards children and families who are outside of the cultural sex, gender and sexuality norms, is an emerging and troubling development that serves to inhibit (or has implications for) an individual’s holistic development—for some, also their life and survival.

3.4. *Life, Survival and Development*

In addition to its status as a general principle of the Convention, a child’s right to life, survival and development is also provided through Article 6 (United Nations 1989). Globally, humans with a diversity of sexes, genders and sexualities experience a range of developmental affordances, barriers and atrocities impacting their life, survival and development: Global human rights violations for intersex people (Carpenter 2016), from feeling unsafe at school to suicide (Jones 2019b); from same-sex marriage legislation to the death penalty (Jones 2019a); lives lived all based on cultural norms and the laws of the land. By acknowledging the broad experiences of life, survival and development of humans with diverse sexes, genders and/or sexualities, it is clear the argument for the rights of children to have access to education inclusive of CSE is bound up in myriad complexities. However, Article 29(1) often abbreviated to ‘the aims of education’, requires;

“States Parties agree that the education of the child shall be directed to:

- (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.”

Enacting the aims of education, therefore, requires States parties⁷ and their representatives (which includes teachers and others employed by the State), to provide educational experiences that not only enable “the development of the child’s personality, talents and mental and physical abilities to their fullest potential” (Article 29.1a) but also prepare “the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin . . . ” (Article 29.1d). Practices, content or omissions from an educational experience that may hinder, stifle or restrict the development of each child to their “fullest potential” could, therefore, be argued as in direct contravention to this mandate and a barrier to the realisation of a child’s development rights.

The preamble to the Convention further emphasises the importance of fostering children’s development thus “the child should be fully prepared to live an individual life in society, . . . brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity” (United Nations 1989, preamble). More recently, the *International Technical Guidance on Sexuality Education* (UNICEF 2017) also “strongly promotes tolerance, inclusion and respect for people of diverse sexual orientations, gender identities and intersex status with approaches sensitive to cultural differences” (Jones 2018, p. 5) demonstrating a contemporised application of realising these principles in the context of sexuality education provision. The kinds of educational experiences children have in education contexts and how their lives are impacted further contributes to considering the enactment of this right in context.

The child’s right to life, survival and development also includes understanding and recognising their experiences of violence based on sexual orientation, gender identity and expression. As Jones (2012, p. 11) describes, “distinct protective policies that explicitly name homophobic discrimination and bullying can make a potentially dramatic difference to self-harm and suicide rates. Sandberg (2015, p. 338) also connects experiences of discrimination and possible violence against LGBTI children as intertwined to one’s identity in “the right to be who you are.” LGBTI children’s experiences of discrimination can, therefore, directly influence their development, identity, and right to self-determination, as well as impacting “the[ir] right not to have a mainstream sexual orientation imposed on you and to have the freedom to decide who you want to be with and be open about your orientation” (Sandberg 2015, p. 338). Children’s rights regarding discrimination should additionally explore children’s rights to knowledge about human diversity in relation to sexes, genders and sexualities in both familial and formal education contexts. As UNICEF (2017, p. 12) determined, “[m]any young people approach adulthood faced with conflicting, negative and confusing messages about sexuality that are often exacerbated by embarrassment and silence from adults, including parents and teachers.” Providing clear, comprehensive sexuality education to children and young people may, therefore, serve to reduce conflicting messages about gender and sexuality.

Further inequities exist for children who experience violence based on identity and/or expression of diverse sexes, genders, and sexualities. Jones’ (2019b) summary of the global conditions of laws related to such violence includes; feeling unsafe at school, achieving lower grades, missing school, depression, adopting risky health behaviours, and thinking about and attempting suicide. The global data from Jones’ research suggest that the lives of children and their ability to survive and develop are quite literally impacted by their legal rights. Isailovic (2017, p. 195) elaborates on the principle of non-discrimination and rights relative to the representation of LGBTI individuals (including for children raised in LGBTI families) by the Committee on the Rights of the Child. Examples highlighted from General Comments include the Committee “stress[ing] the role of discrimination on the basis of sexual orientation in heightening children’s vulnerability.” The concerning connection between

⁷ “A ‘State party’ to a treaty is a country that has ratified or acceded to that particular treaty, and is therefore legally bound by the provisions in the instrument” (UNICEF).

violence based on sexual orientation, gender identity and expression and subsequent implications require further consideration to reduce additional threats to children's development and vulnerability.

As UNICEF (2017, p. 12) describes, "despite clear and compelling evidence for the benefits of high-quality, curriculum-based CSE, few children and young people receive preparation for their lives that empowers them to take control and make informed decisions about their sexuality and relationships freely and responsibly." Limited access to CSE, has clear implications for the full and holistic development of the individual as well as the individual's respect of others. In paragraph 30, General Comment 4 (United Nations 2003b) States parties are also "urged to develop effective prevention programmes, including measures aimed at changing cultural views about adolescents' need for STD⁸ prevention and addressing cultural and other taboos surrounding adolescent sexuality" (Sandberg 2015, p. 340). In recognising that education is a right in itself and also a means to the realisation of other rights, the importance of education *about* rights for self and others is emphasised to aid in fostering equality, tolerance, peace, respect and appreciation for all humans in all their diversity, and ultimately the "development of respect for human rights and fundamental freedoms" (United Nations 1989, Article 29.1b).

4. Synthesis and Conclusions

Bringing the rights of the child to the forefront of the discussion of comprehensive sexuality education provides an opportunity to connect the relationship between what is espoused in the United Nations Convention on the Rights of the Child (United Nations 1989) and the realities of what this means in the context of children's right to knowledge about diverse sexes, genders and sexualities. Due to cultural norms, localised social practices and expectations, and individual beliefs, the tensions between the rhetoric of the Convention and the real-world implications for actualising these rights are significantly complex. In attempting to capture some of this complexity, the four general principles of the Convention (best interests, participation, non-discrimination, and right to life, survival and development) have been intersected with concepts such as heteronormativity and childhood innocence to explicate the tensions.

Children and youth are commonly acknowledged as being more knowledgeable than previous generations about diverse sexualities, and they gain this knowledge through multiple sources (Robinson 2008). Non-heterosexuality is relevant in young people's daily lives as the wider social Western world is increasingly acknowledging sexual diversity (Ferfolja 2007).

Despite the importance of comprehensive sexuality education for supporting the holistic development of each child, there is a dearth of research, particularly in primary and early childhood contexts, in finding out what students want. In the few studies seeking to make student perspectives on sexuality education visible, it is apparent that students are also aware of their contributions as a missing piece. As Coll et al. (2018, p. 163) describe, "[f]rom the beginning, it was clear that young people were acutely aware that their everyday lived experiences were mostly rendered invisible in debates about school-based sexuality education." They continue by highlighting the students' call to action in emphasising that "for sexuality education to be successful, it must actively engage [the students] interests and concerns *as defined by them*. [Students] demonstrated their desire to be active in making decisions about what and how they learned" (Coll et al. 2018, p. 163, *emphasis added*).

However, it is not simply the obligation of 'others' to respond to this complexity, or something to be left to those with the direct responsibility to educate children. Researchers also need to engage in confronting and overcoming potential barriers to engaging with complex and sensitive or controversial issues relating to children and their lives if society is to progress in rights realisation. Ethical complexities associated with researching with children generally, but more so in relation to topics that may be sensitive, present too many 'risks' and make the research less appealing or approachable. Shifting such

⁸ Sexually Transmitted Diseases.

perceptions and highlighting the possibilities of potential research pathways, advice for navigating political and systemic politics and other strategies for promoting and supporting research endeavours, such as genders and sexualities research, is vitally important to promote growing research being undertaken globally (Jones et al. 2019). The importance of multi-stakeholder engagement in proactive responses to barriers that may exist that inhibit the researchability of topics that may be sensitive or controversial is important. Equally important is ensuring necessary protections and safeguards supporting children and their inherent vulnerability and 'best interests' are not compromised, while still enabling their active, valued and authentic participation in important matters that affect them and their lives.

This paper aims to contribute to the uplifting nature of work in this field to realise children's rights to their full potential in the context of diverse sexes, genders and sexualities. While there has been gradually increasing international attention toward the complexity of issues faced by LGBTI children, young people and their families, education as a discipline and in practice could make a significant and positive contribution in normalising diverse representations of gender and sexuality on the pathway to rights realisation. This might be possible by supporting a key missing element of rights realisation for LGBTI children through the provision of comprehensive sexuality education, and done so in a way that authentically seeks, includes and acts upon the participation of children and young people as direct and valued contributors to their educational experience. The complexities associated with discourses of childhood innocence and heteronormativity need to be further teased out, challenged and deconstructed to better understand how they work to create powerful learning contexts which continue to make diverse sexes, genders and sexualities 'sensitive' topics for educators in schools, parents/families and children. While adults still ultimately have the power to override children's expressed views and opinions, children still have the right to be involved and have their views and opinions heard and acted upon in all matters affecting them. Gatekeeping content as a default position when confronting sensitive or controversial topics such as comprehensive sexuality education does not address some of the other barriers identified. Rather, it serves to sustain a cycle of imperceptibility where an absence of direct affirmation disempowers it leading to being overlooked. Adults' responsibilities to protect children also come with the obligation to respect, protect and enable the realisation of children's rights in appropriate and supportive ways, even when this may spark tension between different rights. An apparent reticence to actively involve children in 'safe' curriculum decisions, may also perpetuate a culture, which means educators may be less inclined to include children in the 'controversial' ones (Gillett-Swan and Sargeant 2019). As Lundy (2007, p. 931) describes, "action needs to be taken to ensure that children are involved at each of the stages at which decisions are made which will ultimately impact on the child in the classroom." This includes being involved in curricular decisions relating to topics considered taboo.

Finally, as the United Nations Special Rapporteur on the Right to Education states, "[t]he right to education includes the right to sexual education, which is both a human right in itself and an indispensable means of realizing other human rights, such as the right to health, the right to information and sexual and reproductive rights...Thus, the right to comprehensive sexual education is part of the right of persons to human rights education" (United Nations General Assembly 2010, paragraph 19–20). It is clear more needs to be done in this area in facing the discomfort and providing support to teachers to expand their capacity to not only provide comprehensive sexuality education, but also the ways they can support and prepare their learners and families in approaching topics considered sensitive or topical (Goldschmidt-Gjerløw 2019). Seeming tensions in the level of 'safe' information to provide for children to give an informed decision about what they want to know, if it is about something they currently know nothing or little about, may present a further ethical complexity in providing 'too much' information when trying to support the child in informed decision-making. Further tensions remain in how to avoid further marginalising already marginalised voices about sensitive and/or seemingly controversial topics without compromising children's safety and protection. This again highlights apparent rights tensions in determining what takes precedence in

rights-based decision-making, despite all human rights being considered equal, indivisible, inalienable, and interdependent (United Nations 1948). Beyond the discussion presented in this paper, further practical guidance is needed to support those ‘on the ground’ with the necessary information to interpret, incorporate and enact rights-based decisions in a practical way through user-friendly interpretations of rights for use in educational decision-making.

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