



## Family Policy Brief

### **Abuse of Power: The Report of the Special Rapporteur on the Right to Education**

In the *Report of the United Nations Special Rapporteur on the right to education*<sup>1</sup> submitted to the General Assembly on 23, July, 2010, the Special Rapporteur on the Right to Education, Vernor Muñoz, has grossly overstepped his mandate as outlined in Resolution 1998/33 of the Commission on Human Rights.<sup>2</sup>

Rather than focus on the legitimate educational needs of the world's children<sup>3</sup>, his report centers entirely on what he calls the "issue of the human right to comprehensive sexual education" for children,<sup>4</sup> which he incorrectly asserts is "grounded in human dignity and in international human rights law."<sup>5</sup>

The promotion of sexual rights is prominent in the Special Rapporteur's report; however his positions are supported primarily by citing the comments and recommendations of human rights treaty bodies, the works of nongovernmental organizations, and personal interpretation rather than the global consensus of binding human rights instruments. The misuse of such documents in his official capacity and in fact much of the report itself constitutes a violation of the *Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council* articles 3(a), 6(a), 6(c), 7, and 8(c).<sup>6</sup>

### **Parental Rights**

The report is a blatant assault on parental rights. After insisting that Member States are responsible for ensuring that children have unrestricted access to information and services he

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<sup>1</sup> A/65/162.

<sup>2</sup> <http://www2.ohchr.org/english/issues/education/rapporteur/overview.htm>

<sup>3</sup> The report states, "In Burkina Faso the challenge is greater, since more than half of 15-19-year-olds have never attended school." Yet rather than seeking solutions to challenges such as this, Muñoz's focuses exclusively on sexual education in his report.

<sup>4</sup> Para 2.

<sup>5</sup> Para 3.

<sup>6</sup> 3(a) Act in an independent capacity, and exercise their functions in accordance with their mandate, through a professional, impartial assessment of facts based on internationally recognized human rights standards...

6(a) Without prejudice to prerogatives for which provision is made as part of their mandate, the mandate-holders shall: Always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources, that they have duly cross-checked to the best extent possible.

6(c) Evaluate all information in the light of internationally recognized human rights standards relevant to their mandate, and of international conventions to which the State concerned is a party.

7 It is incumbent on the mandate-holders to exercise their functions in strict observance of their mandate and in particular to ensure that their recommendations do not exceed their mandate of the mandate of the Council itself.

8(c) Rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up. See

[http://www2.ohchr.org/english/bodies/chr/special/docs/CodeofConduct\\_EN.pdf](http://www2.ohchr.org/english/bodies/chr/special/docs/CodeofConduct_EN.pdf)

mentions that “parents and other legal guardians of students must also provide appropriate direction and guidance on sexual and reproductive matters.”<sup>7</sup> Yet he later states that parents who are allowed to exempt their children from sexual education are considered a “barrier.”<sup>8</sup>

This statement directly contradicts international human rights instruments that protect parental rights including:

- The Universal Declaration of Human Rights, which states, “Parents have a prior right to choose the kind of education that shall be given to their children.”<sup>9</sup>
- The International Covenant on Civil and Political Rights, which states, “The States parties to the present Covenant undertake to have respect for the liberty of parents and ... to ensure the religious and moral education of their children in conformity with their own convictions.”<sup>10</sup>
- The Convention on the Rights of the Child, which states, “States Parties shall respect the rights and duties of the parents and ... to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”<sup>11</sup>

The special rapporteur concedes that “fathers and mothers are free to choose the type of education that their sons and daughters will have,” but then states “this authority may never run counter to the rights of children and adolescents, in accordance with the primacy of the principle of the best interests of the child,” suggesting that policymakers rather than parents should be the ones to determine what the best interests of children are.<sup>12</sup>

## **Religion**

The Special Rapporteur’s report constitutes an attack on religion and religious institutions claiming that the modern State “must not allow religious institutions to set patterns of education or conduct that are claimed to apply not only to their followers but to all citizens, whether or not they belong to the religion in question.” And further states that “sexual education has been obstructed in the name of religious ideas.”<sup>13</sup>

The report states that individuals must be aware of their sexual rights (a term not found in any consensus document) including the right to “pleasurable” sexual experiences<sup>14</sup> in order to achieve the highest attainable standard of physical and mental health. He asserts that this can only be achieved through “comprehensive sexual education from the outset of our schooling,” and that schools should foster pupils’ critical thinking about the various expressions of human sexuality and interpersonal relations, without reducing the topic to a biological approach

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<sup>7</sup> Para 4.

<sup>8</sup> Para 27, See document CRC/C/IRL/CO/2, para. 52, Committee on the Rights of the Child.

<sup>9</sup> Article 26(3).

<sup>10</sup> Article 18(4).

<sup>11</sup> Article 14(2).

<sup>12</sup> Para 73.

<sup>13</sup> Para 6.

<sup>14</sup> Quoting Special Rapporteur Paul Hunt, Para 11.

(reproduction).”<sup>15</sup> The Special Rapporteur further states that he “considers that pleasure in and enjoyment of sexuality, in the context of respect for others, should be one of the goals of comprehensive sexual education, abolishing guilt feelings about eroticism that restrict sexuality to the mere reproductive function.”<sup>16</sup>

With regard to HIV/AIDS prevention, the report suggests that “restricting sexual education to the issue of sexually transmitted diseases gives a limited view of sexuality. ...[R]educing sexual education to these aspects may create an erroneous association between sexuality and disease, which is as harmful as associating it with sin.”<sup>17</sup>

While the special rapporteur admits that with regard to sexual education, there is a “need to respect the community’s cultural and religious values,” he states that concerns of different groups should be expressed “without imposing personal moral values on the general public since this compromises the individual’s freedom to choose a lifestyle.”<sup>18</sup>

### UNESCO Guidelines

There is a very troubling reference in the report to the *UNESCO International Guidelines on Sexuality Education*. In 2009, the original version of the UNESCO guidelines called for the following learning objectives for children beginning at age five:

- “Touching and rubbing one’s genitals is called masturbation.” (p. 48)
- “Masturbation is not harmful, but should be done in private.” (p. 48)

Learning objectives for children ages 9-12 include the following:

- “Both men and women can give and receive sexual pleasure.” (p. 43)
- “Relationship between excitement and vaginal lubrication, penile erection and ejaculation.” (p. 44)
- “Many boys and girls begin to masturbate during puberty.” (p. 44)
- “Steps for proper use of condoms.” (p. 51)
- “Definition and function of orgasm.” (p. 49)
- “Legal abortion performed under sterile conditions by medically trained personnel is safe.” (p. 51)

Learning Objectives for children ages 12-15 include:

- “Respect for the different sexual orientations and gender identity.” (p. 48)
- “Both men and women can give and receive sexual pleasure with a partner of the same or opposite sex.” (p. 50)
- “Everyone is responsible for their own and their partner’s sexual pleasure and can learn to communicate their likes and dislikes.” (p. 50)

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<sup>15</sup> Para 12.

<sup>16</sup> Para 16.

<sup>17</sup> Para 15.

<sup>18</sup> Para 74.

- “Access to safe abortion and post-abortion care.” (p. 52)
- “The size and shape of [genitals and other body parts] vary and do not affect reproduction or the ability to be a good sexual partner.” (p. 46)
- Definition and description of the physical changes and stages of male and female human sexual response including orgasm. (p. 50)

The UNESCO guidelines were modified after public outcry, but a copy of the original document can be viewed [here](#).

## **Diversity and Sexual Orientation**

Language in the special rapporteur’s report with regard to “diversity” cites the very controversial Yogyakarta Principles, a non-negotiated, radical sexual rights document and suggests that homosexual education should be a component of sexual education for children.<sup>19</sup>

Citing the European Committee of Social Rights as an international standard, the special rapporteur apparently agrees with its recommendation that required States to “ensure that sexual education programmes did not reinforce stereotypes or perpetuate prejudices regarding sexual orientation.”<sup>20</sup>

## **Abstinence**

The special rapporteur’s report expresses a strong personal opinion with regard to abstinence-only programs for youth stating that they marginalize millions of young people who are already having sexual relationships” and they also “do not foster informed and responsible decision-making.” In addition, the report states that these types of abstinence programs “normalize stereotypes” and “are discriminatory because they are based on heteronormativity; by denying the existence of the lesbian, gay, transsexual, transgender and bisexual population, they expose these groups to risky and discriminatory practices.”<sup>21</sup>

## **Conclusion**

According to the report, comprehensive sexual education for children is the answer to virtually every complex problem facing countries including eliminating stereotyped roles for men and women 33, the health and wellbeing of families 33, promoting gender equality, empowering women, reducing child mortality, combating HIV/AIDS, reducing the rates of maternal mortality, abortion, and adolescent pregnancy rates, 24 guarantor of a democratic and pluralistic environment-6 in order to achieve this state of well-being12 maternal mortality, abortion and adolescent pregnancy rates and the prevalence of HIV/AIDS

This is not the first time a UN Special Rapporteur has misused his position to try to advance controversial sexual rights and the Yogyakarta Principles. The UN Special Rapporteur who deals with counterterrorism, Martin Scheinin, similarly sought to advance the Yogyakarta Principles in his activist report to the General Assembly in 2009.

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<sup>19</sup> Para 67.

<sup>20</sup> Para 39.

<sup>21</sup> Para 69.

However, an even more serious abuse of the UN system has occurred by a number of treaty body monitoring committees where supposedly unbiased committee members are blatantly misinterpreting existing treaties to include sexual rights that not only are not found in the original treaties, but in many cases were soundly rejected by UN Member States when the treaties were initially negotiated. In his report on the right to education Mr. Muñoz cites many of these erroneous misinterpretations by UN committees to try to support his invention of a new right to sexuality education.

Fortunately, last December the UN General Assembly refused to endorse erroneous committee comments that sought to advance sexual rights by unilaterally reinterpreting the term “other status” in a binding UN treaty to now encompass protection for “sexual orientation and gender identity,” concepts that many member states do not accept.

This troubling new trend of UN Special Rapporteurs and UN committees seeking to advance sexual rights by deliberately misinterpreting existing UN treaties to include various fictitious “human rights” undermines the integrity of the entire UN negotiation process and renders treaties meaningless if their intent and meaning can be arbitrarily changed by the actions of UN Special Rapporteurs and unaccountable UN committees.

The only way to remedy this serious problem is to conduct a multi-pronged review of all UN committee observations, comments, and recommendations as well as a review of all UN Special Rapporteur reports to identify where the mandates have been exceeded and have sought to advance the interests of special interest groups rather than interpret existing treaties in accordance with the meaning and intent of the Member States that negotiated them. Once problematic comments, reports, recommendations or observations have been identified they should be presented to the General Assembly for a vote to be stricken from the UN record or at a minimum should be tagged as controversial non-consensus documents that should not be used as a basis for forming future UN policies, nor should they be cited in other UN documents.