

Safeguarding girls' rights to education in the enforcement of the African Children's Charter: the African Children's Committee decision in *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian Girls) v Tanzania*

Naitore Nyamu*

<https://orcid.org/0009-0009-3775-4088>

ABSTRACT: This case was brought by the Legal and Human Rights Centre (LHRC), and the Centre for Reproductive Rights (CRR) on behalf of six Tanzanian girls who were expelled from school for being pregnant. The six girls were representatives of numerous other girls whose rights to education had been violated due to a discriminatory policy that was in operation in Tanzania. The case challenged retrogressive policy and practice in Tanzania that violated the human rights of girls. The rights violated include the right to education, to non-discrimination and to equality. These rights are provided for in the African Charter on the Rights and Welfare of the Child (African Children's Charter) and other legal instruments. In September 2022 the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) ruled in favour of the Tanzanian girls, and found that the practice of expelling pregnant girls from school violated their human rights. The Children's Committee recommended that Tanzania reforms its education policies, and takes steps to eradicate harmful practices in the country. This case discussion looks at the impact of the retrogressive policy and practices that led to the violation of girls' rights to education, and the implementation of the provisions of the African Children's Charter at the national level, with a focus on the right to education in Tanzania. It also discusses the impact of the violation of the right to education, and how this adversely affects the realisation of other rights. The article undertakes desktop research and reviews different reports and case studies of girls whose right to education was violated. This case summary further considers measures that the Tanzanian government has put in place since the Committee expressed itself on this issue. The broader aim of the case discussion is to highlight the role of states in upholding socio-economic rights, particularly the right to education, and to reflect on measures that states can put in place to advance the right to education of girls. For purposes of advancing this discourse, the case summary also gives a comparative analysis of Sierra Leone, where a similar policy that banned pregnant girls from attending school was in place.

* LLB (UNISA), MA (USIU-A), LL.M (Pretoria); Advocate of the High Court of Kenya; naitore.nyamu@gmail.com

TITRE ET RÉSUMÉ EN FRANÇAIS:

Protection du droit des filles à l'éducation en vertu de la Charte africaine des droits et du bien-être de l'enfant. Décision du Comité africain d'experts sur les droits et le bien-être de l'enfant dans l'affaire *Legal and Human Rights Centre et Centre for Reproductive Rights (au nom des filles tanzaniennes) c. Tanzanie*

RÉSUMÉ: Ce commentaire examine l'impact de la politique et des pratiques rétrogrades qui ont conduit à la violation du droit des filles à l'éducation ainsi que la mise en œuvre des dispositions de la Charte africaine des enfants au niveau national avec un accent sur le droit à l'éducation en Tanzanie. Il examine l'impact de la violation du droit à l'éducation et la manière dont elle entraîne la violation d'autres droits. A travers une recherche documentaire, le commentaire examine, ensuite, les cas spécifiques de violation du droit à l'éducation des filles ainsi que les mesures que le gouvernement tanzanien a mises en place depuis que le Comité a rendu sa décision dans cette affaire. Ce commentaire vise en outre à souligner le rôle des États dans la défense des droits socio-économiques, en particulier le droit à l'éducation, et les mesures que les États peuvent mettre en place pour faire progresser le droit à l'éducation des filles. Le commentaire conclut par une analyse comparative de la situation en Sierra Leone, où une politique similaire interdisant aux filles enceintes d'aller à l'école a été mise en œuvre.

KEY WORDS: gender, girls, education, African Charter on the Rights and Welfare of the Child, African Committee of Experts on the Rights and Welfare of the Child, teen pregnancy, discrimination, Tanzania

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1 INTRODUCTION

The right to education is a fundamental human right. The enjoyment of numerous other rights, such as the right to freedom of expression and the right to work, is dependent on the right to education. Therefore, the right to education has multiple effects not only on children but also on the larger society. Treaties, soft-law instruments and court cases have expounded on the right to education, and the measures that states should put in place to ensure the realisation of this right. General Comment 13, adopted by the United Nations Committee on Economic, Social and Cultural Rights, in particular underscores how integral the right to education as a human right is, including its importance in the

realisation of other human rights.¹ This General Comment further places an emphasis on the role of the right to education in safeguarding children against sexual exploitation.² According to a Human Rights Watch report, education is not only linked to enhancing health, nutrition but also serves as a protection factor.³ Children who attend school are less likely to be in conflict with the law, and less vulnerable to child sexual exploitation.

Advancing girls' rights to education in many African countries has faced numerous barriers and challenges. Gender inequality and socio-cultural barriers have been instrumental in impeding the right to education of girls. The retrogressive policy in Tanzania stems from the highly patriarchal nature of Tanzania society that is tolerant towards the notion of 'punishing' girls for their 'errant' behaviour of engaging in sexual relations and falling pregnant. This policy constitutes outright discriminatory in that it targets girls who are pregnant, and not boys who are in school and are responsible for impregnating the girls. Furthermore, from a human rights perspective, the policy in no way complies with the best interests of the child as provided in the African Charter on the Rights and Welfare of the Child (African Children's Charter).

This case discussion reviews the African Children's Committee's 2022 decision in *Legal and Human Rights Centre and the Centre for Reproductive Rights (on behalf of girls in Tanzania) v Tanzania*,⁴ which deals with Tanzania's policy of practice of expelling pregnant girls from school. The case discussion provides an analysis of the importance of girls' rights to education. It undertakes desktop research and reviews different reports and case studies of girls whose right to education was violated, and further considers measures that the Tanzanian government has put in place since the Committee expressed itself on this issue. The broader aim of the case discussion is to highlight the role of states in upholding socio-economic rights, particularly the right to education, and to reflect on measures that states can put in place to advance the right to education of girls. For purposes of advancing this discourse, the case summary also gives a comparative analysis of Sierra Leone, where a similar policy that banned pregnant girls from attending school was in place. A feminist approach is used, to bring out the underlying power imbalances and socialisation that underly these policies.

1 United Nations Committee on Economic, Social and Cultural Rights (ESCR Committee) General Comment 13, on the right to education (8 December 1999), UN Doc E/C.12/1999/10 (General Comment 13).

2 General Comment 13 (n 1) para 1.

3 Human Rights Watch 'The education deficit: Failures to protect and fulfil the right to education in global development Agendas', https://www.hrw.org/sites/default/files/accessible_document/educationdeficit0616_accessible.pdf (accessed 10 August 2023).

4 *Legal and Human Rights Centre and the Centre for Reproductive Rights (on behalf of girls in Tanzania) v Tanzania*, Communication 12/Com/001/2019 African Committee of Experts on the Rights and Welfare of the Child, Decision 2/2022, adopted at the African Children's Committee at its 39th session (21 March-1 April 2022) (*Tanzanian Schoolgirls case*).

2 BACKGROUND AND FACTS

The retrogressive policy that was being enforced in Tanzania brought to the fore an ongoing human rights violation that called for immediate redress. Due to the gravity of the violation, and the need to right this wrong, the matter was brought before different mechanisms, including the African Court on Human and Peoples' Rights (African Court) in *Tike Mwabipile*,⁵ and before the East African Court of Justice in *Inclusive Development for Citizens*.⁶ These cases were brought on behalf of Tanzanian girls who sought to have the ban lifted. In *Tike Mwabipile*, the African Court noted the decision of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) in the *Tanzania Schoolgirls* case, and declared it inadmissible on the basis of having been 'settled' already according to applicable human rights standards.⁷

The communication before the African Children's Committee, which is the focus of this analysis, was brought by Legal and Human Rights Centre (LHRC) and the Centre for Reproductive Rights (CRR) on behalf of girls in Tanzania. The basis of the communication was an existing policy that expelled pregnant girls from school and barred these girls from returning to school. This prohibition on attending school for both primary and secondary school girls was preceded by forced pregnancy testing, and expulsion from school if the girls are pregnant or married.

This led to numerous schoolgirls dropping out of school as a result of pregnancy. Human Rights Watch reported that approximately 15 000 girls drop out of school yearly due to pregnancy.⁸ The education regulations in Tanzania prescribe none of these practices. Specifically, the Expulsion and Exclusion of Pupils from School Regulation 2002 GN 295 of 2002⁹ does not provide for this.

3 THE ADMISSIBILITY TEST

Before an analysis of the merits of the case, the Children's Committee analysed the admissibility of the communication. This was guided by article 4 of the African Children's Charter (setting out the 'best interest of the child' as overriding principle) and the Revised Communication

5 *Tike Mwambipile & Equality Now v Tanzania*, Application 42/2020 African Court on Human and Peoples' Rights (*Tike Mwambipile* case).

6 *Inclusive Development for Citizens, and Centre for Strategic Litigation v Attorney General of the United Republic of Tanzania*, Reference 10 of 2020, file 28 April 2020 (pending).

7 *Tike Mwambipile* case (n 5) para 61, applying art 56(7) of the African Charter: the Court decided the case on 1 December 2022, some two and a half months after the African Children's Committee finalised the *Tanzanian Schoolgirls* case (on 16 September 2022).

8 Human Rights Watch (n 3).

9 The Expulsion and Exclusion of Pupils from School Regulation 2002 GN 295 of 2002.

Guidelines that stipulate that non-governmental organisations (NGOs) that are recognised by one or more member states of the African Union (AU) can submit a communication to the Committee. Both LHRC and CRR are NGOs recognised in Tanzania and also enjoy observer status with the Committee, hence they have standing before the Committee.

3.1 Prior settlement of the communication

A first important consideration in the admissibility of a communication was whether the communication brings to the fore any matters pending settlement or previously settled by any other international body or procedure.¹⁰

The African Children's Committee, referencing *Project Expedite Justice & Others v The Sudan*,¹¹ made a determination that this matter had not been settled previously. It emphasised the fact that this requirement seeks to prevent conflicting decisions, and also to ensure that states are not being sued in multiple instances for the same alleged violation. The respondent state argued that this matter was pending before other mechanisms, in particular the Special Rapporteur on Education and the Working Groups on Discrimination against Women in Law and Practice.¹² However, the Committee held that these special mechanisms did not have the mandate to issue any form of relief or decision on complaints they receive and, hence, it could not be considered that the matter is pending or has been settled in another judicial or quasi-judicial tribunal.¹³ Submission of matters to these procedures do not qualify as matters 'pending settlement or previously settled' under section 9(1)(c) of the Guidelines, hence the Committee is not prevented from considering the communication.

3.2 Exhaustion of local remedies

A second consideration was whether the complainants had exhausted domestic remedies. According to section 11(1)(d)¹⁴ of the Committee's Revised Communication Guidelines, a communication is admissible following the exhaustion of local remedies unless the procedure is prolonged or ineffective. In this instance CRR and LHRC argued that the remedies had been prolonged, and were not available or effective. Tanzania argued that local remedies were still available and effective.

The Children's Committee noted that the domestic remedy had taken over seven years, and the appeal had taken two years without the Court of Appeal fixing a date for hearing of the case. Among other

10 Sec 9(1)(c) of the Revised Communication.

11 *Project Expedite Justice v The Sudan* Communication 1/20018 on admissibility 1/2019.

12 *Tanzanian Schoolgirls* case (n 4) para 11.

13 *Tanzanian Schoolgirls* case (n 4) para 13.

14 Sec 11(1)(d) of the Revised Communication Guidelines.

aspects, the Court found that although the remedy in the present case is available, it has been ‘unjustifiably and unduly prolonged’ and this makes it difficult for the complainant to approach or pursue such a remedy.¹⁵ In making its determination, the Committee underscored the fact that each communication would be examined on a case-by-case basis, and referenced the African Commission on Human and Peoples’ Right (African Commission) and the Inter-American Court of Human Rights. The African Commission as well as the Inter-American Court of Human Rights have both indicated that the availability and effectiveness of a local remedy is assessed on a case-by-case basis.¹⁶

3.3 Submission within a reasonable period

The African Children’s Committee further considered whether the communication met the criteria established under section 11(1)(e) of the Revised Communication Guidelines, which stipulates that communications should be established within a reasonable time following the exhaustion of local remedies. It is important to note that the Guidelines do not provide a specific timeline. However, the requirement seeks to avoid delays, and avert ‘abuse of the right to submission’¹⁷ in other jurisdictions.

In its determination, the Committee referenced the Human Rights Committee, and emphasised that any delay must have reasonable justification.¹⁸ The Committee held that this particular communication brought on behalf of the pregnant girls in Tanzania had been submitted within a reasonable time.

Having assessed all the admissibility tests, the communication was cleared to move to the next phase, and the Children’s Committee sought to examine the merits of the communication prior to issuing its decision.

4 MERITS OF THE CASE

4.1 Parties’ arguments

The main allegation by LHRC and CRR (on behalf of the pregnant girls) was the failure by Tanzania to uphold its obligation to respect, protect and fulfil the rights of girls in Tanzania. This is in contravention of numerous provisions of the African Children’s Charter. By enforcing

15 *Tanzanian Schoolgirls* case (n 4) para 19.

16 *Anuak Justice Council v Ethiopia* (2006) AHRLR 97 (ACHPR 2006) para 49; *Fairén-Garbi and Solís-Corrales v Honduras* IACHR (15 March 1989) Preliminary Objection, para 89.

17 Art 3 of Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966.

18 HRC Communication 767/1997, *Mr Vishwadeo Gobin v Mauritius* (16 July 2001) para 6.3.

mandatory pregnancy testing in schools, expelling pregnant and married learners from schools, denying girls re-entry into schools after childbirth, and the illegal detention of pregnant girls contravened several provisions of the African Children's Charter: the girls' rights to education (article 11); the right to equality and non-discrimination (article 3); the right to be protected from harmful social practices and stereotypes (article 21(d)); the principle of the best interests of the child (article 4); the right to health as it includes the right to access sexual and reproductive health services (article 14); the right to privacy and dignity (article 10); the right to be free from cruel, inhuman and degrading treatment (article 16); and the right to general measures of implementation (article 1).¹⁹

Tanzania submitted that none of these rights had been violated, and it had endeavoured to ensure access to education by offering free primary education, and also secondary education. The respondent state further argued that the limitations on the rights were justifiable since they were aimed at achieving certain results. In addition, Tanzania averred that they sought to promote African values and morality in the education sector since sexual relations among children is against African values.

4.2 Issues for determination

The Children's Committee identified the following as the key issues for its determination:

- (a) Is there a policy and practice that has led to forced testing of schoolgirls, and expulsion from school?
- (b) Do these acts by Tanzania violated various rights under the African Children's Charter?
- (c) Are the applicants entitled to any remedy?

4.3 Committee's merits decision

Having reviewed and analysed the parties' arguments, the African Children's Committee found that Tanzania was in violation of the following articles: its obligations under article 1; article 3 on non-discrimination; article 4 on the best interests of the child; article 10 (on protection of privacy); article 11 (on education); article 14 (on health and health services); article 16 (on protection against child abuse and torture); and article 21 (on protection against harmful social and cultural practices).

The Children's Committee further recommended that the respondent state undertakes the following:

- (a) prohibit mandatory pregnancy testing in schools and health facilities and make the prohibition public;

19 *Tanzanian Schoolgirls case* (n 4) para 109.

- (b) review the Education (Expulsion and Exclusion of Pupils from School) Regulations, 2002 GN 295 of 2002;
- (c) put in place measures aimed at preventing expulsion of girls from school, and put in place re-entry policies for pregnant girls;
- (d) admit girls that had been expelled from school;
- (e) take measures aimed at eradicating child marriage and other harmful practices.

The African Children's Committee's decision re-affirmed the importance of protection, and safeguarding the rights stipulated in the African Children's Charter. This decision is not only relevant for adolescent girls in Tanzania but for all girls across the continent in all the other countries are state parties to the Charter.²⁰

5 COMPARATIVE STUDY WITH SIERRA LEONE

This decision by the African Children's Committee came hot on the heels of the decision by the Economic Community of West African States (ECOWAS) Community Court of Justice (ECOWAS Court) in the case of *WAVES & Another v Sierra Leone*.²¹ In December 2019 the ECOWAS Court expressed itself on the issue of a ban that existed in Sierra Leone that led to numerous girls not accessing education.

This case was brought by Women Against Violence and Exploitation in Society (WAVES) and Child Welfare Society (CWS), two NGOs in Sierra Leone on behalf of Girls in Sierra Leone. As in the case of Tanzania, pregnant adolescent girls in Sierra Leone had been prohibited from attending public schools, and subsequently undertaking examinations. The government of Sierra Leone equally had not put in place any measures to address the rising cases of teenage pregnancies despite having adopted a National Strategy for the Reduction of Teen Pregnancies. To further perpetuate discrimination, the Sierra Leonean government provided alternative schools for pregnant girls, and these institutions did not offer the same standards as other public schools.

This was in contravention of numerous legal instruments, including the Convention against Discrimination in Education (CADE), which provides that the establishment of separate educational systems or institutions for persons or groups of persons contravened the right to non-discrimination.²²

20 By December 2023, 50 states have become party to the African Children's Charter; see www.au.int/en/treaties (accessed 8 December 2023).

21 *Women against Violence in Society and Child Welfare Society, Sierra Leone v Sierra Leone*, Judgment ECW/CCJ/JUD/37/19, ECOWAS Court of Justice (12 December 2019 (*WAVES* case)).

22 The Convention Against Discrimination in Education (CADE) was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 14 December 1960 and entered into force on 22 May 1962.

To put into effect this retrogressive ban, the education minister of Sierra Leone had issued a statement, which was widely enforced in public schools across Sierra Leone. Among others, the plaintiffs detailed the different violations that this ban had perpetuated. These included the violation of the right to non-discrimination that hampered the right to education as provided in the African Charter on Human and Peoples' Rights (African Charter) and the Protocol to the Charter on the Rights of Women in Africa (Women's Rights Protocol). Article 12 of the African Women's Protocol expounds on the right to education and stipulates states' obligation to eliminate all forms of discrimination against women, to ensure equal opportunity and access to education and training. Article 12 also emphasises states' obligations to promote the enrolment and retention of girls in schools.²³ This stems from the realisation that several barriers exist to girls accessing education or dropping out of school. Additionally, this article acknowledges that the elimination of harmful practices is integral in the realisation of women's and girls' rights to education.²⁴

The relief sought by the plaintiffs included declarations that the ban was in contravention of numerous rights, including the right to freedom from discrimination, and the right to education, and ultimately a reversal of the ban.

The Court held that the differential treatment of pregnant girls in the enjoyment of education constituted discrimination against them, as there was no reasonable justification for the differential treatment of the girls who attended school before falling pregnant.²⁵ The ECOWAS Court found that the setting up of parallel schools that were not up to standard further violated the girls' rights to non-discrimination. The Court ordered the government of Sierra Leone to lift the ban with immediate effect and put in place measures that will address the increasing incidents of teenage pregnancies.

The decision by the ECOWAS Court is an indication of the critical role that human rights instruments play. Having these commitments and rights in statutes gives room for enforcement bodies to hold the different states to account should these states not live up to their obligations.

6 SIGNIFICANCE OF THE DECISION ON THE RIGHT TO EDUCATION

Education is a key human right that is critical in the realisation of all other human rights. Therefore, all states should endeavour to ensure the realisation of the right to education for all children. In the past decade or so, several African countries have proceeded to offer free

23 Art 12 African Women's Protocol.

24 S Wamahiu & C Musembi 'Article 12: The right to education' in A Rudman, C Musembi & T Makunya (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary* (2023).

25 WAVES (n 21).

primary and, in some instances, secondary education in the hope of realizing this socio-economic right.

The ban prohibiting pregnant girls from attending school in Tanzania was not only misinformed but also led to the violation of a particularly key human right. By denying girls the right to education, multiple other rights were violated, particularly the right to non-discrimination whereby the policy targeted girls who already were a vulnerable group.

In the *Nubian Community* case the African Commission underscored the fact that the right to 'non-discrimination is a general principle which permeates the enjoyment of all rights guaranteed in the Charter'.²⁶ This means that the violation of the freedom of non-discrimination has counter-effects as seen in the regressive bans that were in existence in both Sierra Leone and Tanzania. The differential treatment of pregnant girls in this case is targeted at a group of vulnerable girls, which in itself renders it impossible for girls to enjoy other key human rights. General Comment 13, cited earlier,²⁷ emphasises that 'education in all its forms and at all levels ought to exhibit the following features: availability, accessibility, acceptability, and adaptability'.²⁸

Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁹ provides for the right to non-discrimination, and this speaks to the right to education. Therefore, states have an obligation to ensure that the provision of the right to education is available in a non-discriminatory manner and ensure access to all. Furthermore, in *Free Legal Assistance Group & Others v Zaire* the African Commission expressed itself on accessibility of the right to education. In this case, the Commission held that a failure to ensure accessibility of education institutions amounts to a violation of the right to education under the African Charter.³⁰

The African Commission's Resolution on the Right to Education in Africa underscores states' obligations to ensure that pregnant girls have the opportunity to complete their education.³¹ This provision by the Commission emanates from an understanding that girls over the years have been denied access to education due to numerous barriers and cultural practices, including early and forced marriages and unions, as well as female genital mutilation.

26 African Commission *The Nubian Community in Kenya v Kenya* Communication 317/06 para 123; *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* (2000) AHRLR 321 (ACHPR 1996) para 22.

27 General Comment 13 (n 1).

28 1999, E/C.12/1999/10, <https://www.refworld.org/docid/4538838c22.html> (accessed 10 August 2023).

29 International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (accessed 20 July 2023).

30 *Free Legal Assistance Group & Others v Zaire* (2000) AHRLR 74 (ACHPR 1995) para 11.

31 Resolution on the Right to Education in Africa ACHPR/Res. 346 (LVIII) 2016.

Girls continue to face numerous barriers in their quest to access education. These challenges include the societal beliefs that a boy's education is more integral than that of girls.³² This has permeated the fibre of society, hence the emergence of such policies prohibiting girls from attending school. Therefore, it cannot be overemphasised why such decisions by the African Children's Committee are critical in putting to an end such retrogressive policies since they are normalised due to existing gender disparities.

In addition, teenage pregnancies continue to pose significant challenges as far as access to education for girls in many developing countries is concerned.³³ In most instances, when girls fall pregnant, that marks the end of their education since there are no deliberate measures to ensure that girls can return to school after giving birth. The stigma that accompanied such a pregnancy, and the failure by states to adopt measures and policies supporting young mothers to continue with schooling render it impossible for girls to proceed with their schooling. In the ECOWAS Court decision against the government of Sierra Leone,³⁴ the Court ordered Sierra Leone not only to revoke the ban, but also to put in place programmes and campaigns that will support teenage mothers to attend school, and to also incorporate sexual and reproductive health education as part of school curricula. Similarly, in the African Children's Committee's decision against Tanzania, the Committee urged Tanzania to provide sexuality education for adolescent children and provide child-friendly reproductive health services.

This recommendation was largely informed by the fact that affording adolescent girls these services and knowledge allows them to make better-informed decisions as far as their reproductive rights are concerned, which ultimately reduces the cases of teenage pregnancy. In fact, young people have called for their right to the provision of sexuality education.³⁵ This, therefore, calls on leaders and states to ensure the realisation of this right as it has ripple effects on the right to education, not only on the learners currently in school but also for future generations.

The multitude of challenges that girls face in accessing education is well documented in the region, and with this information and bearing in mind the structural barriers that girls encounter in education, states such as Tanzania and other states in Africa ought to have policies that promote girls' rights to education. In fact, governments in sub-Saharan

32 A Chigona & R Chetty 'Girls' education in South Africa: special consideration to teen mothers as learners' (2007) 3 *Journal of Education for International Development* 1.

33 As above.

34 WAVES (n 21).

35 <https://unesdoc.unesco.org/ark:/48223/pf0000260770> (accessed 13 August 2023).

Africa have continued to do very little to eliminate the existing discrepancies as far as access to education is concerned.³⁶

The adoption and enforcement of a ban that discriminates against girls' rights to education is arising from the failure by the government to intentionally eradicate stereotypes that undermine girls' rights to education. This is fuelled by a failure to recognise that girls ought to be afforded equal opportunities in all spheres of their lives. Additionally, some states continue to underestimate the integral role of women – and girls – in achieving a wide variety of development goals.³⁷

7 CONCLUSION

The enactment of domestic laws on the right to education in different African countries is a right step towards advancing this right. However, the enactment of these laws is not sufficient. Implementation is key. This is critical as the progress in promoting the right to education has been very slow,³⁸ which may be partly attributed to the existence of punitive policies and regulations that bar pregnant girls from attending school or returning to school.

The 2030 Agenda that encapsulates the Sustainable Development Goals (SDGs)³⁹ indicates that the realisation of all the goals is inextricably linked. Quality education, good health and well-being, gender equality and human rights are intrinsically intertwined.⁴⁰

Investing in girls' education and ensuring that all structural barriers are removed will go a long way towards enhancing not only the right to education, but also the enjoyment of numerous other rights of women and girls. To advance the realisation of SDGs, which is what many states have committed to do, girls' right to education ought to be safeguarded and promoted at all times. The existing stigma and stereotypes surrounding the enhancement of the right to education must be dealt with. This will include concerted efforts between different state agents. State parties have immediate obligations as far as the right to education is concerned. The right ought to be exercised in a non-discriminatory manner, and states must take 'deliberate, concrete and targeted' steps aimed at the realisation of the right to education.⁴¹

36 R Meena quoted in 'Africa: women are losing the battle for education' *Win News* (2001), http://findarticles.com/p/articles/mi_m2872/is_2_27/ai_75099774 (accessed 15 July 2023).

37 E Johannes 'Women's education in sub-Saharan Africa: obstacles facing women and girls' access to education: the case of Kenya' (2010) *Kenya Studies Review* 57.

38 African Union, Economic Commission for Africa, African Development Bank, UNDP Africa Sustainable Development Report, <https://www.undp.org/africa/publications/2022-africa-sustainable-development-report> (accessed 15 September 2023).

39 Sustainable Development Goal 4 calls for the elimination of gender disparities in education, and ensuring equal access to all levels of education.

40 <https://unesdoc.unesco.org/ark:/48223/pf0000260770> (accessed 11 August 2023).

41 General Comment 13 (n 1).

Wamahiu and Musembi aver that some of the key issues that perpetuate gender discrimination in schools are the retrogressive pregnancy policies, and discrimination against students on basis of regulations on hairstyle and dress.⁴² This observation goes to the root of the continued contravention of the right to education, and girls are disproportionately affected by these policies and regulations.

Article 17 of the African Charter⁴³ and article 11 of the African Children's Charter⁴⁴ guarantee the right to education and equal access to education. These provisions offer guidelines that states must take up and implement as far as realising this right. The three legal instruments were quite intentional in providing for the right to education, as there is an acknowledgment of the important role that this right plays in the lives of everyone and, more so, those of women and girls.

Education, being a fundamental right, must be realised for all adolescents in an inclusive and equitable manner, and considering their vulnerabilities. The decision of the African Children's Committee's in *Tanzanian Schoolgirls* case and the *WAVES* case, decided by the ECOWAS Court, are a testament to some of the progressive decisions emanating from the regional mechanisms that continue to guarantee the rights of girls. More importantly, these decisions serve as a reminder to all state actors that they ought to live up to their obligations and ensure that the right to education of girls is always safeguarded.

The decisions by the ECOWAS Court and the African Children's Committee constitute important jurisprudence as far as advancing girls' jurisprudence in Africa. It is hoped that in coming years we will see fewer such policies in African countries, and more initiatives that are aimed at safeguarding the rights of girls to education. It is incumbent on all states on the continent to ensure that these rights are realised. Indeed, the right to education is the gateway to the realisation of all the other human rights, and this right should be safeguarded and always promoted.

42 Wamahiu & Musembi (n 24).

43 Art 17 African Charter.

44 Art 11 African Children's Charter.