

Article 12

The right to education

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1. States Parties shall take all appropriate measures to:
 - (a) eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;
 - (b) eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;
 - (c) protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;
 - (d) provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment;
 - (e) integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.
2. States Parties shall take specific positive action to:
 - (a) promote literacy among women;
 - (b) promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;
 - (c) promote the enrolment and retention of girls in schools and other training institutions and the organisation of programmes for women who leave school prematurely.

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1 Introduction

Ending multiple exclusions including discrimination against women in the field of education is the chief concern that frames article 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). This concern has been on the global agenda for several decades. Since the adoption of the Universal Declaration of Human Rights (Universal Declaration) in 1948, education has been recognised as an inalienable right of every human being.¹ Three quarters of a century later, this right is yet to be realised equally for the world's populations. Inequities in education remain wide, with an estimated 244 million children and young people aged between six and 18 excluded from their countries' education systems in 2021.² The United Nations Educational, Scientific and Cultural Organization (UNESCO) has estimated the annual cost of this failure to be USD129 billion.³ Article 17(1) of the African Charter on Human and Peoples' Rights (African Charter) enshrines the right of every individual to education. The Maputo Protocol elaborates on this right, reflecting the commitment by member states to ensure gender equality in education for all women and girls.

In sub-Saharan Africa, this exclusion is most pronounced relative to other regions of the world.⁴ Socio-economic status, (dis)ability, race, ethnicity, religion, and gender intersect to create overlapping and self-reinforcing layers of disadvantage, limiting opportunity and social mobility for children from disadvantaged and marginalised groups.⁵ It is these children who suffer the highest levels of exclusion from formal education, 'exacerbated by poverty and economic crises, gender stereotyping in curricula, textbooks and teaching processes, violence against girls and women in and out of school and structural and ideological restrictions to their engagement in male-dominated academic and vocational fields'.⁶ These, in turn, reproduce multiple, often intergenerational inequities at individual and societal levels.⁷ Poverty, malnutrition, natural and human-made disasters (inclusive of armed conflict, violent extremism, and instability) aggravated by historical injustices, widespread corruption and neoliberal policies and practices (which invariably result in funding cuts to public services) also affect children's learning conditions by increasing anxiety and stress and making the learning environment unfriendly, unsafe and insecure.⁸ Conversion of education facilities to military use in conflict situations moreover

1 Article 26 of the Universal Declaration.

2 Global Education Monitoring Report Team & UNESCO Institute for Statistics 'New estimation confirms out-of-school population is growing in sub-Saharan Africa' Policy Paper 48, ED/GEMR/MRT/2022/PP/48 <https://unesdoc.unesco.org/ark:/48223/pf0000382577> (accessed 11 May 2023).

3 UNESCO 'Teaching and Learning: achieving quality for all – EFA global monitoring report 2013-2014' <https://www.unesco.org/gem-report/en/teaching-and-learning-achieving-quality-all> (accessed 11 May 2023).

4 UNESCO Institute of Statistics Global Monitoring Report Team 'Meeting commitments: are countries on track to achieve SDG 4?' (2019) <https://unesdoc.unesco.org/ark:/48223/pf0000369009> (accessed 11 May 2023).

5 Jaslika Support Team, Strengthening Girls' Education in Emergencies: Leveraging Data & Partnerships (contribution to Equal Measures 2030 <https://www.equalmeasures2030.org/> (2022) (accessed 11 May 2023). See also L Antonowicz 'Too often in silence: a report on school-based violence in West and Central Africa' (2010) UNICEF, Plan West Africa, Save the Children Sweden, ActionAid <https://resourcecentre.savethechildren.net/document/too-often-silence-report-school-based-violence-west-and-central-africa/> (accessed 11 May 2023); Plan International & Save the Children 'Learn without fear: the global campaign to end violence in schools' <https://resourcecentre.savethechildren.net/document/learn-without-fear-global-campaign-end-violence-schools/> (2008) (accessed 11 May 2023).

6 Committee on the Elimination of Discrimination against Women, General Recommendation 36 on the right of girls and women to education (2017) CEDAW/C/GC/36 para 4.

7 UNICEF 'The investment case for education and equity' <https://www.unicef.org/reports/investment-case-education-and-equity> (2015) (accessed 11 May 2023).

8 Jaslika Support Team, "'Strengthening Girls'" Education in Emergencies: Leveraging Data & Partnerships' (contribution to *Equal Measures 2030* <https://www.equalmeasures2030.org/> (2022) (accessed 11 May 2023). See also, UNESCO Global Education Monitoring Report Team 'Gender Report: a new generation: 25 years of efforts for gender equality in education' <https://www.unesco.org/gem-report/en/2020-gender-report> (2020) (accessed 11 May 2023).

exposes learners to heightened security risks. Available data indicates that between 2015 and 2019, most countries where at least one incident of military use of schools or universities was experienced were in Africa.⁹

This chapter provides a commentary on article 12 of the Maputo Protocol to clarify its provisions and implications for realising the rights of women and girls to education in Africa. The chapter is organised into seven sections. Section 2 traces the drafting history of article 12, while section 3 reviews the linkages between article 12 and other relevant treaties. Section 4 clarifies and offers definitions of concepts central to the chapter. Section 5 examines the nature and scope of state obligation under article 12 while section 6 assesses progress in implementation. Section 7 concludes by reiterating the centrality of education to the overall attainment of rights for women in Africa and calling attention to issues that have seen almost no progress since the adoption of the protocol, such as the elimination of stereotypes in textbooks and syllabuses.

2 Drafting history

There were several iterations of what eventually became article 12 of the Maputo Protocol. A review of the various drafts reveals differences between them in terms of the numbering, naming of the article, structure, and substantive content. It was variously numbered as articles 13,¹⁰ 14,¹¹ and 11.¹² The Nouakchott Draft read as follows:¹³

Elimination of all discrimination towards women in education:

- Elimination of all reference to stereotypes, which perpetuate such discrimination in textbooks and syllabuses;
- Promotion of an increased literacy rate among citizens, especially women;
- Ensuring that primary education is free and compulsory for all; and
- Making secondary education free and compulsory for girls.

In November 1999, the African Commission on Human and Peoples' Rights (African Commission) examined and adopted a revised draft protocol, the Kigali Draft.¹⁴ There were significant differences in structure and content between this draft and the Nouakchott Draft. The article on education and training was now organised into two clauses, each with several sub-clauses. The first clause obliged states parties to take measures for the elimination 'of all forms of discrimination against girls and women in the spheres of education and training' as well as the elimination of 'all references in text books and syllabuses to the stereotypes which perpetuate such discrimination'.¹⁵ The second clause further obliged states parties to take 'positive action' to promote 'increased literacy rate among women', 'vocational training for women and girls', and the retention of girls in school 'by providing free secondary education through grants and bursary'.¹⁶ This draft was more intentional and bolder

9 UNESCO 'Spotlight Report on Basic Education Completion and Foundational Learning in Africa' <https://www.unesco.org/gem-report/en/2022-spotlight-africa> (2022) 2 (accessed 11 May 2023).

10 Expert Meeting on the Preparation of a Draft Protocol to the African Charter on Human and Peoples' Rights Concerning the Rights of Women, Nouakchott, Islamic Republic of Mauritania, 12-14 April 1997 (Nouakchott Draft).

11 Draft Protocol to the African Charter on Women's Rights, 26th ordinary session of the African Commission on Human and Peoples' Rights 1-15 November 1999 Kigali, Rwanda (Kigali Draft).

12 Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, CAB/LEG/66.6; final version of 13 September 2000 (Final Draft). Reprinted in MS Nsibirwa 'A brief analysis of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women' (2001) 1 *African Human Rights Law Journal* 53-63.

13 Nouakchott Draft (n 10).

14 Kigali Draft (n 11).

15 Kigali Draft (n 11) art 14(1).

16 Kigali Draft (n 11) art 14(1)(b).

in tone, with its exclusive focus on women and girls, as opposed to the generic 'all'. It was also more specific about the types of actions to be taken to ensure the retention of girls in secondary school. Unlike the earlier iteration, the Kigali Draft dropped the reference to primary education, emphasising women's literacy, secondary education, and vocational training.

The third draft of the Protocol, the Final Draft,¹⁷ underwent substantive amendments and inclusions at the 2001 Meeting of Experts.¹⁸ Two additional obligations were set out under article 12(1). First, the protection of the girl-child from all forms of abuse, including sexual harassment in schools, was underscored.¹⁹ Linked to it, the second focused on integrating gender sensitisation and human rights education at all levels of education, including teacher training institutions,²⁰ drawing attention to the critical role that teachers can play in breaking the cycle of violence against women and girls.²¹

At the same time, article 12(1)(a) was amended to include the words 'and guarantee equal opportunity and access'. This conformed with article 10 of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which provides for equal 'opportunity' and 'access' in the educational context, thereby setting the international standard. Though not explicitly stated, article 10(c) of CEDAW, which provides for the adaptation of textbooks, programmes and teaching methods to eliminate discrimination against women in education, presented the anchor for article 12(1)(a) on the elimination of stereotypes in textbooks and syllabuses that perpetuate discrimination in spaces where girls and women are educated and trained. The Beijing Platform for Action (Beijing Platform) further underscored the critical need for developing non-discriminatory education and training to address the inequalities and inadequacies in and unequal access to education and training for women and girls.²² It also called for the elimination of discrimination against girls in education, skills development, and training.²³

The language had changed significantly by the time the Meeting of Ministers adopted the draft text in 2003. This is largely attributable to a forum held in Addis Ababa in January 2003 convened jointly by the Africa Regional Office of the Organisation of African Unity (OAU) and the Law Project of Equality Now, bringing together a cross-section of NGOs.²⁴ The draft article on education was at that time numbered 11. While in draft article 11 (2)(a), the word 'increase' was replaced with 'promote' (literacy among women), draft article 11 (2)(b) was expanded to include the words, particularly in the 'fields of science and technology'.²⁵ This amendment was in alignment with paragraph 75 of the Beijing Platform. In a footnote to this clause, it is noted that the Beijing Platform recognises gender bias in the science curricula and that 'girls are often deprived of basic education in mathematics and science and technical training'. It further highlights paragraph 82, which calls on states to 'provide information to women and girls on the availability and benefits of training in science and technology' and 'to take

17 Final Draft (n 12).

18 Report of the Meeting of Experts on the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Expt/Prot.Women/Rpt(I), Addis Ababa, Ethiopia, November 2001 (Report of the Meeting of Experts).

19 Final Draft (n 12) art 12(1)(c).

20 Final Draft (n 12) art 12(1)(d).

21 In a footnote to draft art 12 (1)(d), reference is made to para 9 of the Bangalore Principles on the Domestic Application of International Human Rights Norms (1988) which expresses the view that it is desirable to integrate international human rights norms into all levels of education.

22 Beijing Declaration and Platform for Action Strategic area of concern B4 (Beijing Platform).

23 Beijing Platform Strategic area of concern L4.

24 Comments by the NGO Forum, CAB/LEG/66.6/Rev.1. January 2003.

25 Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, MIN/WOM. RTS/DRAFT.PROT(II)Rev.5, as adopted by the Meeting of Ministers, Addis Ababa, Ethiopia, 28 March 2003 (Addis Ababa Draft) 10.

positive measures to promote training in science and mathematics, and to ensure women better access to and participation in technical and scientific fields, especially where they are underrepresented’.

Finally, draft article 11(2)(c) was not only refined but completely overhauled: ‘retention of girls in schools and training institutions’ was augmented by adding ‘and the organisation of programmes for women and girls who leave school prematurely’.²⁶ This underlined the acknowledgement that gender parity in enrolment had not been fully achieved and that states had obligations beyond simply providing incentives such as bursaries to keep girls in school.

3 Linkages to other treaty provisions

As mentioned in the introduction, the recognition of education as a universal human right may be traced back to article 26 of the Universal Declaration. However, the first international legal instrument dedicated exclusively to education was the 1960 Convention against Discrimination in Education (CADE), which explicitly bans discrimination in education on the basis of sex, among other grounds.²⁷ Overall, at least 48 international and regional legal instruments guarantee the right to education. In addition, 23 soft law instruments also embed education as a fundamental right.²⁸ Of the international treaties preceding it, article 10 of CEDAW and articles 28 and 29 of the UN Convention on the Rights of the Child (CRC) were the most influential in relation to the education provision of the Maputo Protocol. The Beijing Platform also set out detailed provisions on education, as referenced under the drafting history above.

At the regional level, article 17 of the African Charter enshrines education as the right of every individual but states it in broad terms without elaboration. Article 11(3) of the African Charter on the Rights and Welfare of the Child (African Children’s Charter) expounds on the right of children to education. Two provisions of the African Children’s Charter stand out, especially concerning increased access to and inclusion of girls in education. Article 11(3)(e) singles out education for female, gifted and disadvantaged children, while article 11(6) guarantees the right of girls who fall pregnant in school to return and continue with their education when they are ready.

Moreover, article 12 is related to other articles in the Maputo Protocol in two ways. First, there is acknowledgement in the different articles that education is a strategy for the achievement of other human rights guaranteed by the Protocol. Second, the Protocol commits itself to the elimination of violence against women and girls, including female genital mutilation and child marriage, which act as barriers to the realisation of their education rights. The explicit mention of education and training or related issues in more than a third of the 24 substantive articles of the Maputo Protocol is linked to either one of these two perspectives.²⁹ For example, article 2, which focuses on the elimination of discrimination against women, recognises education as a vehicle for positive changes at the individual and societal levels. It includes the provision of ‘*public education, information, education and communication strategies*’ to eliminate ‘harmful cultural and traditional practices, and all other practices which are based on the idea of the inferiority of either of the sexes or on stereotyped roles for women and men’.³⁰ On the flip side, eliminating harmful practices is critical to realising women’s and girls’ right to education.³¹ Key barriers to girls’ education in Africa include child marriage, girls’

26 As above.

27 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.

28 UNESCO & Right to Education Initiative (UK) ‘Right to Education Handbook’ (2019).

29 The articles that explicitly mention education are arts 2, 4, 5, 8, 10, 14, 19 & 23.

30 Our emphasis.

31 Article 2(2).

participation in armed conflict as combatants, employment as child labourers and the exploitation of children. Articles 6 and 11 protect girls from child marriage, direct participation in hostilities, and recruitment as soldiers.³² Article 13 sets the minimum age for employment and prohibits 'all forms of exploitation of children, especially the girl child'.³³ This bidirectional link is also reflected in article 5, which seeks to eliminate harmful practices through the creation of widespread public awareness and make victims of such practices self-reliant through the provision of vocational training.³⁴ Article 4 provides for the active promotion of '*peace education through curricula and social communication* in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women'.³⁵

Article 10 on the right to peace emphasises the importance of increased participation of women in education programmes to create a culture of peace.³⁶ Similarly, article 8 underscores the need to establish adequate educational and other appropriate structures for women and men to ensure equal access to justice and protection by the law.³⁷ Article 14 guarantees the right to family planning education and considers education programmes to be integral to the achievement of women's right to health, including their right to sexual and reproductive health.³⁸ In article 19, the provision of training, skills development and extension services is singled out as a strategy for women to realise their right to sustainable development.³⁹ Finally, article 23 guarantees the right to professional training for women with disabilities.⁴⁰

In addition, articles 6 and 7 protect the best interest of the child, assigning responsibility to both parents for the education of their children (girls and boys) within marriage and in situations where a marriage is annulled and parents are separated or divorced.⁴¹

4 Concepts and definitions

Concepts central to the understanding of article 12 are education, training and literacy; discrimination against women in education; gender stereotypes; all forms of abuse, including sexual harassment; gender sensitisation and human rights education. This section unpacks these concepts.

4.1 Education, training and literacy

Three interrelated perspectives on education emerge from a reading of the Maputo Protocol. First, it guarantees women and girls' right to education as an inalienable human right. Second, it reminds us that the realisation of education as a right is intrinsically linked to the achievement of other human rights, including the right of women and girls to live in dignity in an environment that is free from all forms of discrimination and violence. Third, the achievement of other human rights of women and girls contributes to the achievement of their right to education.

32 Articles 6(b) & 11(4).

33 Article 13(g).

34 Articles 5(a) & 5(c).

35 Article 4(2)(d). Our emphasis.

36 Article 10(2)(a).

37 Article 8(c).

38 Articles 14(1)(g) & 14(2)(a).

39 Article 9(d).

40 Article 23(a).

41 Articles 6(i) & 7(c).

These perspectives have their antecedents in a host of international and regional legal instruments, all of which affirm the right of all to education.⁴² CADE defines the scope and offers an elaborate definition of education as ‘all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given’.⁴³ Article 10 of CEDAW further unpacks the scope of education to include preschool, general, technical, professional and higher technical education, as well as functional literacy programmes. This is reiterated in article 12(2) of the Maputo Protocol. Article 29(1)(a) of the CRC and article 11(2)(a) of the African Children’s Charter articulate the aim of education as holistic development of the child. It should be noted that article 10 of CEDAW uses the term women to include girls, apart from once in article 10(f), where it specifically mentions both girls and women ‘who have left school prematurely’ implying that their needs may be different and therefore may require different responses.⁴⁴ Girls are not singled out in either articles 28 and 29 of the CRC or article 11 of the African Children’s Charter. In both instruments, the omnibus term ‘child’ is used to refer to both girls and boys.⁴⁵

CADE is recognised as the cornerstone of the Education 2030 Agenda,⁴⁶ which is an essential part of the 2030 Agenda for Sustainable Development, part of the global commitment to basic education for all under Sustainable Development Goal (SDG) 4.⁴⁷

Taking it for granted that equal access to education means substantive equality, CADE calls for the building and upgrading of education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all. The scope of education is also envisioned as lifelong, encompassing diversified technical and vocational education and training for women and men, youth and adults by 2030, to enable the acquisition of ‘relevant knowledge, skills and competencies for decent work and life’.⁴⁸

4.2 Discrimination against women in education

The definition of discrimination in the Maputo Protocol is essentially a shorter version of what is contained in article 1 of CEDAW. Discrimination as a concept is discussed comprehensively in Chapter 4 of this Commentary.⁴⁹ This subsection focuses specifically on discrimination in education.

SDG 4 Target 4.5 commits UN member states to the elimination of all discrimination, including gender disparities at all levels of education. CADE describes the scope of discrimination in education to apply to all levels.⁵⁰ It defines discrimination in education as conduct that limits ‘any person or

42 Universal Declaration art 26; CADE (n 27) art 10; CEDAW art 10; African Charter art 17; African Children’s Charter art 11; CRC arts 28 & 29; International Covenant on Economic, Social and Cultural Rights (CESCR) art 13.

43 CADE (n 27) art 1(2).

44 CEDAW art 10(f).

45 CRC art 21(2) is an exception. This article mentions both girls and boys in offering protection against child marriage and betrothal.

46 UNESCO ‘Key facts about the Convention against Discrimination in Education’ <https://www.unesco.org/en/education/right-education/convention-against-discrimination#key-facts-about-the-convention-against-discrimination-in-education> (accessed 23 June 2023).

47 SDG 4 calls on UN member states to ensure inclusive and equitable quality education, and promote lifelong learning opportunities for all, embracing early childhood development, pre-primary, primary, secondary and tertiary levels, as well as technical and vocational education. Gender equality and inclusion is one among its seven outcome targets. It refocuses attention on all learners everywhere irrespective of gender, ability, ethnicity, race, nationality, socio-economic status, faith or belief, ensuring respect for their diverse needs, abilities, and characteristics, free of all forms of discrimination UNESCO ‘Inclusion in education’ <http://www.iiep.unesco.org/en/inclusive-education> (accessed 11 May 2023).

48 SDG 4 Target 4.4.

49 See E Lubaale ‘Article 2’ in this volume.

50 CADE (n 27) art 1(1)(a).

group of persons to education of an inferior standard'⁵¹ and inflicts 'on any person or group of persons conditions which are incompatible with the dignity of man'.⁵² Discrimination against women and girls in education – as in all spheres of life – may be direct or indirect.⁵³ The Maputo Protocol's framework of substantive equality is designed to address both direct and indirect discrimination.

4.3 Gender stereotyping

It is curious that neither CEDAW nor the Maputo Protocol defines gender stereotypes, yet their elimination is core to the fulfilment of states' obligations under both treaties. Stereotypes, in general, operate so as to attribute generalised behaviours, abilities, interests, values, and roles to a person or group of persons on the basis, in whole or in part, of their sex, gender, ethnicity, religion, social class, (dis)ability, or the intersection of these, or roles to people based on their membership in an identified group.⁵⁴ They are 'often unfair and untrue beliefs that many people have about all people or things with a particular characteristic',⁵⁵ which 'may cause hurt and offence' and may be used to deny individuals respect or legitimacy.⁵⁶

Within the school environment, stereotypes manifest themselves in gender-biased textbooks, supplementary teaching-learning materials, and the language teachers use in their interactions with learners in and out of the classroom, attributing certain qualities and capabilities to girls and others to boys based on their gender.⁵⁷ There is evidence pointing to the harmful effects of stereotyping on girls. For example, by promoting images of girls and women as the "weaker" sex, they 'contradict values of gender equality and non-discrimination, and dampen girls' career aspirations and self-esteem'.⁵⁸ Further, research has drawn a connection between early socialisation into gender stereotypical roles and careers and 'girls' interest, engagement and achievement in STEM'.⁵⁹

The Maputo Protocol, CEDAW and the CADE, among other human rights instruments, consider gender stereotyping as constituting indirect discrimination against women and girls, based on sex, gender or some other marker of marginalised status, within and outside the school setting, contributing to their psychological exclusion from effective participation in formal education.

4.4 All forms of abuse, including sexual harassment

The Maputo Protocol recognises all forms of abuse, including sexual harassment, as factors contributing to the premature exit of vulnerable girls from the education system.

51 CADE (n 27) art 1(1)(b). The ECOWAS Community Court of Justice took this substantive equality approach in finding that Sierra Leone had treated pregnant and parenting school girls in a discriminatory manner by readmitting them only to designated schools that offered education of a lower quality, offering a much narrower range of subjects. See *Women Against Violence & Exploitation in Society (WAVES) & Child Welfare Society Sierra Leone (CWS-SL) (On behalf of pregnant adolescent schoolgirls in Sierra Leone) v Sierra Leone* Judgment No ECW/CCJ/JUD/37/19 (12 December 2019) (*WAVES*) 28.

52 CADE (n 27) art 1(1)(d). 'Man' in this 1960 convention is used in the generic sense to include women and men.

53 United Nations Committee on Economic, Social and Cultural Rights (ESCR committee) General Comment 20 on Non-discrimination in economic, social and cultural rights (2 July 2009) E/C.12/GC/20 para 10.

54 S Cusack 'The CEDAW as a legal framework for transnational discourses on gender stereotyping' in A Hellum & H Sinding Aasen (eds) *Women's human rights: CEDAW in international, regional and national law* (2013) 124, 127.

55 *Britannica Dictionary* <https://www.britannica.com/dictionary/stereotype> (accessed 12 May 2023).

56 *Oxford Learner's Dictionaries* https://www.oxfordlearnersdictionaries.com/definition/english/stereotype_1#:~:text=stereotype,-noun,may%20cause%20hurt%20and%20offence (accessed 12 May 2023).

57 SP Wamahiu 'Value-based Education in Kenya: an exploration of meanings and practices' (Women Educational Researchers of Kenya (WERK) (2015) 17, 104, 141-142 & 145.

58 Wamahiu (n 57) 17.

59 UNESCO 'Cracking the code: girls' and women's education in science, technology, engineering and mathematics' <https://unesdoc.unesco.org/ark:/48223/pf0000253479> (accessed 12 May 2023) (2017) 43.

Within the education context, forms of abuse and sexual harassment include any act or threat of sexual, physical or psychological violence that occurs in or around schools and other educational institutions, perpetrated as a result of gender norms and stereotypes and enforced by unequal power dynamics.⁶⁰ These acts range from verbal abuse, bullying, corporal punishment, sexual abuse and harassment, coercion and assault, and rape.⁶¹ State reports and Concluding Observations of the African Commission, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) and the CEDAW Committee specifically mention female genital mutilation, child and forced marriage, abduction of young women and corrective rape as violence that are grounded in the community but impact negatively on girls' right to education.⁶²

That article 12(c) singles out and highlights 'sexual harassment' despite the clause's reference to 'all forms of abuse' is not random. It is the deliberate highlighting of a pervasive problem. CEDAW Committee General Recommendation 19 defines sexual harassment to include 'unwelcome sexually determined behaviour as physical contact or advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions'.⁶³ The Maputo Protocol defines neither abuse nor sexual harassment. However, it defines and expounds on the broader concept of 'violence against women' in articles 1(j), and 4.⁶⁴ The first part of article 1(j) defines violence against women as: 'all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts'.

The International Labour Organization (ILO)'s Convention 190, adopted in 2019, defines sexual harassment in terms similar to article 1(j) of the Maputo Protocol as part of the combined phrase 'violence and harassment':

a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.⁶⁵

It then goes on to define 'gender-based violence and harassment' as: 'violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex or gender disproportionately and includes sexual harassment'.⁶⁶

60 UNESCO and UN Women 'Global guidance on school-related gender-based violence <https://www.unicef.org/documents/global-guidance-addressing-school-related-gender-based-violence> (accessed 11 May 2023) (2016).

61 The CEDAW Committee points out reported cases of corporal punishment and gender-based violence, discrimination and bullying in schools, particularly against indigenous girls in Namibia. See Concluding Observations on the 6th Periodic Report of Namibia (12 July 2022) UN Doc CEDAW/C/NAM/CO/6 (2022) para 37. The African Committee of Experts on the Rights and Welfare of the Child observes the prevalence of corporal punishment in schools in countries like Nigeria, where it is not fully banned as well as those countries like Rwanda and South Africa where corporal punishment has been outlawed. See African Children's Committee Concluding Observations on: First Periodic Report of Nigeria, adopted at the 33rd ordinary session (18-28 March 2019) para. 26; First Periodic Report of South Africa, adopted at the 32nd ordinary session (12-22 November 2018) para 16; Second Periodic Report of Rwanda, adopted at the 33rd ordinary session (18-28 March 2019) paras 23-24.

62 See, eg, African Children's Committee Concluding Observations South Africa (2019) (n 62) para 36. In South Africa, abduction of young women, known as *Ukuthwala*, is entrenched in traditional cultures. The African Children's Committee expressed concern that it continued despite its criminalisation. It also noted the inadequacy of laws governing child marriages. See also Concluding Observations on the first and 2nd Periodic Reports of Eswatini, Committee on Elimination of Discrimination against Women (24 July 2014) UN Doc CEDAW/C/SWZ/CO/1-2 (2014) para 18, where the CEDAW Committee singled out abduction of young girls as being prevalent in Eswatini.

63 UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation 19: Violence against women, 1992, A/47/38 para 18.

64 See M Kamunyu 'Article 1' and R Nekura 'Article 4' in this volume.

65 ILO Convention 190 art 1(a).

66 ILO Convention 190 art 1(b).

The ILO definition moved away from listing specific isolated acts that might constitute sexual harassment, as is done in CEDAW Committee General Recommendation 19. Rather, the emphasis is now on locating sexual harassment within the broad scope of gender-based violence. Sexual harassment is therefore thought of as going beyond demands for sexual favours in exchange for favourable treatment ('quid pro quo' scenarios) to behaviour that generally creates a hostile environment. The behaviour in question may be sex-based without necessarily being sexual in nature, in the sense that it targets or impacts women on account of their sex.⁶⁷ This expansive understanding of the concept is particularly relevant in the context of education since it directs emphasis on the kind of learning environment that is created. An approach that dwells narrowly on delineating specific acts that amount to sexual harassment risks failure to take responsibility for the prevailing culture at an institutional level, perceiving the issue as an individual problem, which in turn makes it difficult for survivors to be taken seriously.

4.5 Gender sensitisation and human rights education

4.5.1 Gender sensitisation

This is the process of creating awareness of existing gender differences, issues and inequalities and incorporating these into strategies and actions that result in the modification of people's behaviour and views about themselves and other genders. Gender sensitisation is indispensable in countering gender stereotypes, as discussed in section 4.3. It is a reflective process that facilitates critical examination of one's attitudes and beliefs and contributes to achieving gender equality and a human rights culture. As further discussed in section 5, in several state reports and concluding observations, the term gender awareness has been used instead of gender sensitisation.⁶⁸

4.5.2 Human rights education

Human rights education is 'a process of empowerment' consisting of all learning activities aimed towards 'promoting the development of the individual as a responsible member of a free, peaceful, pluralist and inclusive society'.⁶⁹ Human rights education helps to combat and eradicate all forms of discrimination by equipping learners with knowledge, skills and positive attitudes and behaviours that prevent racism, stereotyping and 'incitement to hatred'.⁷⁰

5 Nature and scope of state obligations

The state obligations spelt out in article 12 call for state action at the level of legislation, policy formulation, and policy implementation. It calls upon state parties to implement measures guaranteeing equal opportunities and access to education and training for women by eliminating all forms of discrimination. State obligations include the integration of gender sensitisation and human rights content into teacher training curricula and at all levels of education, as well as the removal of

67 J Heymann, G Moreno, A Raub & A Sprague 'Progress towards ending sexual harassment at work? A comparison of sexual harassment policy in 192 countries' (2022) 25 *Journal of Comparative Policy Analysis* 9.

68 Eg, the CEDAW Committee calls on Kenya, Rwanda, South Africa among other states to strengthen gender awareness campaigns or efforts to address barriers to girls' enrolment, retention or progression in education. See Concluding Observations on the 8th Periodic Report of Kenya, Committee on Elimination of all Forms of Discrimination against Women (22 November 2017) UN Doc CEDAW/C/KEN/CO/8 (2017) para 35; Concluding Observations on the combined 7th to 9th Periodic Report of Rwanda, Committee on Elimination of all Forms of Discrimination against Women (9 March 2017) UN Doc CEDAW/C/RWA/CO/7-9 (2017) para 33; Concluding Observations on the 5th Periodic Report of South Africa, Committee on Elimination of Discrimination against Women (23 November 2021) UN Doc CEDAW/C/ZAF/CO/5 (2021) para 44.

69 UN Declaration on Human Rights Education and Training (2011) art 4.

70 As above art 4(b) & 4(c).

gender biases exemplified by stereotypes in curricula materials and in the media through music and film. Extension of the measures to teacher training reflects a recognition of teachers' transformational potential to change learners' gender-discriminatory mindsets within the contexts of the school and other educational and training institutions.

State parties are further required not only to protect women and girls in school and other educational institutions from any kind of harm and to ensure the sanctioning of perpetrators of abuse but also to provide access to counselling and rehabilitation services to women who have suffered abuses and sexual harassment.

It is worth mentioning that article 12(2) calls on states to take 'specific positive action'. This deviates from the formulation used in article 12(1), which is also found in CEDAW, namely, 'take all appropriate measures.' Article 12(2) employs the formulation 'take specific positive action' with respect to three issues: promotion of literacy among women, promotion of education and training for women and girls at all levels and in all disciplines, especially in the field of science and technology; and enrolment and retention of girls in educational institutions, including designing of programmes for women who leave school prematurely. The phrase 'specific positive action' does not introduce obligations different in nature from the obligation to take appropriate measures. However, it does underline the need for the state to make specific, targeted investment with these goals or outcomes in mind. The phrasing of article 12(2) identifies the areas singled out as posing particular challenges for advancing women's rights in the field of education. The positive action contemplated might therefore entail temporary special measures if necessary. The terminology of 'positive action' or 'positive measures' has been employed in other contexts to refer to temporary measures taken to correct a pattern of past discrimination that has disadvantaged a social group, such as women. This interpretation of the intended meaning in article 12(2) is consistent with international human rights law practice.⁷¹

5.1 State obligation with respect to legislation

Article 12 does not explicitly stipulate that states enact legislation so as to achieve the obligations placed upon them. Legislation, however, is a core function of a state and the primary means through which a state gives effect to the international and regional human rights standards it has committed itself to. As a first step, a state must encode equality and outlaw discrimination, in line with article 2 of the Protocol, usually through a robust constitution with a broad non-discrimination clause. Such a constitution is further strengthened by giving explicit attention to the rights of specific groups, for instance, children.⁷² Against the backdrop of such a constitutional framework, the elimination of discrimination in the sphere of education and training, as required under article 12(1)(a), would require a state to align specific laws, subsidiary legislation, regulations, and directives in the sphere of education to the constitutional standard of equality and non-discrimination. This calls for timely enactment and repeal as each situation demands continuous review to ensure compatibility with human rights standards under the Maputo Protocol and other related treaties.

This exercise of alignment must take a broad view so as to encompass laws and regulations in other sectors that have an impact on education and training. Examples include laws on birth registration,

71 See, eg, UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation 25 on art 4, para 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures 2004 para 17; General Recommendation 36 on the right of women and girls to education 2017 para 31(c).

72 The African Children's Committee has stated that while it does not regard express inclusion of children's rights in the constitution as mandatory, it highly recommends it. See African Children's Committee General Comment 5 on State party obligations under the African Charter on the Rights and Welfare of the Child (art 1) and systems strengthening for child protection (2018) 18.

which make it possible to ascertain age, which is crucial for school enrolment and retention. Another crucial area of legislation is the minimum age of marriage, which article 6 of the Protocol sets at 18.

Laws that impose sanctions and avail redress for various forms of violence against women, such as female genital mutilation (addressed in articles 4 and 5 of the Protocol),⁷³ are central to the state's obligation under article 12(1)(c) to protect women – and especially the girl-child – from sexual harassment and other forms of abuse in the context of education.

5.2 State obligation with respect to policy formulation

The scope for policy formulation with respect to education is wide, covering policies oriented toward ensuring access for all and policies oriented toward assuring the delivery of quality education that has relevance. Examples of policies addressing access include policies on free basic education and policies that target the elimination of barriers for specific groups. Re-entry and continuation policies, which respect the right of pregnant girls and girl mothers to continue with their education, are an example of the latter. Examples of policies that address the quality of education and learning processes include curriculum policies (such as curriculum policies that mainstream gender sensitisation and human rights at various levels of education), school safety policies, school infrastructure policies, policies on teacher-learner ratios, and teachers' codes of ethics that regulate relationships between learners and teachers.

The policies in education do not stand in isolation. They need to be harmonised with overall national policies on children. The African Children's Committee has underlined the need for states to adopt comprehensive national child policies with accompanying National Action Plans, which in turn must be nested into the African Children's Agenda 2040 and the SDGs.⁷⁴ Addressing the barriers to the right to education and training for women and girls requires multi-sectoral partnerships. It is, therefore, imperative that policy formulation takes a coordinated approach beyond education to the health, protection, justice and media sectors, among other sectors.⁷⁵

5.3 State obligation with respect to policy implementation

At the level of concrete implementation, the state inevitably works with non-state entities to deliver services in the education and training sector. Nonetheless, the African Children's Committee emphasises that even though states have allowed private service providers to operate educational institutions, the state's human rights obligations are not thereby lessened.⁷⁶

Therefore, the state is obligated to give effect to its laws and policies by backing them up with the necessary administrative structures, processes, personnel and funds. For instance, with respect to the obligation to protect women and girls from abuse in educational institutions, it will not be enough to stop at requiring institutions to adopt sexual harassment policies. The state is still responsible for ensuring that there are systems in place for preventing, identifying, reporting, investigating, punishing and providing redress, as well as continuous investment in preventive measures, such as the maintenance of a public register of teachers who have been guilty of defiling children.⁷⁷ Policies

73 See R Nekura 'Article 4' and S Nabaneh 'Article 5' in this volume.

74 African Children's Committee General Comment 5 (n 72) 45-46.

75 See CEDAW Committee General Recommendation 36 (n 71).

76 African Children's Committee General Comment 5 (n 72) 17-18. See also African Commission on Human and Peoples' Rights, General Comment 7 on State obligations under the African Charter on Human and Peoples' Rights in the context of private provision of social services, adopted at the 72nd ordinary session (28 July 2022) Banjul, The Gambia.

77 African Children's Committee General Comment 5 (n 72) 20. National courts have also underlined the state's obligation in ensuring systems for child protection, including oversight of private institutions and individuals employed in school settings. See, eg, the Zambian case of *RM Katakwe v Edward Hakasenke and Others*, 2006/HP/0327 (High Court, Zambia),

addressing the quality of education need to be accompanied by a detailed setting of standards and monitoring of the implementation of those standards at school level. These implementation measures require adequate financing, and therefore the state obligation extends to budgeting and budget tracking to ensure adequate allocation and appropriate utilisation of funds. Implementation also entails keeping the policy in continuous review. Mechanisms for coordination across sectors are indispensable, given the vast array of rights that must work in tandem to eliminate barriers to the substantive realisation of gender equality in education.⁷⁸

The next section on implementation assesses how well states parties to the Maputo Protocol have fulfilled these obligations in relation to the issues discussed in the preceding section.

6 Implementation

In assessing the status of implementation of article 12, this section draws from concluding observations and states' reports on article 12 of the Maputo Protocol and article 17 of the African Charter. These are supplemented with data drawn from the CEDAW Committee's engagement with African states, UNESCO's Global Education Monitoring reports, which feed into the SDG monitoring process, and secondary research by education sector experts. This section evaluates the progress made by states against the specific obligations that article 12(1) places on them, namely: promotion of participation of women and girls in education; elimination of discrimination in access to training and education; elimination of stereotypes in textbooks, syllabuses and the media; protection from all forms of abuse including sexual harassment; and integration of gender sensitisation and human rights education into the curriculum.

While the majority of African Union member states have ratified the Maputo Protocol and other related legal instruments, reporting on article 12, in particular, is overlooked in a number of periodic state reports or merged with reporting on article 17 of the African Charter, contrary to the reporting guidelines issued by the Commission.⁷⁹ There appears to be an erroneous assumption that the reporting on article 17 in the African Charter adequately addresses education (article 12) under the Maputo Protocol.⁸⁰

citing art 4 of the Maputo Protocol; discussed in S Omondi, E Waweru & D Srinivasan (2018) *Breathing Life into the Maputo Protocol: Jurisprudence on the Rights of Women and Girls in Africa*, Equality Now, Nairobi. See also the Kenyan case of *WJ & another v Astarikoh Henry Amkoah & 9 others* [2015] eKLR.

78 African Children's Committee General Comment 5 (n 72) 36.

79 African Commission, Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Centre for Human Rights, University of Pretoria, 2016). The Guidelines recommend reporting of art 12 under the theme of Equality/Non-discrimination. The Commission has taken issue with several states for not implementing the guidelines, and for failing to provide sex disaggregated data. See, eg, Concluding Observations on the Combined 8th to 11th Periodic Report of Kenya 2008-2014 on Implementation of the African Charter on Human and Peoples' Rights, African Commission on Human and Peoples' Rights adopted at the 19th extraordinary session (16-25 February 2016) Banjul, The Gambia, 12, 16; Concluding Observations on the 6th Periodic Report of Namibia 2011-2014 on Implementation of the African Charter on Human and Peoples' Rights, African Commission on Human and Peoples' Rights, adopted at the 58th ordinary session (6-20 April 2016) Banjul, The Gambia, 10; Concluding Observations on the 2nd Periodic Report of South Africa 2003-2014 on Implementation of the African Charter on Human and Peoples' Rights, African Commission on Human and Peoples' Rights, adopted at the 58th ordinary session (6-20 April 2016) Banjul, The Gambia, 17.

80 Although Kenya, in its latest report includes a paragraph under Equality/Non-discrimination as recommended by the Commission, it references art 17 of the African Charter, without any reference to art 12 of the Maputo Protocol, and the data presented are not sex disaggregated. For other examples of state reports that have either subsumed art 12 of the Protocol under art 17 of the Charter and/or not provided adequate information on the same see Republic of Uganda 5th Periodic Report under the African Charter on Human and Peoples' Rights (2015) 8; United Republic of Tanzania 2nd to 10th Periodic Report 1992-2006 under the African Charter on Human and Peoples' Rights (2008); and Nigeria (2017, p 11).

The Commission expresses concern that, overall, inadequate information and lack of sex-disaggregated data (quantitative and qualitative) in many of the periodic state reports make it difficult to track progress within and across countries on commitments made by states to promote gender equality in and through education.⁸¹ In addition, the way information is communicated tends to be activity-centred rather than results-oriented. Among the 17 Concluding Observations we reviewed, only Zimbabwe gets commended for compiling gender-disaggregated data.⁸²

A review of 17 Concluding Observations that the African Commission has issued between 2012 and 2022 reveals that while the first two obligations (promotion of participation and elimination of discrimination in access) have received attention, the other three have gone almost completely unattended to. This trend is highlighted in the following discussion.

6.1 Promotion of participation of women and girls in education

The African Commission has commended some states for taking measures to promote the participation of women and girls in education. In some cases, the states provide enough specific information to indicate how the measures in question contributed to the goal, and in other cases, the information is too general.⁸³ Some states are criticised for not doing enough.⁸⁴

The overall picture in Africa is that progress has been slow,⁸⁵ while globally, the past 20 years have seen gender gaps in education access and completion close or even reverse.⁸⁶ More than one in four

81 See, eg, Concluding Observations on the 5th Periodic Report of Uganda (2015, p 8); Nigeria's 6th periodic country report: 2015-2016 on the implementation of the African Charter on Human and Peoples' Rights in Nigeria (2017) 10; Rwanda (2017, p 10); and South Africa (2016, p 17).

82 Concluding Observations and Recommendations on the Combined 11th to 15th Periodic Reports of Zimbabwe 2007-2019 on the implementation of the African Charter on Human and Peoples' Rights, African Commission on Human and Peoples' Rights, adopted at the 69th ordinary session (15 November-5 December 2021) para 29.

83 For instance, Burkina Faso is commended simply for reform to the education sector to make it more 'effective'. See Concluding Observations and Recommendations on the combined 3rd and 4th Periodic Report of Burkina Faso, African Commission on Human and Peoples' Rights, adopted at the 21st extraordinary session (23 February-4 March 2017) para 24; while Nigeria is specifically commended for construction of model junior secondary schools for girls in 13 states and training of female teachers. See Concluding Observations on the 5th Periodic Report of the federal republic of Nigeria on the Implementation of the African Charter on Human and Peoples' Rights 2011-2014, African Commission on Human and Peoples' Rights, adopted at the 56th ordinary session (21 April-7 May 2015) para 40; Sierra Leone is specifically commended for implementing the recommendations of a commission (the Gbamanja Commission 2010) which made proposals on enrolment and retention of girls. See Concluding Observations on the initial and combined Periodic Reports of Sierra Leone on the implementation of the African Charter on Human and Peoples' Rights, African Commission on Human and Peoples' Rights, adopted at the 57th ordinary session (4-18 November 2015) para 36; Cameroon is commended for nationwide sensitization campaigns to promote education of girls. See Concluding Observations on the 3rd Periodic Report of Cameroon on the implementation of the African Charter on Human and Peoples' Rights, African Commission on Human and Peoples's Rights, adopted at the 15th extraordinary session (7-14 March 2014) para 27.

84 See, eg, the African Commission's concern over persisting high rates of illiteracy among females in spite of policy measures adopted: Concluding Observations and Recommendations on 2nd and 3rd Periodic Reports of Malawi, on the implementation of the African Charter on Human and Peoples' Rights 2015-2019 and Initial report on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Commission on Human and Peoples' Rights, adopted at the 70th ordinary session (23 February-9 March 2022) para 78; Concluding Observations and Recommendations on the 2nd and 3rd combined Periodic Report of Eswatini, African Commission on Human and Peoples' Rights, adopted at the 70th ordinary session (23 February-9 March 2022) para 86(i), urging the government to give more attention to retention of girls in school when implementing its 2019 education strategy by addressing girls' dropout and repetition of grades.

85 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 12 May 2023) (2022).

86 World Economic Forum, *Global Gender Gap Report 2022: Insight Report* (July 2022).

young women in sub-Saharan Africa do not know how to read or write.⁸⁷ There is a 13-point gender gap in adult literacy in sub-Saharan Africa, the second largest in the world.⁸⁸ In Benin, Central African Republic, Guinea, Liberia and Mali, there are 60 literate women for every 100 men, with the gender parity index almost twice as high in urban than in rural areas.⁸⁹

With two in five children out of school, sub-Saharan Africa is the only region in the world with a growing out-of-school population.⁹⁰ The female out-of-school rate in sub-Saharan Africa is 4.2 percentage points higher than the male rate.⁹¹ In Guinea and Togo the out-of-school rates for females are 20 percentage points higher than for males. A gap of about 15 percentage points is observed in Cameroon, Chad, Uganda, and Zambia.⁹² Thirteen of the 16 countries reporting gender gaps larger than ten percentage points are in sub-Saharan Africa.⁹³

At least a quarter of the children who enter the school system in sub-Saharan Africa will never complete primary education, while one third of the children do not complete primary school on time.⁹⁴ Progress in girls' education has stagnated since 2011 at the lower secondary level, and since 2014, at upper secondary level as well. In countries like Chad and Guinea, the gender gap at the expense of young women at the upper secondary level was observed to be 20 percentage points. However, there are some success stories: the Gambia and Mauritania have closed or even reversed the overall gender gap.⁹⁵

Unlike other regions of the world, where education opportunities for women have expanded strikingly, in sub-Saharan Africa, gender disparities at tertiary level linger on, with 73 female students enrolled for every 100 males in 2018.⁹⁶ This contrasts with countries in northern Africa, where women's enrolment has increased rapidly. An example is Morocco, which had one of the most gender-unequal tertiary enrolment ratios (30 women for every 100 men) in the 1990s and had achieved parity by 2017.⁹⁷

Gender disparity is the widest in STEM-related disciplines and is evident globally at all levels of education. In Africa, the gender gap tends to be to the disadvantage of girls. There is evidence of gender typing⁹⁸ of subjects from an early age, becoming apparent usually from upper secondary education and worsening up the education ladder.⁹⁹ Based on data from 20 countries, the Africa Gender Index Report 2019 reveals a very wide gender gap among STEM graduates, with the female-to-male ratio at 37.9 for the tertiary level.¹⁰⁰ On average, women constitute 34 per cent of STEM researchers in sub-Saharan Africa though there are significant variations across countries. In 2016, in Cape Verde, Tunisia, South

87 UNESCO Gender Report (n 8) 19.

88 The World Bank 'Sub-Saharan Africa' <https://genderdata.worldbank.org/regions/sub-saharan-africa/> (accessed 12 May 2023).

89 UNESCO Gender Report (n 8) 4.

90 Global Education Monitoring Report Team and UNESCO Institute of Statistics, 'New estimation confirms out-of-school population is growing in sub-Saharan Africa', *Factsheet 62*, Policy Brief 48,1.

91 Global Education Monitoring Report Team and UNESCO Institute of Statistics (n 4) 4.

92 UNESCO Gender Report (n 8) 30-38.

93 World Economic Forum, *Global Gender Gap Report* (n 87) 3.

94 UNESCO Spotlight Report (n 9).

95 UNESCO Gender Report (n 8) 14.

96 UNESCO Gender Report (n 8) 18.

97 UNESCO Gender Report (n 8) 21.

98 Gender typing refers to 'expectations about people's behaviour that are based on their biological sex, or the process through which individuals acquire and internalise such expectations.' See APA Dictionary 'Gender typing' <https://dictionary.apa.org/gender-typing> (accessed 12 May 2023).

99 UNESCO Cracking the code (n 59) 43-44.

100 African Development Bank and United Nations Economic Commission for Africa, *Africa Gender Index Report 2019* (March 2020).

Africa and Uganda, women constituted 52 per cent, 47 per cent and 40 per cent, respectively, with Guinea, Ethiopia, Mali, and Côte d'Ivoire registering only 6 per cent, 7.6 per cent, 10.6 per cent, and 16.5 per cent respectively.¹⁰¹

These dismal statistics are reflected more in the CEDAW Committee's than the African Commission's engagement with states' reports. The CEDAW Committee took on states that, on the face of it, had laws and policies aimed at increasing women's participation in education but still registered persistently low literacy rates for women (especially rural women) and low enrolment, retention, completion, and transition rates for girls.¹⁰² The picture suggests lapses in the implementation of the laws and policies in question, for instance, through under-resourcing of the education sector in general and of specific initiatives to promote women's education.

6.2 Eliminate discrimination against women and guarantee equal opportunity and access in education and training

The elimination of all forms of discrimination against women and girls is central to achieving their right to education and training. However, legislation prohibiting discrimination in education is not where the gap is. Several states are commended for enacting or reviewing their education laws toward greater inclusion. The CEDAW Committee, for instance, commends Kenya for adopting the Education Act of 2013,¹⁰³ and Malawi for similar legislation adopted in the same year, and Lesotho for its 2010 law.¹⁰⁴

From our analysis, the main issues that emerged concerning gender discrimination in, and exclusion of girls from education are punitive pregnancy policies, disability and discrimination against learners on the basis of school regulations on dress and hairstyle. The protection of women from discrimination on the grounds of disability has been addressed in detail in Chapter 25.¹⁰⁵ The following subsection will therefore focus on punitive pregnancy policies and restrictions on dress and hairstyle.

6.2.1 Punitive pregnancy policies

Eighteen of the 20 countries with the world's highest child marriage rates are in sub-Saharan Africa, and the region also has high rates of teenage pregnancy both within and outside of marriage.¹⁰⁶

101 JC Jackson, JG Payumo, AJ Jamison, ML Conteh & P Chirawu, 'Perspectives on Gender in Science, Technology, and Innovation: a Review of Sub-Saharan Africa's Science Granting Councils and Achieving the Sustainable Development Goals', *Frontiers in Research Metrics and Analytics* (2022) 14. See also African Academy of Sciences, *Factors that Contribute to or Inhibit Women in Science, Technology, Engineering, and Mathematics in Africa* (2020).

102 See, eg, CEDAW Committee Concluding Observations on: 6th and 7th Periodic Reports of Ghana (14 November 2014) UN Doc CEDAW/C/GHA/CO/6-7 (2014) para 32; Fourth Periodic Report of Benin (28 October 2013), UN Doc CEDAW/C/BEN/CO/4 (2013) para 26; Combined initial to 2nd Periodic Reports of Swaziland (Eswatini) (24 July 2014) UN Doc CEDAW/C/SWZ/CO/1-2 (2014) para 30; Combined first to 4th Periodic Reports of Chad (4 November 2011) UN Doc CEDAW/C/TCD/CO/1-4 (2011) para 30; Sixth Periodic Report of Equatorial Guinea (9 November 2012) UN Doc CEDAW/C/GNQ/CO/6 (2012) para 31; Eighth Periodic Report of Ethiopia (14 March 2019) UN Doc CEDAW/C/ETH/CO/8 (2019) para 33; Sixth Periodic Report of Gabon (11 March 2015) UN Doc CEDAW/C/GAB/CO/6 (2015) para 30; Kenya (n 68) para 34; Seventh Periodic Report of Malawi (24 November 2015) UN Doc CEDAW/C/MWI/CO/7 (2015) para 30; Combined 7th to 9th Periodic Report of Rwanda (9 March 2017) UN Doc CEDAW/C/RWA/CO/7-9 (2017) para 32.

103 Kenya's Education Act (2013) anchored in the 2010 Constitution, stipulates that, '(a) school or a person responsible for admission shall not discriminate against any child seeking admission on any ground, including ethnicity, gender, sex, religion, race, colour or social origin, age, disability, language or culture'. Kenya Education Act 2013, sec 34(2). Section 34(6) guarantees remedies for denial of admission.

104 See CEDAW Committee Concluding Observations Kenya (n 68) para 34; CEDAW Committee Concluding Observations Malawi (n 102) para 30; and Concluding Observations on the initial to 4th Periodic Report of Lesotho (8 November 2011) UN Doc CEDAW/C/LSO/CO/1-4 (2011) para 28.

105 See L Chenwi 'Article 23' in this volume.

106 Girls not Brides 'Top 20 countries with the highest prevalence rates of child marriage' <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/atlas/> (accessed 11 May 2023).

A review of state reports to the African Commission and CEDAW Committee identifies teen pregnancy as a leading cause of the low completion and transition rates for girls.¹⁰⁷ Adoption and implementation of policies on the continuation and readmission of girls following pregnancy would go a long way in mitigating the impact of teen pregnancy on girls' education and future prospects.

Regionally, significant progress has been made in this direction since the mid-1990s. High-level policy advocacy exemplified by a ministerial consultation on school drop-out and adolescent pregnancy convened by the Forum for African Women Educationalists (FAWE) in collaboration with the Government of Mauritius in 1994 gave further impetus to the drafting of school pregnancy policies in various Sub-Saharan African countries.¹⁰⁸ Guinea Conakry, Kenya, Malawi, Namibia and Zambia have had some form of policies in place safeguarding the right of pregnant girls and adolescent mothers to education since the early 1990s.¹⁰⁹

Currently, 38 out of 54 African countries have laws, policies, or measures in place protecting adolescent girls' education during pregnancy and motherhood.¹¹⁰ Countries that have in recent years repealed discriminatory laws and policies that ban pregnant girls and adolescent mothers from attending school include Togo and Cameroon, which in 2022 revoked circulars issued in 1978 and 1980, respectively, denying pregnant girls the right to education.¹¹¹ In Cameroon, the current policy allows pregnant girls to continue attending secondary schools. It also provides the option of maternity leave starting at the 26th week of pregnancy and promotes expanded access to sexual and reproductive health services and information.¹¹² Earlier, in 2019, Niger rescinded a discriminatory law that excluded girls who became pregnant and permanently expelled married students from school, replacing it with a new policy that explicitly protects their right to education.¹¹³ Burundi had a reintegration policy in place by 2016.¹¹⁴

In 2020, Zimbabwe amended its Education Act to align it with the country's 2013 Constitution. Among other progressive provisions protecting, respecting and fulfilling the right to education for all

107 Seventeen (17) Concluding Observations by the African Commission issued between 2012 and 2022 contained sections addressing the right to education, either under art 17 of the African Charter or art 12 of the Maputo Protocol. In all 17, pregnancy was cited as the main reason for a higher dropout rate for girls. A sample of eighteen (18) CEDAW Concluding Observations issued to African states between 2011 and 2022 registered the same observation.

108 FAWE's membership comprises women Ministers of Education, Vice Chancellors and other top level education policy makers. <https://fawe.org/about-fawe/> (accessed 12 May 2023).

109 FAWE 'School drop-out & adolescent pregnancy' A report of the Ministerial Consultation held from 15 to 18 September, 1994, Mauritius (1995). (Organised by the Forum for African Women Educationalists in collaboration with the Government of Mauritius).

110 Human Rights Watch 'Across Africa, many young mothers face education barriers' <https://www.hrw.org/news/2022/08/30/across-africa-many-young-mothers-face-education-barriers> (accessed 12 May 2023).

111 In Togo, the Ministry of Education replaced the 1978 circular banning pregnant girls from attending school via Decision No.33/2022/MEPSTA/CAB/SG portant abrogation de la lettre circulaire No 8478/MEN-RS du 15 decembre 1978.

112 Cameroon had stopped excluding girls from school even before this 2022 measure. See African Commission Concluding Observations Cameroon 2014 (n 83) para 27. See also E Calimoutou 'Accelerate equality: catalyzing legal change for Cameroon's inclusive communities' <https://blogs.worldbank.org/nasikiliza/accelerate-equality-catalyzing-legal-change-camerouns-inclusive-communities> (accessed 23 June 2023) and Republic of Cameroon. Ministry of Secondary Education Circular number 02/22/C/MINESEC/CAB of 22 April on the procedures for handling student pregnancies in government and private secondary schools.

113 Ministère de L'enseignement Primaire, de L'alphabétisation, de la Promotion des Langues Nationale et de L'Education Civique. Arrêté conjoint no 335/MEP/ A/PLN/EC/MES/MEP/T du 22 août 2019 modifiant et complétant l'arrêté no 25 du 4 février 2019, précisant les conditions de protection, de soutien et d'accompagnement de la jeune fille en cours de scolarité. Journal Officiel de la République du Niger. See also, <https://blogs.worldbank.org/nasikiliza/accelerate-equality-catalyzing-legal-change-camerouns-inclusive-communities> (accessed 23 June 2023).

114 See Concluding Observations on the combined 5th and 6th Periodic Reports of Burundi, Committee on Elimination of all Forms of Discrimination against Women (25 November 2016) UN Doc CEDAW/C/BDI/CO/5-6 (2016) para 34.

children, it prohibits the expulsion of pregnant girls from schools.¹¹⁵ Uganda revised its guidelines for preventing and managing teen pregnancies in school settings to include re-entry of teen mothers into the education system.¹¹⁶ Kenya issued policy guidelines in 2020 to allow pregnant girls to remain in school until delivery, allowing for up to six months to breastfeed the baby at home before returning to the same school or seeking a transfer to another one.¹¹⁷

However, despite this positive record of the adoption of policies and guidelines, challenges persist. For instance, while the African Commission commended Malawi for its 2016 readmission policy, which even allowed girls to sit the national examinations while pregnant, it was observed that a stigma still surrounded the returning girls, leading to low completion rates.¹¹⁸ Some policies impose conditions, such as a period of mandatory withdrawal from school during pregnancy and/or after delivery.¹¹⁹ In some cases, girls are subjected to restrictions such as barring them from taking national examinations, lack of provision for supplementary examinations when girls are unable to take scheduled national examinations,¹²⁰ or consignment to alternative education spaces of lower quality.¹²¹ In Equatorial Guinea, for example, there were only two centres nationwide with programmes for the reintegration of girls post-pregnancy, and they were privately owned, excluding those unable to afford the costs.¹²² The CEDAW Committee has also decried the absence of information on the assessment of the impact of post-pregnancy reintegration policies.¹²³

6.2.2 African Court, African Children's Committee and ECOWAS decisions on punitive pregnancy policies

Both the African Court and the African Children's Committee have had the opportunity to rule on the matter of the exclusion of pregnant schoolgirls. In 2022 the African Children's Committee ruled against the government of Tanzania's policy of excluding girls from public schools on the grounds of pregnancy, parenting, or marriage, ruling that the policy and practice violate the right to education, as well as the right to non-discrimination, in contravention of the African Children's Charter, African Charter and the Maputo Protocol.¹²⁴ The matter had also been brought before the African Court, but

115 Zimbabwe Education Act 1987 (revised 2020), sec 68C. Section 4(2)(b) forbids discrimination on grounds of pregnancy.

116 Ministry of Education and Sports, 2020, Revised Guidelines for the Prevention and Management of Teenage Pregnancies in School Settings in Uganda, <https://www.ungei.org/sites/default/files/2021-02/Revised-Guidelines-Prevention-Management%20-Teenage-Pregnancy-School-Settings-Uganda-2020-eng.pdf> (accessed 12 May 2023).

117 Ministry of Education, National Guidelines for School Re-entry in Early Learning and Basic Education, Republic of Kenya (2020).

118 African Commission Concluding Observations Malawi 2022 (n 84) paras 67, 77.

119 The CEDAW Committee observed in 2017, for instance, that pregnant girls in Rwanda were compelled to stay out of school for one year. See CEDAW Concluding Observations Rwanda 2017 (n 102) para 32.

120 Sierra Leone barred visibly pregnant girls from taking national examinations: African Commission Concluding Observations Sierra Leone 2015 (n 84) para 71. See also Ministry of Education, National Guidelines for School Re-entry in Early Learning and Basic Education, Republic of Kenya (2020).

121 Sierra Leone is one such example. Its policy of consigning pregnant girls to alternative institutions less accessible than public schools, and which only held classes three days a week, offering only four core subjects, was judged discriminatory by the ECOWAS Community Court. Had the separate institutions been of an equal standard and on a voluntary basis, justified only by the need to provide specialised health or other facilities for the girls, the move would not, in itself, be adjudged discriminatory. See *Waves* (n 51) 28.

122 CEDAW Concluding Observations Equatorial Guinea 2012 (n 102) para 31.

123 See, eg. CEDAW Concluding Observation Namibia 2022 (n 61) para 37.

124 *Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania* Decision on Communication 0012/Com/001/2019 African Committee of Experts on Rights and Welfare of the Child, 39th ordinary session 21 March-1 April 2022.

the Court ruled that the African Children's Committee had already dealt substantively with the matter and endorsed the decision of the African Children's Committee.¹²⁵

The African Children's Committee ruling cited an earlier decision of the ECOWAS Community Court of Justice (ECOWAS Court) in December 2019 against Sierra Leone's policy of exclusion of pregnant and parenting girls from mainstream schools in a country where the teenage pregnancy rate in some regions is as high as 65 per cent.¹²⁶ The government compelled pregnant girls or parenting girls seeking readmission after childbirth to attend alternative institutions that only held classes three days a week and taught only four core subjects and not the full school curriculum.¹²⁷ The ECOWAS Court ruled that Sierra Leone's policy and practice constituted discrimination in contravention of the African Charter,¹²⁸ the CRC¹²⁹ and CADE.¹³⁰ It ordered the government to revoke the ban and publish the revocation throughout the country. The judgement does not refer to the Maputo Protocol, even though Sierra Leone is a party to it, but reflects the spirit of articles 2 and 12 of the Maputo Protocol. Following the judgment of the ECOWAS Court, Sierra Leone lifted the ban against pregnant schoolgirls and teenage mothers and in 2021, adopted a 'Radical Inclusion' policy that reaffirms the right of pregnant girls to stay in school during their pregnancy and to return to school when they are ready, without imposing any conditions, mandatory maternity leave, or restrictions for their return.¹³¹

6.2.3 Discrimination in school dress codes

School dress codes and their enforcement can constitute a barrier to girls' education, particularly for learners from religious minority groups. Contention has arisen with respect to regulations relating to the hijab or headscarf worn by Muslim girls and women and Afro hairstyles and hairdos, including dreadlocks that are banned in many schools. These conflicts have not surfaced in regional forums, but domestic courts and administrative forums in countries such as Kenya, Nigeria, South Africa, and Uganda have dealt with them.¹³²

(a) The hijab

The exclusion of Muslim girls on the grounds of violation of the school's uniform policies by wearing the hijab or head scarves has proved contentious. Central to the court cases is whether the exclusion of girls based on the dress code stipulated by school boards constitutes discrimination in contravention of the state's constitution and international human rights laws. The outcomes of the litigation have been varied, sometimes among courts in the same country, demonstrating just how contested the issue is. For example, the Nigerian Supreme Court, in a majority decision delivered on 17 June 2022, upheld a previous ruling by the Court of Appeal, Lagos Division on 21 July 2016, setting aside a ban on the use of hijab in public schools in Lagos State, which ban had been upheld by a lower court on 17 October

125 *Tike Mwambipile & Equality Now v United Republic of Tanzania*, Application 042/2020 African Court of Human and Peoples' Rights (delivered 1 December 2022). A similar challenge had also been brought before the East African Court of Justice. See *Inclusive Development for Citizens, and Center for Strategic Litigation v Attorney General of the United Republic of Tanzania*, East African Court of Appeal, Reference 10 of 2020.

126 *Waves* (n 51) 4.

127 *Waves* (n 51) 28, 32.

128 Articles 2, 3, 17(1), 18(3) & 25 of the African Charter.

129 Article 28(1) of the CRC.

130 Articles 1 & 3 of CADE.

131 Human Rights Watch 'Africa – Rights progress for pregnant students' <https://allafrica.com/stories/202109300116.html> (accessed 13 May 2023).

132 In Mozambique and Senegal, the issue has been resolved administratively outside the courts through state mediation. See <https://religionnews.com/2021/03/15/across-africa-hijab-in-schools-divides-christians-and-muslims/>; <https://www.aciafrica.org/news/137/catholic-school-in-senegal-lifts-ban-on-headscarves-for-muslim-students>; <https://www.wantedin africa.com/news/headscarves-allowed-in-mozambique-schools.html> (accessed 13 May 2023).

2014. The Supreme Court agreed with the Court of Appeal's ruling that the ban was discriminatory against Muslim girls and that it violated their rights to freedom of thought, conscience, religion, the dignity of human persons and freedom from discrimination guaranteed by the Nigerian Constitution 1999.¹³³

Similarly, in Kenya, the Court of Appeal had, in 2016, ruled that a school uniform policy that was applied so as to deny Muslim girls permission to wear the *hijab* (head covering) and trousers in addition to the prescribed uniform in a public school sponsored by the Methodist church, constituted discrimination.¹³⁴ The High Court had ruled that since the policy on the prescribed uniform applied uniformly to all students, it did not constitute discrimination.¹³⁵ The apex court (Supreme Court), in a majority decision delivered in 2019, reversed the Court of Appeal's orders on technical grounds.¹³⁶

The Court of Appeal judges had directed the Ministry of Education to develop school guidelines for better protection of freedom of religion and non-discrimination.¹³⁷ No such guidelines have been developed, and it is unclear whether the government will take steps in that direction given the reversal by the Supreme Court, even though undeniably, school officials are left without any guidance at all on the day-to-day handling of the issue.

(b) Hairstyle restrictions

A related concern has arisen from hair regulations in schools. Rooted in colonial practices, many African schools have regulations preventing learners from having Afro hairstyles and braids. Some schools allow braids and long hair but only for girls, while boys are expected to sport short hair. Such regulations have been perceived to discriminate on the grounds of race and, in some cases, religion, provoking protests by learners and activists and social media petitions. While hairstyle restrictions apply to both girls and boys, there are at least three grounds that raise concern in the context of the Maputo Protocol: First, such restrictions reflect stereotypes at the intersection of gender, coloniality and race. Second, there is greater pressure on girls to use chemicals to manage their hair, thus risking harmful exposure. Third, girls experience the consequences of exclusion from school in a different way from boys. Exclusion increases girls' risk of teen pregnancy and early marriage, which in turn spell premature and permanent exit from the education system.

The banning of dreadlocks has been challenged in domestic courts in Ghana, Kenya, Malawi, South Africa and Zimbabwe on the grounds of religious discrimination and exclusion of children from the Rastafarian community from attending classes. In a Kenyan case, the High Court declared the exclusion of a 15-year-old student on account of her 'rasta' hairstyle, which was proven to be a manifestation of her Rastafarian religious beliefs, to be a violation of her constitutional rights.¹³⁸ The school had required her to shave off her hair as a condition for readmission. The Court ruled that the school regulations amounted to forcing her to choose between her right to education and her freedom of conscience and religion. The school administration had not demonstrated that it had no other

133 *Lagos State Government & others v Asiyat AbdulKareem*, SC/910/16. The South African Constitutional Court made a similar ruling with respect to a Tamil-Hindu school girl's wearing of a nose stud, emphasising that if the person genuinely believed the item in question to be central to her religious and racial identity, it was secondary whether it was actually required by her religion. *MEC for KwaZulu Natal, School Liaison Officer & others v Pillay* 2008 (1) SA 474 (CC).

134 *Mohamed Fugicha v Methodist Church in Kenya and 3 Others* (2015) Civil Appeal 22 [2015] eKLR.

135 *Methodist Church in Kenya v Teachers' Service Commission & 2 others* (2014) High Court Petition 30 (Meru) [2014] eKLR.

136 *Methodist Church in Kenya v Mohamed Fugicha and 3 Others* (2016) Supreme Court Petition 16 [2016] eKLR, 10-11 (one dissenting judge upheld the Court of Appeal's finding of indirect discrimination).

137 *Mohamed Fugicha v Methodist Church* (n 136) 34.

138 *JWM (alias P) v Board of Management O High School, Ministry of Education & Attorney General* (2019) High Court, Constitutional and Human Rights Division, Petition 10 [2019] eKLR.

means of enforcing the school regulations besides coercing her to cut her hair, which would subject her and her faith community to indignity and degradation. The Court ruled that school regulations should not be applied in such a manner as to override constitutional rights. The Court, therefore, ordered the school administration to immediately re-admit the learner.¹³⁹

The judgment in the Kenyan case referred to a similar outcome in a 2007 decision of the Zimbabwean Supreme Court, involving a six-year-old child excluded from a public primary school on the same grounds.¹⁴⁰

The cases discussed above on dress codes and hairstyles deal with these in the context of religious expression. There is, however, a related issue of school regulations finding a balance between enforcing discipline and enabling an inclusive environment that affirms girls' outward expression of their identity.¹⁴¹ This issue has arisen with respect to hairstyle policy in schools. One prominent incident involved a girls high school in South Africa. Girls of African descent alleged that they were compelled to chemically straighten their hair as school authorities considered Afro hairstyles to be untidy.¹⁴² Protests over the school's policy accounted for the high number of online complaints alleging racism received by the South African Human Rights Commission in 2016 and 2017.¹⁴³

Stepping back from the specific cases and incidents discussed in this subsection, there is, overall, a valid concern about conducive learning environments as part of the process of eliminating the various forms of discrimination that pose obstacles to equal access to education by girls and women. The African Commission has, on occasion, referred to inclusive education. For instance, in 2015 and 2022, it commended Malawi on its self-reported inclusive education policy;¹⁴⁴ in 2016, it commended Namibia for adopting a national plan of action to complement its Education for All policy¹⁴⁵ and in 2018 Eritrea was commended for its policy on improving access to education for rural and nomadic communities.¹⁴⁶ The conversation could be deepened further by taking the initiative to enquire from states whether they have the necessary policies and guidelines in place and how those policies and guidelines take account of a diverse range of exclusions, including those that may be presumed neutral or inevitable, as the cases described here have illustrated. African regional human rights bodies have an opportunity to

139 *JWM (alias P)* (n 138) paras 42, 55 & 59.

140 *Dzvova v Minister of Education, Sports and Culture and Others* (2007) AHRLR 189 (ZwSC 2007). See discussion of the case in MO Mhango 'Upholding the Rastafari religion in Zimbabwe: *Farai Dzvova v Minister of Education, Sports and Culture and Others*' (2008) 8(1) *African Human Rights Law Journal* (2008) 221.

141 A Kenyan case has ruled that where a hairstyle is simply a fashion choice rather than an expression of religious freedom, school rules will take precedence, as long as they are applied fairly. *JK (suing on behalf of CK) v Board of Directors of R School & Another* (2014) High Court, Constitutional and Human Rights Division, Petition 450 [2014] eKLR.

142 AFP 'A prestigious South African school has been ordered to stop banning black students from having Afros or braids' <https://www.businessinsider.com/afp-s-african-school-told-to-halt-racist-hair-policy-2016-8?r=US&IR=T>; Agence France-Presse. 'Racism row over South Africa school's alleged hair policy' <https://www.theguardian.com/world/2016/aug/29/south-africa-pretoria-high-school-for-girls-afros> (accessed 13 May 2023). In Kenya and Uganda news reports document similar grievances, of girls of African descent treated differently from their Asian, Caucasian or biracial descent, but no complaints to official bodies are on record. See N Segawa 'Female students claim discrimination over short hair policies at some Uganda schools' <https://globalpressjournal.com/africa/uganda/female-students-claim-discrimination-short-hair-policies-uganda-schools/>; G Achieng 'The racist legacy of Kenyan schools' short hair policies' <https://womensmediacenter.com/fbomb/the-racist-legacy-of-kenyan-schools-short-hair-policies> (accessed 13 May 2023).

143 South African Human Rights Commission, *Annual Report: Advocacy and Communication Unit* (2017) 25.

144 Concluding Observations on the initial and combined report of Malawi on implementation of the African Charter on Human and Peoples' Rights 1995-2013, African Commission on Human and Peoples' Rights, adopted at the 57th ordinary session (4-18 November 2015) para 32, and African Commission Concluding Observations Malawi 2022 (n 85) para 23.

145 African Commission Concluding Observations Namibia 2016 (n 80) para 10.

146 Concluding Observations on the initial and combined Periodic Report of Eritrea, African Commission on Human and Peoples' Rights, adopted at the 62nd ordinary session (25 April-9 May 2018) para 28.

contribute to the relevant jurisprudence on ensuring that the environment in educational institutions is conducive for girls and affirming their identities, particularly girls from minority communities.

6.3 Eliminate stereotypes in textbooks, syllabuses and the media

A review of the 17 selected Concluding Observations of the African Commission issued between 2012 and 2022 registers a stunning silence on the issue of the elimination of stereotypes.¹⁴⁷ The African Commission has made no reference to the issue. By contrast, the CEDAW Committee's engagement with African states raises the issue of the persistence of gender stereotypes in textbooks and the media, pointing out that measures put in place for their elimination are inadequate. The CEDAW Committee expressed concern in reviewing the reports of Eswatini,¹⁴⁸ Ethiopia,¹⁴⁹ Gabon,¹⁵⁰ Rwanda,¹⁵¹ South Africa¹⁵² and Uganda.¹⁵³ In some cases, the CEDAW Committee also expressed concern that stereotypical attitudes seem to inform the selection of subjects by girls, which results in low enrolment in STEM courses at the tertiary level.¹⁵⁴

The 2020 GEM Gender Report confirms that stereotypes in textbooks persist in many countries. The report observes that despite political will in support of gender equality in Ethiopia, for instance, gender stereotypes in textbooks are common, reflected in the portrayal of men as powerful, assertive and intelligent leaders, doctors, engineers and politicians and women as weak, passive and submissive, generally depicted in domestic, caregiving and supportive roles: 'stories of African kings, male freedom fighters and leaders dominate, whereas females actively involved in the independence struggle were forgotten'.¹⁵⁵

Though the Protocol only mentions stereotypes in relation to textbooks, the syllabus and the media, stereotypes may also be embedded in school rules and regulations and oral communication by school authorities, teachers and learners.¹⁵⁶ The dress code and hairstyle restrictions discussed above reflect stereotypes based on race, religion and gender, resulting in intersectional discrimination.

147 It bears pointing out that slow progress in taking on the issue of elimination of gender stereotypes is not unique to the African region. It has proved to be a sticking point globally. See Cusack (n 54) 125.

148 CEDAW Committee Concluding Observations Eswatini 2014 (n 102) para 30.

149 CEDAW Committee Concluding Observations Ethiopia 2019 (n 102) para 33.

150 CEDAW Committee Concluding Observations Gabon 2015 (n 102) para 30.

151 CEDAW Committee Concluding Observations Rwanda 2017 (n 102) para 32.

152 CEDAW Committee Concluding Observations South Africa 2021 (n 68) para 45.

153 Concluding Observations on the combined 8th and 9th reports of Uganda, Committee on Elimination of Discrimination against Women (1 March 2022) UN Doc CEDAW/C/UGA/CO/8-9 (2022) para 22.

154 See, eg, CEDAW committee Concluding Observations Ethiopia 2019 (n 102) para 33; CEDAW committee Concluding Observations Gabon 2015 (n 102) para 30; CEDAW Committee Concluding Observations Lesotho 2011 (n 104) para 29.

155 The 2020 GEM Gender Report draws from several background papers that analysed text books and learning materials in several countries to arrive at this conclusion. See, eg, D A Wondifraw 'Survey of gender representation in social studies textbooks of Ethiopian primary schools' (2017) 21(1) *British Journal of Education, Society and Behavioural Science* 7. See also T Melesse 'Gender Responsive Teaching and Learning Materials Development and Revision in Ethiopia' (2020) (Background paper for UNESCO Gender Report 2020); D Ballini, 'Etudes sur les Manuels d'Enseignement et d'Apprentissage dans l'Union des Comores' (2020) [Study on Textbooks in the Union of the Comoros] (Background paper for UNESCO Gender Report 2020). Both Ballini and Melesse concluded that no significant change was achieved in gender representation in textbooks in Ethiopia and the Comoros. Their findings were consistent with the overall conclusion of the GEM Report 2020 that countries tend not to act on their commitment to bias-free textbooks.

156 Wamahiu (n 57) 141-142.

6.4 Protection from all forms of abuse, including sexual harassment

Not all parties to the Maputo Protocol have adopted laws against sexual harassment. A comparative study of legal prohibition of sexual harassment in 192 UN member states found that in a subset of 42 states that had ratified the Maputo Protocol as of January 2021, nine had not enacted legislation prohibiting workplace sexual harassment.¹⁵⁷ This means that a majority have at least acted at the level of enacting legislation.¹⁵⁸ Even more positive is the study's finding that between 2016 and 2021, five states either enacted legislation or amended existing legislation,¹⁵⁹ thus, suggesting progressive action.

A review of concluding observations suggests, however, that the African Commission's engagement with states on this issue has been scant. The African Commission only alludes to the issue of abuse and sexual harassment in one of the 17 Concluding Observations reviewed. The Commission commended the Gambia in 2021 for its policy of building schools within a three to five-kilometre radius nationwide, thus providing safety and security for children, especially girls.¹⁶⁰

The CEDAW Committee has done more in engaging states to go beyond the enactment of legislation and establishment of administrative mechanisms to actual enforcement. While lauding Ghana for the adoption of sexual harassment policies in key institutions, such as public universities, the CEDAW Committee lamented that sexual harassment still persisted in schools.¹⁶¹ The CEDAW Committee expressed particular concern over girls' exposure to sexual violence and harassment on their way to and from school, as well as in their dealings with teachers and school officials.¹⁶² The CEDAW Committee also decried the lack of or inadequate sanctions for perpetrators of abuse against girls and women in educational institutions, including a lack of clear procedures for sanction in key policies, such as teachers' codes of conduct.¹⁶³ This is made worse by underreporting by victims and low rates of prosecution of offenders, which calls attention to the need to interrogate whether the law or policy in question provides adequate safeguards against retaliation.¹⁶⁴ The CEDAW Committee has, on numerous occasions, urged states to strengthen a holistic response mechanism that incorporates awareness-raising, training of both school officials and students, confidential reporting and referral mechanisms, and provision of adequate psychological, medical and legal assistance.¹⁶⁵ It has also raised concern about the lack of enforcement and its disproportionate impact on girls from marginalised communities. The Concluding Observations on Namibia's 2022 Report to the CEDAW Committee notes that though overall literacy for girls has improved due to state provision of free primary and secondary education, reported cases of corporal punishment, gender-based violence, discrimination

157 Heymann et al (n 67) 16. The study did not break down 'workplace' into sectors, so educational settings are subsumed within this broad reference.

158 For discussion of sexual harassment in the broader context of addressing gender-based violence see R Nekura 'Article 4' in this volume.

159 Heymann et al (n 67) 17. The five countries that adopted legislation or amendments between 2016 and 2021 are: Burkina Faso, Burundi, Niger, São Tomé and Príncipe, and South Sudan.

160 Concluding Observations on the combined Periodic Report of Gambia, African Commission on Human and Peoples' Rights (19-25 February 2021) para 22.

161 CEDAW Concluding Observations Ghana 2014 (n 102) para 32.

162 See CEDAW Concluding Observations on Eswatini 2014 (n 102) para 30; Chad 2011 (n 103) para. 30; Ethiopia 2019 (n 102) para 33; Gabon 2015 (n 102) para. 30; Kenya 2017 (n 68) para. 34; Malawi 2015 (n 102) para 30; Lesotho 2011 (n 104) para 28; Rwanda 2017 (n 102) para 32.

163 See, eg, CEDAW Committee Concluding Observations on Benin 2013 (n 102) para 26; Kenya 2017 (n 68) para 34; Malawi 2015 (n 102) para 30.

164 A global study (192 countries) found that legal protection from retaliation was crucial in operationalizing legal prohibitions of sexual harassment. See Heymann et al (n 67) 10.

165 See CEDAW Concluding Observations on Kenya 2017 (n 68) para 34; Benin 2013 (n 102) para 26; Combined 5th and 6th reports of Zambia (19 September 2011) UN Doc CEDAW/C/ZMB/CO/5-6 (2011) paras 29-30; Combined 3rd to 5th Periodic Reports of Mozambique (30 July 2019) UN Doc CEDAW/C/MOZ/CO/3-5 (2019) paras 31-32; Fourth Periodic Report of Côte d'Ivoire (30 July 2019) UN Doc CEDAW/C/CIV/CO/4 (2019) paras 39-40.

and bullying in schools persist, particularly against indigenous girls.¹⁶⁶ The CEDAW Committee made similar observations regarding Rwanda's and Burundi's reports concerning refugees, Batwa (ethnic minority) and girls with disabilities.¹⁶⁷

Although sexual harassment is acknowledged as a problem in many educational institutions at all levels, statistical data on its prevalence is scant.¹⁶⁸ State reporting needs to go beyond simply indicating that relevant legislation or policy has been enacted, to giving specific data on action taken on specific cases. Without detailed data, taking concerted action on the issue remains difficult.

6.5 Integration of gender sensitisation and human rights education into the curriculum.

The African Commission does not appear to engage much with states on the issue of integration of gender sensitisation and human rights education into the school curriculum. In the entire review period (2012-2022), there is only one reference: in 2014, Cameroon was commended for introducing human rights education in its school curriculum.¹⁶⁹

However, a look at national level practice from other sources suggests that states are acting largely in collaboration with civil society in the education sector and UN agencies. In Rwanda, the Competence-based Curriculum, which was introduced in 2015, integrates a gender perspective into the curriculum to improve 'the outcome of quality teaching by enabling girls and boys to exploit their full potential and talents without any discrimination or prejudice'.¹⁷⁰ It recognises that efforts to eliminate gender inequality must address 'interactions within and out of the classroom'.¹⁷¹ Following this, in 2017, the Ministry of Education, in partnership with the United Nations Children's Fund (UNICEF), launched the National Gender Responsive Teacher Training Package to guide both teachers and school leaders in facilitating teaching in a school environment that is gender responsive and empowering.¹⁷²

The Gender Responsive Pedagogy (GRP) developed by FAWE has been influential in integrating gender sensitisation into the teaching and learning processes, including teacher training, as article 12(1)(e) of the Maputo Protocol requires. Several countries – notably Ethiopia and Malawi – have mainstreamed GRP as a policy in pre-service training in all public and private teacher training colleges.¹⁷³ In Uganda, FAWE, in collaboration with the teachers' union, UNATU, adapted the GRP for primary schools in an effort to implement the Gender in Education Sector Policy.¹⁷⁴ Between 2003 and 2010, UNATU implemented the Teachers' Action for Girls initiative, which offered a five-day in-service training for teachers to empower them 'with knowledge, skills, and values to become lead actors in creating gender responsive school environments'¹⁷⁵ in support of girls' education.

166 CEDAW Concluding Observations Namibia 2022 (n 61) para 37.

167 See Rwanda 2017 (n 102) para 32; Burundi 2016 (n 114) para 34.

168 GF Mbuya 'An appraisal of the legal framework on sexual harassment at the place of work and schools in Cameroon' in K Mwikya, C Osero-Ageng'o, & E Waweru (eds) (Equality Now, 2020) *Litigating the Maputo Protocol: a compendium of strategies and approaches for defending the rights of women and girls in Africa* 172.

169 African Commission Concluding Observations Cameroon 2014 (n 83) para 26.

170 Ministry of Education – Rwanda *Competence-based Curriculum. Curriculum Framework from Pre-Primary to Upper Secondary* (2015) 23.

171 *Rwanda Competence-based Curriculum* (n 170) 23.

172 A Uworwabayeho et al *National Gender Responsive Teacher Training Package* (2017) (Ministry of Education – Rwanda & UNICEF).

173 LN Wanjama & F Njuguna *Case study: gender responsive pedagogy as a best practice by the Forum for African women educationalists (FAWE)* (FAWE & UNGEI, 2015).

174 Republic of Uganda *Gender in Education Sector Policy* (2009).

175 A Davidson *Case study: teachers' action for girls* (n.d.) (UNGEI & Canadian Teachers' Federation, with support from Overseas Development Institute (ODI) 3.

The CEDAW Committee's engagement with African states on integrating gender and human rights education into the school curriculum has tended to emphasise the integration of education on sexual and reproductive health rights. The CEDAW Committee cites a lack of age-appropriate sexual and reproductive health rights education, attributing it in some cases to cultural resistance.¹⁷⁶ The African Commission could do more to initiate dialogue with states on this dimension of state obligation under the protocol.

7 Conclusion

Progress in implementing article 12 will reap benefits for the overall attainment of the rights contained in the Maputo Protocol. The converse is also true: lack of concrete progress in education will have a knock-on adverse effect. Already, an assessment of the progress on SDG 4 is cause for concern. With the exception of Mauritius and Seychelles, African states are set to miss almost all educational progress indicators by the target date.¹⁷⁷

As discussed throughout this chapter, education is acknowledged in several articles of the Maputo Protocol as being central to the overall attainment of women's human rights. In turn, the realisation of the rights of women and girls to education is dependent on progress in other areas of rights, such as protection from discrimination, violation of dignity, exploitative work and harmful practices that pose barriers to access to quality education and inhibit their progression up the education ladder. Yet, despite its potential for addressing deep-rooted barriers to gender equality in education, article 12 of the Maputo Protocol remains largely invisible in educational policy documents and in national level jurisprudence. Of the nine national level Court cases referred to in this chapter, for instance, none referred to the Maputo Protocol, even though it is clear that article 12 would have strengthened the case and contributed to the development of jurisprudence in this area.

The invisibility of the Maputo Protocol in policy documents and national level jurisprudence is reflective of the low prioritisation of the gender equality agenda by many African governments, driven by deep-rooted patriarchal attitudes, values and practices of exclusion and gender discrimination. Article 12, in particular, is often overlooked or unsatisfactorily reported on in multiple state reports. Sex-disaggregated data and information (quantitative and qualitative) that would assist in tracking progress on the implementation of the right to education of the Maputo Protocol is largely unavailable. This low prioritisation, in turn, suggests inadequate investment in creating awareness of the Protocol among critical education and other stakeholders, resulting in limited outreach and poor quality of efforts.

It is essential that the quality of awareness-raising and sensitisation activities must be interrogated, not only for gender responsiveness of the content but also for the methodology used for delivery. The methodology used should facilitate deeper analysis incorporating an intersectional perspective. Experiential methods, critical thinking, problem-solving and creativity skills are recommended for changing patriarchal mindsets and generating evidence-based solutions that match the rhetoric to sustainable actions for gender equality. At the same time, the gathering of sex-disaggregated data should be prioritised as a matter of routine. Though most African ministries of education have put education management information systems in place, they are still grappling with generating credible, timely,

176 See, eg, CEDAW Concluding Observations on Eswatini 2014 (n 102) para 30; Benin 2013 (n 102) para 26; Namibia 2022 (n 61) para 37; Mozambique 2019 (n 165) para 31-32; Uganda 2022 (n 153) para 37. In Uganda a government decision to ban comprehensive sexuality education (CSE) from the school curriculum was successfully challenged in court: *Center for Health, Human Rights and Development (CEHURD) v Attorney General and Family Life Network* (2016) High Court of Uganda Miscellaneous Cause 309 of 2016. The judgment was delivered in November 2021, ordering the Ministry of Education to develop a CSE policy within two years, informed by the provisions of the Ugandan Constitution and international laws. The case, however, made no reference to the Maputo Protocol.

177 AU, UNECA, AfDB and UNDP, *Africa Sustainable Development Report* (2022).

sex-disaggregated data, making monitoring the implementation of the Maputo Protocol and other related instruments challenging.¹⁷⁸ This calls for investing in gender-responsive education statisticians and planners.

Overall, as the chapter has shown, progress has been registered at the level of enactment of legislation and adoption of policies to promote literacy for women and eliminate barriers to access to education. Among the measures to be commended are the facilitation of the reintegration of girls after pregnancy into educational and training institutions and adopting legal and policy frameworks to deal with abuse and sexual harassment. However, inadequate data makes it difficult to assess impact and progress. Underfunding of the education sector is a reality across the states. The African Commission could do more to hold states to account to a more rigorous reporting standard, especially as article 12(2) calls for 'specific positive action' on the part of states.

The record of dismal engagement at the regional level on the issue of gender sensitisation and integration of human rights education and elimination of gender stereotypes in education materials and the media bears highlighting. The Protocol puts a potent tool in the hands of the African Commission in the form of articles 2(2) and 12(1)(b), which call for the elimination of negative gender stereotypes. This tool is made even more potent by the fact that virtually all states parties to the Maputo Protocol are also states parties to CEDAW, whose articles 2(f), 5(a) and 10(c) articulate the same call to eliminate negative stereotypes.

When it fails to engage states on these issues, the African Commission forfeits the opportunity to set the tone for states. Without concrete action on this front, there is no serious challenge to attitudes that justify or take for granted barriers to women's education and training in general or in fields viewed as traditionally male, such as STEM.

178 Data gaps as a challenge to adequate reporting on the SDGs and Agenda 2063 were highlighted in AU, UNECA, AfDB and UNDP, *Africa Sustainable Development Report* (2022).