

**IN THE MATTER OF THE AFRICAN COURT ON HUMAN AND PEOPLE'S  
RIGHTS AT ARUSHA**

**APPLICATION NO. 042 OF 2020**

**TIKE MWAMBIPILE & EQUALITY NOW**

**(APPLICANTS)**

**VS**

**THE UNITED REPUBLIC OF TANZANIA**

**(RESPONDENT)**

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**BRIEF OF THE JOINT AMICI CURIAE  
THE INITIATIVE FOR STRATEGIC LITIGATION IN AFRICA, HUMAN  
RIGHTS WATCH AND WOMEN'S LINK WORLDWIDE**

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**I. INTRODUCTION**

1. The Initiative for Strategic Litigation in Africa (ISLA), founded in Johannesburg, the Republic of South Africa in 2015, Human Rights Watch (HRW), an independent and international non-governmental organization founded in the United States in 1978 with registered presence in the Republic of Kenya and the Republic of South Africa since 2011 and Women's Link Worldwide (WLW), an international non-governmental organization founded in 2001 with presence in Latin America, Europe and Eastern Africa and registered in Colombia were joined in this application as joint amici on 29<sup>th</sup> April 2022. In these submissions, the joint amici offer information on:
  - a) Tanzania's international and regional human rights obligations to guarantee freedom from discrimination; to prevent and respond to violence against girls, including in school settings; and to safeguard the sexual and reproductive health and rights of girls and young women.

- b) The role of the Court to provide transformative remedies for violations of the highlighted rights in compliance with the state party's obligations under: Articles 2, 3 and 16 of the African Charter on Human and People's Rights (Banjul Charter); Articles 3, 4, 10, 11 and 14 of the African Charter on the Rights and Welfare of the Child; Article 1, 2, 3, 12(1)(a) and 14 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol); Articles 2, 3, 10 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Articles 2, 3, 4, 6(2), 12, 16, 19, 24 of the Convention on the Rights of the Child.
2. This case challenges Regulation 4 and 7 of the Education (Expulsion and Exclusion of Pupils from Schools) Regulations (No. 295 of 2002) made under the Education Act, Cap 353 provide for situations where a pupil can be expelled. These include:
  - a. The persistent and deliberate misbehavior of the pupil such as to endanger the general discipline or the good name of the school.
  - b. The pupil has committed a criminal offence such as theft, malicious injury to property, prostitution, drug abuse, or an offence against morality whether the pupil is being or has been prosecuted for that offence.
  - c. The pupil has entered into wedlock.
3. For many decades, these provisions have meant that the government of Tanzania has denied girls who were pregnant or were adolescent mothers the right to study in public schools.<sup>1</sup> Students banned from public schools had few options to continue studying: either enrolling and paying fees and associated costs in private

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<sup>1</sup> See Center for Reproductive Rights, *Forced Out: Mandatory Pregnancy Testing and the Expulsion of Pregnant Students in Tanzanian Schools*, September 2013, <https://reproductiverights.org/forced-out-mandatory-pregnancy-testing-and-the-expulsion-of-pregnant-students-in-tanzanian-schools/>; Human Rights Watch, *No Way Out – Child Marriage and Human Rights Abuses in Tanzania*, October 2014, <https://www.hrw.org/report/2014/10/29/no-way-out/child-marriage-and-human-rights-abuses-tanzania>; Human Rights Watch, *"I Had a Dream to Finish School": Barriers to Secondary Education in Tanzania*, February 2017, <https://www.hrw.org/report/2017/02/14/i-had-dream-finish-school/barriers-secondary-education-tanzania>; Human Rights Watch, *Tanzania: Pregnant Student Ban Harms Thousands*, October 6, 2021, <https://www.hrw.org/news/2021/10/06/tanzania-pregnant-student-ban-harms-thousands>.

schools;<sup>2</sup> paying school fees and associated costs to enroll in “qualifying test” centers, also known as tuition centers, where students can study an accelerated learning program that trains them to pass the secondary school leaving certificate, or in folk development colleges to follow a non-formal learning programme;<sup>3</sup> or accessing predominantly NGO or community-led free non-formal education programmes.<sup>4</sup>

4. On November 24, 2021, the Ministry of Education, Science and Technology published a circular on the “Reinstatement of students who dropped out of secondary education for various reasons” that states that students who are pregnant will be allowed to study in the formal education system. The Ministry of Education’s circular does not include safeguards for girls’ and women’s sexual and reproductive health and rights and does not include measures to address the high rate of pregnancy amongst school-going girls and women.
5. Where a policy mandates the separation of pregnant students from other students, and where the facilities that they are taken to are inferior to other schools that other children go to, and provide inferior quality instruction, that policy is deemed to be discriminatory and violates the rights of the affected children to education. In *Women Against Violence and Exploitation and Society & Another v Republic of Sierra Leone*, Judgment No: ECW CCJ/JUD/37/19 (*Waves Case*), the ECOWAS Community Court of Justice found such a policy to be unjustifiable as there was no reason to have differential treatment accorded to pregnant school

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<sup>2</sup> Fumuka Ng’wanakilala, “Tanzanian Leader Reaffirms Ban on Pregnant Girls Attending State Schools,” *Reuters*, June 23, 2017,

<https://www.reuters.com/article/uk-tanzania-education-idUKKBN19E19F>.

<sup>3</sup> UNESCO Institute for Lifelong Learning, “Folk Development Colleges, Tanzania,” July 4, 2017, <https://uil.unesco.org/case-study/effective-practices-database-litbase-0/folk-development-colleges-tanzania>; See Tanzania Education Network, *Investigating the Existing Educational Initiatives for Out of Schoolgirls and Teenage Mothers in Mainland Tanzania*, April 2021, [https://africaeducationhub.org/bitstream/handle/hesa/37/Study\\_of\\_investigating\\_the\\_existing\\_educational\\_initiatives\\_for\\_out\\_of\\_schoolgirls\\_and\\_teenage\\_mothers\\_in\\_Tanzania%20mainland.pdf?sequence=1](https://africaeducationhub.org/bitstream/handle/hesa/37/Study_of_investigating_the_existing_educational_initiatives_for_out_of_schoolgirls_and_teenage_mothers_in_Tanzania%20mainland.pdf?sequence=1).

<sup>4</sup> Human Rights Watch, *“I Had a Dream to Finish School”: Barriers to Secondary Education in Tanzania*, February 2017.

girls who were enrolled in mainstream schools before pregnancy.<sup>5</sup> The ECOWAS Court noted that there was a responsibility on the State to ensure that girls are afforded access to education and that they should not be discriminated against on the basis of their pregnancies, and that excluding them from school and separating them and making them attend other forms of schooling could be seen as punishing them for being pregnant.

6. Tanzania's discriminatory policy to ban students who were pregnant, married, or were mothers from public schools resulted in the denial of education and learning loss for thousands of girls. The World Bank estimates that approximately 6,500 girls drop out of school (meaning that they leave school or are expelled and do not return to the formal system of instruction) every year in Tanzania because they are pregnant.<sup>6</sup>
7. The government did not implement additional measures to mitigate the loss of education experienced by the vast majority of students who were expelled from public schools as a result of the policy and who lacked the means to enroll in private schools or alternative forms of education at their own expense, thereby rendering education inaccessible to those students.<sup>7</sup>
8. There is therefore need for the Court to make a determination that will ensure that the rights of adolescent girls and women are protected and that the discriminatory

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<sup>5</sup> *Women Against Violence and Exploitation and Society & Another v Republic of Sierra Leone*, Judgment No: ECW CCJ/JUD/37/19 (December 12, 2019), p. 26. In this case, the ECOWAS court adopted with approval the reasoning of the European Court of Human Rights in *Orsus & Others v Croatia*, App. No. 15766/03 (March 16, 2010), on the meaning of discrimination finding that there was no reasonable unjustifiable separation of Roma children from Croatian children, where they had not taken measures to safeguard their rights as members of a disadvantaged group.

<sup>6</sup> See World Bank, "World Bank Statement on the Announcement by Government of Tanzania on Equal Access to Education for Pregnant Girls and Young Mothers," Statement, November 24, 2021, <https://www.worldbank.org/en/news/statement/2021/11/24/world-bank-statement-on-the-announcement-by-government-of-tanzania-on-equal-access-to-education-for-pregnant-girls-and-y>. In 2013, the Center for Reproductive Rights estimated that between 2003 and 2011, "over 55,000 adolescent girls in Tanzania were forced to drop out of or were expelled from primary and secondary schools due to pregnancy," Center for Reproductive Rights, *Forced Out: Mandatory Pregnancy Testing and the Expulsion of Pregnant Students in Tanzanian Schools*, p. 17.

<sup>7</sup> Human Rights Watch, *"I Had a Dream to Finish School": Barriers to Secondary Education in Tanzania*; Tanzania Education Network, *Investigating the Existing Educational Initiatives for Out of Schoolgirls and Teenage Mothers in Mainland*, April 2021, [https://africaeducationhub.org/bitstream/handle/hesa/37/Study\\_of\\_investigating\\_the\\_existing\\_educational\\_initiatives\\_for\\_out\\_of\\_schoolgirls\\_and\\_teenage\\_mothers\\_in\\_Tanzania%20mainland.pdf?sequence=1](https://africaeducationhub.org/bitstream/handle/hesa/37/Study_of_investigating_the_existing_educational_initiatives_for_out_of_schoolgirls_and_teenage_mothers_in_Tanzania%20mainland.pdf?sequence=1).

effects of policies are remedied. The joint amici believe the information offered herein will assist this court in determining the state's obligation in guaranteeing equality for school-going girls and women in accessing the right to education. The joint amici's submissions will aid the Court in:

- a. Determining the framework for the states' obligation for the promotion of the highest attainable standard of health, with a specific focus on sexual and reproductive rights of adolescent girls and women who are still in school.
- b. Demonstrating that the remedies and reparations for girls and women whose right to education has been violated sought by the applicant and that the Court will deliberate on should strive to have a transformative potential, subverting preexisting structural inequality that may be at the root cause of the discrimination and violence girls and women experience.

## **II. THE DENIAL OF EDUCATION AND THE IMPACT ON STUDENTS' DEVELOPMENT, SELF-ADVANCEMENT, LOST EARNINGS, AND THE POVERTY CYCLE**

9. Article 28 of the Convention on the Rights of the Child provides for the right to education, for every child. This right is framed in various other international and regional mechanisms, which expand on it, and specifically provide for the states obligation in the protection of this right.<sup>8</sup> The right to education is also guaranteed in African human rights instruments,<sup>9</sup> including state obligations to ensure that appropriate measures are taken to eliminate all forms of discrimination in guaranteeing equal opportunity and access to education.<sup>10</sup>

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<sup>8</sup> Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women provides that states have the obligation to take appropriate measures to eliminate discrimination against women, in order to ensure to them equal rights with men in the field of education. Article 17 of the African Charter on Human and Peoples' Rights provides that all children shall have the right to education.

<sup>9</sup> Article 17(1), African Charter on Human and Peoples' Rights; Article 11, African Charter on the Rights and Welfare of the Child; Article 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol); Articles 13 and 20 of the African Youth Charter.

<sup>10</sup> Article 12(1)(a), Maputo Protocol.

10. Article 29 of the Convention on the Rights of the Child adds to the provisions of Article 28, and as interpreted by the Committee on the Rights of the Child in General Comment No. 1 goes further to insist that education has to be child-centered and empowering.<sup>11</sup>
11. Expounding on Article 29(1), and specifically in addressing the aims of education, the Committee on the Rights of the Child in General Comment No. 1 reflected that the outright denial of access to education impairs and undermines a child's capacity to participate fully and responsibly in a free society.<sup>12</sup>
12. In terms of their responsibility to respect the right to education, states parties are under an obligation to avoid measures that would hinder or prevent the enjoyment of the right to education.<sup>13</sup>
13. The Committee on Economic Social and Cultural Rights (the CESCR Committee) have called on states parties to closely monitor policies, institutions, programmes and practices, in an effort to identify and take measures to redress discrimination in accessing education.<sup>14</sup> Where there is inequality in the enjoyment of the right to education, the CESCR Committee have noted that special measures may be applied, as long as these measures do not lead to the maintenance of unequal or separate standards for different groups.<sup>15</sup>
14. The government of Tanzania has acknowledged that "inequity of access and learning outcomes continues to present major challenges."<sup>16</sup> Further, in assessing gender parity in education, the government adds that "girls have higher enrolment rates in primary and lower secondary education, but lag behind boys in the transition rate from primary to secondary."<sup>17</sup> Fifty-eight percent of girls are out of lower secondary school; and 81 percent of girls are out of upper

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<sup>11</sup> Committee on the Rights of the Child, General Comment No. 1: The Aims of Education, U.N. Doc. CRC/GC/2001/1 (April 17, 2001).

<sup>12</sup> Ibid.

<sup>13</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education, U.N. Doc. E/C.12/1999/10 (December 8, 1999), paragraph 47.

<sup>14</sup> Ibid., paragraph 37.

<sup>15</sup> Ibid., paragraph 32.

<sup>16</sup> United Republic of Tanzania, Ministry of Education, Science and Technology, Education Sector Development Plan (2016/17 – 2020/21), Tanzania Mainland, July 2018, <https://www.globalpartnership.org/sites/default/files/2019-04-gpe-tanzania-esp.pdf>, p. 47.

<sup>17</sup> Ibid.

secondary school.<sup>18</sup> Only 27 percent of girls complete lower and upper secondary school.<sup>19</sup> This leads to widespread loss of education among girls.<sup>20</sup>

15. The Committee on the Elimination of Discrimination against Women (the CEDAW Committee) has in General Recommendation No. 36 on the Rights of Women and Girls to Education noted that even where there are adequate facilities, girls and women may be excluded from enjoying their right to education due to cultural barriers based on the persistence of patriarchal systems and traditional roles associated with girls and women.<sup>21</sup> These include forced and child marriage as well as early pregnancy, which further exposes girls to exclusion from school, and in turn makes them vulnerable to violations that undermine their personal autonomy, their health, the sexual and reproductive health and which also foster cyclic and intergenerational poverty.<sup>22</sup> The CEDAW Committee has therefore recommended that State parties take measures to mitigate the impact of harmful cultural practices that hinder the access of girls to school. These include ensuring protection of girls and women from being deprived of education as well as the formulation of re-entry and inclusive policies that enable pregnant girls, young mothers and married girls to remain in, or return to school as well as ensure that all children are in full time education.<sup>23</sup>
16. Similarly, the Committee has outlined how unwanted and unintended pregnancies are caused by a variety of reasons, including sexual violence. The Committee has asserted the need to ensure that the sexual and reproductive health and rights of girls are assured through the prevention of sexual violence and the provision of comprehensive sexuality services and education with a view to

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<sup>18</sup> UNICEF, “Education Overview,” Datasets for Out-of-School rates and Adjusted net attendance rates (valid as of April 2021), <https://data.unicef.org/topic/education/overview/>.

<sup>19</sup> Ibid., Dataset for Completion Rates (valid as of April 2021).

<sup>20</sup> See also Haki Elimu, *A Study on Girls’ Basic Education in Tanzania*, 2019, <https://www.hakielimu.or.tz/download/a-study-on-girls-basic-education-in-tanzania-grti/?wpdmdl=9223&refresh=62a90ee3e0e311655246563>; Human Rights Watch, “I Had a Dream to Finish School” : Barriers to Secondary Education in Tanzania.

<sup>21</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 36 on the Right of Women and Girls to Education, U.N. Doc. CEDAW/C/GC/36 (November 16, 2017), paragraph 51.

<sup>22</sup> Ibid., paragraphs 28 and 52.

<sup>23</sup> Ibid., paragraph 55.

encourage informed sexual behaviour and prevent early pregnancy and sexually transmitted diseases.<sup>24</sup> Ensuring that girls and women are allowed to complete their education leads to numerous long-term benefits, among other the lowering of adolescent pregnancy rates as well as lower rates of infant and maternal mortality.<sup>25</sup>

17. Loss of education, for example when children are excluded from or permanently drop out of formal schooling, has long-term academic and socioeconomic impacts on children. Interruptions during “critical schooling stages of life” – when students are gaining and mastering foundational skills—can lead to worse learning outcomes, exacerbate learning poverty<sup>26</sup> and worsen life prospects for children affected.<sup>27</sup> The loss of education, and low educational attainment, faced by girls have long-term personal and wider societal cumulative impact and can significantly affect girls’ life trajectories.<sup>28</sup> Adolescent girls who abruptly lose education may lose essential components of healthy or full development – including the development of their full agency and autonomous decision making, their full enjoyment of their sexual and reproductive rights,<sup>29</sup> their ability to

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<sup>24</sup> Ibid., paragraph 69 (i).

<sup>25</sup> Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (November 14, 2014), paragraph 63.

<sup>26</sup> The World Bank defines “learning poverty” as “the share of children that by age 10 cannot read and understand a simple text.” See Jaime Saavedra (World Bank), “How to Tackle Learning Poverty? Delivering Education’s Promise to Children Across the World,” December 23, 2019, <https://blogs.worldbank.org/education/how-tackle-learning-poverty-delivering-educations-promise-children-across-world>.

<sup>27</sup> Azevedo, P.J, et al, “Simulating the Potential Impacts of Covid-19 School Closures on Schooling and Learning Outcomes: A Set of Global Estimates,” 2021, *The World Bank Research Observer*, <https://academic.oup.com/wbro/article/36/1/1/6174606?login=true>, p. 7; UNESCO, UNICEF and The World Bank, *The State of the Global Education Crisis: A Path to Recovery*, 2021, <https://documents1.worldbank.org/curated/en/416991638768297704/pdf/The-State-of-the-Global-Education-Crisis-A-Path-to-Recovery.pdf>, pp. 9, 10, 13 - 14.

<sup>28</sup> World Bank Group, Malala Fund et al., *Missed Opportunities: The High Cost of Not Educating Girls*, July 2018, <https://openknowledge.worldbank.org/bitstream/handle/10986/29956/HighCostOfNotEducatingGirls.pdf?sequence=6&isAllowed=y>, p.1.

<sup>29</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 36, paragraph 28.



engage in and contribute to their communities, and their enjoyment of their right to an adequate standard of living.<sup>30</sup>

18. Being excluded from or dropping out of school without completing sufficient levels of education –in particular without completing secondary education<sup>31</sup>– significantly exposes girls to higher rates of poverty and financial hardship.<sup>32</sup> Girls with low levels of education are more likely to face “occupational segregation,” including limited access to paid jobs, reduced labor market opportunities and loss of human capital.<sup>33</sup> For example, in Sierra Leone, where the government adhered to a school ban for pregnant girls for 10 years, adolescent girls affected by the schooling policy during the aftermath of the Ebola outbreak experienced acute impacts, including lower levels of human capital accumulation.<sup>34</sup>
19. In contrast, as the CEDAW Committee and the Committee on the Rights of the Child have observed, the completion of primary and secondary education allows girls to more effectively claim their rights and “increase[es] their opportunities for effective participation in all spheres of life.”<sup>35</sup>

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<sup>30</sup> World Bank Group, Malala Fund et al, *Missed Opportunities: The High Cost of Not Educating Girls*, July 2018, <https://openknowledge.worldbank.org/bitstream/handle/10986/29956/HighCostOfNotEducatingGirls.pdf?sequence=6&isAllowed=y>, p. 18 – 20.

<sup>31</sup> The World Bank observes that “[w]hen a child does not finish secondary school, or does not learn what is needed to function productively as an adult, potential costs are high for boys and girls alike in terms of lost earnings. But not educating girls is especially costly in part because of the relationship between educational attainment, child marriage, and early childbearing, and the risks that they entail for young mothers and their children. In addition, occupational segregation by gender between paid and unpaid (housework and care) work, and between types of employment and sectors, also lead to especially high potential costs for girls... While primary schooling is necessary, it is not sufficient... The gains associated with educational attainment tend to be substantial only with a secondary education.” Ibid., pp. 3 – 4.

<sup>32</sup> Ibid., p. 3.

<sup>33</sup> Ibid., pp. 3, 5; International Growth Centre, *The Economic Lives of Young Women in the Time of Ebola*, Working Paper, December 2018, [https://www.theigc.org/wp-content/uploads/2018/06/Bandiera-et-al-2018-Working-Paper\\_rev-Dec-2018.pdf](https://www.theigc.org/wp-content/uploads/2018/06/Bandiera-et-al-2018-Working-Paper_rev-Dec-2018.pdf).

<sup>34</sup> International Growth Centre, *The Economic Lives of Young Women in the Time of Ebola*.

<sup>35</sup> Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices, paragraph 63.

### **III. FRAMEWORK FOR THE STATE'S OBLIGATION FOR THE PROMOTION OF THE HIGHEST ATTAINABLE STANDARD OF HEALTH, INCLUDING SEXUAL AND REPRODUCTIVE RIGHTS**

20. Article 16 of the Banjul Charter guarantees every person's right to the best attainable state of physical and mental health. Article 14 of the African Charter on the Rights and Welfare of the Child provides a similar right for children, requiring the state to ensure the right for every child to enjoy the best attainable state of physical, mental and spiritual health. Article 14 of the Maputo Protocol also requires state parties to ensure the right to health of women, including sexual and reproductive health is respected and promoted. The right to health includes the right to control fertility, the right to choose any method of contraception and the right to education on family planning. Article 14 (2) of the Maputo Protocol places an obligation on Tanzania to ensure that there are adequate, affordable and accessible health services for women and girls. These services include health care information, education and communication programmes for women, especially those in rural areas.
21. In General Comment No. 2 on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the Maputo Protocol, the African Commission on Human and Peoples' Rights has noted that Africa has a high rate of unwanted pregnancies, and that some adolescent girls become sexually active very early, or are subjected to sexual violence and harmful practices such as forced early marriage which exposes them to early pregnancies before reaching their full physical maturity.<sup>36</sup> The African Commission has interpreted the Protocol to mean that there is a state obligation to ensure that the right to sexual and reproductive health is to be provided without discrimination, and thus states are required to remove impediments to the health services reserved for women, including ideology or belief-based barriers. Moreover, administrative laws, policies and procedures of

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<sup>36</sup> African Commission on Human and Peoples' Rights, General Comment No. 2 on Article 14.1(a), (b), (c) and (f) and Article 14. 2(a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, November 28, 2014, paragraph 17.

health systems and structures cannot restrict access to family planning contraception on the basis of religious beliefs.

22. States are also under an obligation to eliminate administrative laws, policies, procedures and practices, as well as socio-cultural attitudes and standards that impede access to contraception and family planning. Such barriers not only violate the rights of women and girls to life and health, and subject them to additional discrimination, they deprive her of her decision-making power and force her to undergo early pregnancy, unsafe or unwanted pregnancy, and can lead to situations where she will seek unsafe abortion at the risk of her health and life.<sup>37</sup> Therefore to fulfil their obligations under the Banjul Charter and the Protocol, State parties are required to provide complete and accurate information which is necessary for the respect, protection, promotion and enjoyment of health, including availability and information on choice of contraceptive methods.<sup>38</sup>
23. Article 5 of the Banjul Charter prohibits cruel, inhuman or degrading treatments, a prohibition reiterated in Article 4 of the Maputo Protocol. State parties must ensure that women and girls are not treated in an inhumane, cruel or degrading manner, particularly when they seek to benefit from reproductive health services such as contraception or family planning services or safe abortion care, where provided for by national law and the Protocol.<sup>39</sup>
24. The African Commission has underscored the importance of access to sexual and reproductive health information, particularly on education on family planning/contraception and safe abortion, especially for adolescent girls and young people.<sup>40</sup> Tanzania therefore has an obligation to provide to all women and girls comprehensive information and education on sexuality, reproduction and sexual and reproductive rights. The information to be provided must be based on scientific evidence, should take into account the level of maturity of adolescent girls and youth, and should be rolled out in a rights-based manner.

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<sup>37</sup> Ibid., paragraph 27.

<sup>38</sup> Ibid., paragraph 28.

<sup>39</sup> Ibid., paragraph 36.

<sup>40</sup> Ibid., paragraph 51.

25. In addition, in accordance with Articles 2 and 5 of the Maputo Protocol, Tanzania has an obligation to take all appropriate measures, through policies, sensitization and civic education programs, and to remove all obstacles to the enjoyment by women of their rights to sexual and reproductive health. Specific efforts should especially be made to address gender disparities, patriarchal attitudes, harmful traditional practices, prejudices of health care providers, discriminatory laws and policies.<sup>41</sup>
26. At an international level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires Tanzania to ensure that all forms of discrimination against women and girls are eliminated. Article 10 of CEDAW requires state parties to eliminate discrimination in the field of education and reduce the rate of female student drop-out rates, and to provide specific educational information which helps ensure the health and wellbeing such as information and advice on family planning. Article 12 of CEDAW calls on states to eliminate discrimination in health care by ensuring that women access health care services, including those related to family planning. Therefore, the right to access education requires that state parties recognize the various intersecting factors that result in the exclusion of young women and girls from school. This means that in addition to eliminating discriminatory policies and laws, state parties should address factors that result in early pregnancies by providing the full spectrum of sexual and reproductive information and services of good quality, and which are acceptable to women and girls. The Committee on the Elimination of all Forms of Discrimination against Women has noted that acceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.<sup>42</sup>
27. Even within the education system, the CEDAW Committee has noted in General Recommendation No 36, that one way of reducing unintended and unwanted

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<sup>41</sup> Ibid., paragraph 60.

<sup>42</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), U.N. Doc. A/54/38/Rev.1, chap. I (1999), paragraph 22.

pregnancies is through the institution of “mandatory, age-appropriate curricula, at all levels of education, on comprehensive sexuality education, including on sexual and reproductive health and rights, responsible sexual behaviour, prevention of early pregnancy and prevention of sexually transmitted infections.”<sup>43</sup> The Committee interpreted this obligation in line with articles 10(h) and 12 of the Convention and borrowed from its General Recommendation No. 24 (1999) on women and health, stating that particular attention should be paid to the health education of adolescents which should include aspects of information and counselling on gender equality, prevention of sexually transmitted diseases and reproductive and sexual health and rights.<sup>44</sup>

28. Under the International Covenant on Economic Social and Cultural Rights (ICESCR) states are obligated to ensure the right to health. In its General Comment No. 14 on the right to the highest attainable standard of health, the Committee on Economic Social and Cultural Rights has set forth four interrelated and essential elements of the right to health: availability, accessibility, acceptability and quality.<sup>45</sup> In turn, accessibility has overlapping dimensions, including information accessibility, which includes the right to seek, receive and impart information and ideas concerning health issues.<sup>46</sup>
29. To eliminate discrimination against women, a comprehensive national strategy should be developed that aims for the promotion of women’s right to health throughout their life span. The realization of women’s right to health requires that access is provided without discrimination, and there should be no barriers that interfere with access to health services, education and information, including in the area of sexual and reproductive health.<sup>47</sup> In addition, states parties are to provide a safe and supportive environment for adolescents, that ensures the

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<sup>43</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 36, paragraph 68.

<sup>44</sup> See, Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, paragraphs 23, 31 (b).

<sup>45</sup> Committee on Economic Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4 (August 11, 2000), paragraph 12.

<sup>46</sup> Ibid., paragraph 12 (b) (iv).

<sup>47</sup> Ibid., paragraph 21.

opportunity to fully participate in decisions affecting their health, to build life skills, to acquire appropriate information, to receive counselling and to negotiate the health behavior choices they make.<sup>48</sup> The realization of the right to health of adolescents is dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.<sup>49</sup>

30. In General Comment No. 22 (2016) on the right to sexual and reproductive health, the Committee on Economic, Social and Cultural Rights has observed that adolescents and young people are among those groups that may be disproportionately affected by multiple forms of discrimination, or “intersectional discrimination.” Effectively addressing intersectional discrimination requires states to have an awareness of and take deliberate measures to overcome “the often exacerbated impact that intersectional discrimination has on the realization of the right to sexual and reproductive health.”<sup>50</sup> It has also noted the specific interdependence of the right to health and the right to education, stating that the right to education requires the inclusion of information on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate, and held that there is a specific legal obligation under Article 12 of the Convention to ensure that adolescents have full access to appropriate information on sexual and reproductive health, including family planning and contraceptives.<sup>51</sup>

31. The Convention on the Rights of the Child also places obligations on the state to ensure the right to health. The Committee on the Rights of the Child has stated in General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, “States parties have the obligation to ensure that all adolescents, both in and out of school, have access to adequate information that is essential for their health and development in order to make

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<sup>48</sup> Ibid., paragraph 23.

<sup>49</sup> Ibid.

<sup>50</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health, U.N. Doc. E/C.12/GC/22 (May 2, 2016), paragraph 30.

<sup>51</sup> Ibid., paragraph 44.

appropriate health behaviour choices. This should include information on ... appropriate sexual and reproductive information.”<sup>52</sup> The right to be heard is inextricably linked to the right to have children’s best interests taken as a primary consideration.<sup>53</sup> The Committee on the Rights of the Child has noted that states should ensure young people “can make autonomous and informed decisions on their reproductive health.”<sup>54</sup>

32. Further, following the Committee on the Rights of the Child’s analysis in General Comment No 4 on Adolescent Health and Development in the Context of the Convention on the Rights of the Child, and General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, states should introduce comprehensive and proactive measures to address factors that cause adolescents to leave school, including their expulsion from schools.<sup>55</sup> Some of these measures include the provision of adolescents with access to sexual and reproductive information. The Committee has noted that a lack of comprehensive services and education in relation to sexual and reproductive health contributes to adolescents being at risk of dying or suffering from serious and lifelong injuries in pregnancy and during childbirth.
33. To mitigate against this, all adolescents should be provided with access to free, confidential, adolescent-responsive and nondiscriminatory sexual and reproductive health services, including information and education on family planning, contraception, including emergency contraception, prevention, care and treatment of sexually transmitted infections, counselling, pre-conception care, maternal health services, safe abortion and post-abortion services, and

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<sup>52</sup> Committee on the Rights of the Child, General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, U.N. Doc. CRC/C/GC/4 (May 29, 2013), paragraph 78.

<sup>53</sup> Ibid., paragraph 43. See also Committee on the Rights of the Child, General Comment No. 12: The Right of the Child to Be Heard, U.N. Doc. CRC/C/GC/12 (July 20, 2009), paragraph 68.

<sup>54</sup> Committee on the Rights of the Child, General comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24), U.N. Doc. CRC/C/GC/15 (April 17, 2013), paragraph 24.

<sup>55</sup> Committee on the Rights of the Child, General Comment No. 20 on the Implementation of the Rights of the Child During Adolescence, U.N. Doc. CRC/C/GC/20 (December 6, 2016), paragraph 69; Committee on the Rights of the Child, General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4 (July 1, 2003), paragraph 17.

menstrual hygiene. As such, there is a state obligation to adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination.<sup>56</sup>

34. Moreover, states should also ensure that essential medicines are available, including a wide range of contraceptive methods, such as condoms and emergency contraception, medicines for abortion and for post-abortion care, and medicines, including generic medicines, for the prevention and treatment of sexually transmitted infections and HIV.<sup>57</sup>

#### **IV. FRAMEWORK FOR THE REPARATION FOR GIRLS AND WOMEN WHO THROUGH PUNITIVE POLICIES HAVE BEEN PREVENTED FROM ATTAINING THE RIGHT TO EDUCATION**

35. The right to an effective remedy has been well established in various regional and international law and treaties and it is not contested that victims of human rights abuses and violations have a right to effective remedy and reparation. In the Banjul Charter, the right is an aspect of the general obligation requiring state parties to give effect to the norms contained therein. This is bolstered by references to remedies in the formulation of certain rights. Article 1 of the Banjul Charter provides: ‘The member states of the Organisation of African Unity [AU], parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.’ Articles 7(1) & 21(2) of the African Charter provide for recourse to national tribunals for human rights violations and compensation for spoliation of natural resources respectively; while Article 10 establishes expressly the right to compensation for miscarriage of justice.

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<sup>56</sup> Committee on the Rights of the Child, General Comment No. 20, paragraphs 58-60.

<sup>57</sup> Ibid., paragraph 63. See also Committee on the Rights of the Child, General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health, U.N. Doc. CRC/C/GC/15 (April 17, 2013), paragraphs 31, 56, 57.



36. Article 25(a) of the Maputo Protocol requires state parties to ‘provide for appropriate remedies to any woman whose rights or freedoms, as herein recognized, have been violated.’
37. As this Court has observed, “any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation.”<sup>58</sup> Indeed, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights gives this Court the express power to provide remedies, providing, “If the Court finds that there has been [a] violation of a human or peoples’ right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.”<sup>59</sup> As the Permanent Court of International Justice, the predecessor to the International Court of Justice, observed in the *Chorzow Factory* case, a core principle of remedies is that “reparation must, as far as possible, wipe out the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act not been committed.”<sup>60</sup>
38. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the United Nations General Assembly in 2005, outline that remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.<sup>61</sup> The Basic

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<sup>58</sup> *Reverend Christopher R. Mtikila v. Tanzania*, App. No. 011/2011, Ruling on Reparations, June 13, 2014, paragraph 27.

<sup>59</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 9 June 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III) (entered into force 25 January 2004).

<sup>60</sup> *Case Concerning the Factory at Chorzow (Germany v. Poland)*, 1928 PCIJ Rep. Series A No. 17, p. 47. See also *Mtikila v. Tanzania*, App. No. 011/2011, paragraph 27 (citing *Chorzow Factory* as the “*locus classicus*” on reparations).

<sup>61</sup> United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>, paragraph 11.

Principles and Guidelines emphasize that they do not entail new international or domestic legal obligations, but rather identify mechanisms, modalities, procedures and methods for existing legal obligations.<sup>62</sup>

39. The Basic Guidelines and Principles affirm that the modality of reparation must be proportional to the gravity of the violation and can include the following forms: **restitution**, as those measures to restore the victim to his/her original situation before the violation, including restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property; **compensation** for any economically assessable damage, as appropriate and proportional to the gravity of the violation including physical or mental harm, lost opportunities including employment, education and social benefits, and material and moral damages; measures of rehabilitation, including medical and psychological care as well as legal and social services; **measures of satisfaction** including, among others, the verification of the facts and full and public disclosure of the truth, the search for the whereabouts of the disappeared, public apologies, judicial and administrative sanctions against persons liable for the violations, commemorations and tributes to the victims; and **guarantees of non-repetition**, including measures which contribute to prevention such as ensuring effective civilian control of military and security forces, protecting human rights defenders, providing human rights education and reviewing and reforming laws contributing to or allowing gross violations of international human rights law.<sup>63</sup>
40. The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, developed by women's rights advocates and activists as well as survivors of sexual violence in situations of conflict, from Africa, Asia, Europe, Central, North and South America, applies the basic principles of the right to remedy, including access to justice and key aspects for access to reparation, to the specific situation of women and girls.<sup>64</sup> It lays out the principles to be considered in providing reparations

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<sup>62</sup> Ibid., preamble.

<sup>63</sup> Ibid., paragraph 18.

<sup>64</sup> Nairobi Declaration on Women's and Girls' Right to a Remedy, 2007, [https://www.fidh.org/IMG/pdf/NAIROBI\\_DECLARATIONeng.pdf](https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf).

including non-discrimination and the inclusion of women and girls in decision-making at all levels.

41. The harms caused by Tanzania's school exclusion policy are immediate, numerous, cascading, and effectively permanent. In line with this Court's jurisprudence and persuasive authority from other tribunals, remedies ordered by this Court appropriately take into account the nature and extent of the human rights violations to be corrected and bear in mind the need for "proportionality between the measure of restoration sought and the extent of the violation established" and "the ultimate purpose of upholding fairness."<sup>65</sup>
42. In crafting appropriate remedies, the Court should be mindful of the State's obligations, particularly where, as with the rights implicated in this case, these obligations are overlapping and interdependent.
43. As the International Commission of Jurists has observed, "International human rights law not only recognizes the human rights of every human being, but it also establishes a concurrent obligation on States to ensure, secure or guarantee the effective enjoyment of human rights to all within their jurisdiction."<sup>66</sup>
44. The positive obligation on States to ensure effective enjoyment of human rights requires that the State adopt all necessary legislative and other measures to give effect to the rights guaranteed in international law,<sup>67</sup> an obligation affirmed many times by international human rights bodies. As the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have made clear, in order to comply fully with its duty to give effect to human rights, the State has to ensure human rights through its entire "legal, political and institutional system", and to organize "the governmental apparatus and, in general, all the structures

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<sup>65</sup> *Armand Guehi v. Tanzania*, App. No. 001/2015, Judgment, ACtHPR, December 7, 2018, paragraph 164.

<sup>66</sup> International Commission of Jurists, *The Right to a Remedy and Reparations for Gross Human Rights Violations, A Practitioners' Guide*, October 2018, <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>, p. 19.

<sup>67</sup> Article 8 of the United Nations Declaration of Human Rights, Article 39 of the Convention on the Rights of the Child, Article 25 of the Maputo Protocol.

through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”<sup>68</sup>

45. States have multidimensional obligations to respect, protect and fulfil human rights.<sup>69</sup> The duty to respect human rights entails, in turn, the obligation to refrain from acts or omissions that would violate human rights; the duty to protect can be understood as the duty to prevent acts that would impede the enjoyment of their rights; and the duty to fulfil includes obligations to provide and to facilitate, including by promotion through measures such as dissemination, training and education.<sup>70</sup>
46. The positive obligation of the State to provide a remedy and provide adequate reparations involves ensuring the rights of girls and women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services for survivors of violence.<sup>71</sup> The notion of reparation may also include elements of restorative justice and the need to address the pre-existing inequalities, injustices, prejudices and biases or other societal perceptions and practices that enabled violations to occur, including discrimination.<sup>72</sup>
47. At the regional level, in the case of *Jawara v The Gambia*, the African Commission has elaborated on the elements of a remedy, namely on its availability, effectiveness and sufficiency:

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<sup>68</sup> *Velásquez-Rodríguez v Honduras*, Judgment of 29 July 1988, Inter-Am. Ct. H.R. (Ser. C) No. 4, paragraph 166.

<sup>69</sup> See, for example, Committee on Economic, Social and Cultural Rights, General Comment No. 13, paragraph 46; Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4 (August 11, 2000), paragraph 33; Committee on Economic, Social and Cultural Rights, General Comment No. 22 on the Right to Sexual and Reproductive Health, U.N. Doc. E/C.12/GC/22 (May 2, 2016), paragraph 39; Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of State Parties under Article 2 of the CEDAW, U.N. Doc. CEDAW/C/GC/28 (December 16, 2010).

<sup>70</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, paragraphs 20 - 21; Committee on Economic, Social and Cultural Rights, General Comment No. 22, paragraph 29.

<sup>71</sup> Human Rights Council, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo, U.N. Doc. A/HRC/14/22 (April 23, 2010), paragraph 23.

<sup>72</sup> *Ibid.*, paragraphs 12, 56.

“A remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint.”<sup>73</sup>

48. Although the African Commission has elaborated three aspects of a remedy, distinguishing effectiveness from availability (accessibility) and sufficiency, it is submitted that all three elements should be considered, as used in its literature and jurisprudence, constitutive of a remedy that is ‘effective’ for human rights violations under the African Charter.<sup>74</sup>
49. As is evident from this jurisprudence, for a remedy to be considered effective, substantive as well as procedural benchmarks must be met. As reiterated in *Constitutional Rights Project (in respect of Akamu & Others v Nigeria)*, the African Commission has repeatedly stated that domestic avenues of recourse adopted must ‘vindicate a right.’<sup>75</sup>
50. In *Lohe Issa Konate vs Burkina Faso*,<sup>76</sup> the African Court of Human Rights outlined the principles applicable to reparation: a State found liable of an internationally wrongful act must make full reparation for damage caused; such reparation shall include all the damages suffered by the victim, considering the circumstances of each case; there must be a causal link between the established wrongful act and the alleged prejudice; the burden of proof lies with the Applicant to show justification for the amounts claimed.
51. In *Reverend Christopher Mtikila v Tanzania*,<sup>77</sup> the African Court reiterated that a remedy should restore a victim failing which compensation for a violation should correspond to the value which a restitution in kind would bear.

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<sup>73</sup> Communication Nos. 147/95-149/96, African Commission on Human and People’s Rights (May 11, 2000), paragraph 32.

<sup>74</sup> In the Commission’s Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Fair Trial Guidelines) Part C(b), the Commission notes that the right to an effective remedy includes access to justice, reparation for the harm suffered and access to the information concerning the violations.

<sup>75</sup> *Constitutional Rights Project (in respect of Akamu & Others) v Nigeria*, Communication No. 60/91, African Commission on Human and Peoples’ Rights, in (2000) AHRLR 180 (ACHPR 1995), paragraph 8.

<sup>76</sup> App. No. 004/2013, Judgment on Reparations, ACtHPR, June 3, 2016, paragraph 15.

<sup>77</sup> App. No. 011/2011, Ruling on Reparations, ACtHPR, June 13, 2014.

52. In *Beneficiaries of the late Norbert Zongo v Burkina Faso*,<sup>78</sup> the African Court reiterated this principle in subsequent cases and highlighted that reparation can take many forms including restitution, compensation and satisfaction. Aside from compensation for pecuniary and non-pecuniary damages, the court has also ordered publication of its decisions within the domestic jurisdiction and the resumption of investigations, as it did in *Lohe Issa Konate v Burkina Faso*.<sup>79</sup>
53. The African Commission has granted remedies for violations of rights in almost all of the communications on merits albeit with the remedies crafted with great deference to the states concerned. The Commission's practice has also been to award remedies that are widely formulated such as ordering the state to take measures to align them to the Charter. Similar to the other regional bodies the Commission often awards compensation. The quantum of damages has however consistently been left to the states to quantify. The *EIPR v Egypt* case marked a departure from this practice with the Commission stating the amount to be paid to victims as compensation.<sup>80</sup> It also stated that any amount of compensation paid to victims must be in line with international standards.
54. The Joint ACHPR and ACERWC General Comment on Ending Child Marriage provides guidance to States on reparation to victims as follows: "As part of their restitution efforts, States Parties must ensure that girls who are pregnant and girls who have had children are allowed and assisted to return to school and that alternative vocational training programmes are offered to all victims of child marriage."<sup>81</sup> Further "[r]ehabilitation for victims of child marriage should aim to restore, as far as possible, their independence, physical, mental, cultural, spiritual and vocational ability and the full inclusion and participation in society. States Parties must provide specialised, appropriate and accessible rehabilitative service to the victims of child marriage which may include legal aid services, victim support

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<sup>78</sup> App. No. 013/2011, Judgment on Reparations, ACtHPR, June 5, 2015.

<sup>79</sup> App. No. 004/2013, Judgment on Reparations, paragraph 60 (vii).

<sup>80</sup> *Egyptian Initiative for Personal Rights v. Egypt*, Communication No. 323/06, African Commission on Human and Peoples' Rights (December 12-16, 2011), paragraph 275 (iv).

<sup>81</sup> Joint General Comment of the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on Ending Child Marriage (2017), paragraph 31.

and empowerment services, access to healthcare and medical services, psychosocial and protection services, re-integrative and social services and alternative vocational training.”<sup>82</sup>

55. The UN Special Rapporteur on violence against women, its causes and consequences has observed, “Reparation measures express the obligation of the State to provide redress to victims when, by action or omission, it has infringed against their rights. Social policy and development measures are measures addressed at the entire population to ensure that each and every person can meaningfully enjoy all rights recognized by the State. They are inspired by notions of redistributive justice and should primarily target those sectors of the population which have traditionally been discriminated against and structurally disadvantaged, including women.”<sup>83</sup>
56. In recognizing the violation of the rights of women and girls, Courts should therefore make the effort not just to restore the victims to where they were before the violations occurred but rather to ensure that reparations offered have a transformative potential. The Special Rapporteur states that reparations should aspire, to the extent possible, to subvert, instead of reinforce, preexisting structural inequality that may be at the root causes of the violence the women experience before, during and after the conflict”.<sup>84</sup> The African Commission has adopted this approach, as in the case of *COHRE v Sudan*,<sup>85</sup> where the Commission recommended a wide range of measures such as investigation of abuses, law reforms, measures to ensure effective remedies for victims, rehabilitation of economic and social infrastructures, establishment of national reconciliation forum to address sources of conflict and desist from enacting amnesty laws. On the basis of Rule 112 of its rules titled “Follow up on the recommendations of the Commission” the Commission has, in a number of decisions, directed states to report to it on the measures undertaken to implement its recommendations.

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<sup>82</sup> Ibid., paragraph 59.

<sup>83</sup> Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo, U.N. Doc. /A/HRC/14/22, paragraph 20.

<sup>84</sup> Ibid., paragraph 31.

<sup>85</sup> *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communication Nos. 279/03-296/05, [2009] ACHPR (May 27, 2009).

57. In *WAVES v Sierra Leone*, the ECOWAS Court of Justice in its judgement recommended a number of measures to be undertaken by the State to ensure reparation of violations suffered by women and girls in Sierra Leone, including requiring the State to develop strategies, programmes and nationwide campaigns that focus on reversing negative societal attitudes that support the discrimination and bias against pregnant girls and further ensuring that the strategies and programmes enable teenage mothers to attend school and/or the development of income-generation driven programmes for pregnant girls.
58. Similarly, as in *Guzmán Albarracín y Otras v. Ecuador*, the Inter-American Court of Human Rights has required States to publish a summary of the judgement of the Court in the Official Gazette and a national newspaper with widespread circulation and further hold an act of public acknowledgment of international responsibility and in specific reference to the violations suffered.<sup>86</sup> In the *Yean and Bosico Children Case*, the Inter-American Court ordered the State to “organize a public act to acknowledge its international responsibility” for its denial of access to education “with the participation of the authorities, the victims and their next of kin,” and to disseminate the apology through radio, press, and television. In its order, the Inter-American Court observed that “[t]his act would be a measure of satisfaction and would serve as a guarantee of non-repetition.”<sup>87</sup>
59. In *Monica Carabantes Galleguillos v. Chile*, a case brought to the Inter-American Commission on Human Rights involving a girl who was expelled from a subsidized private school for being pregnant, a friendly settlement included the provision of a scholarship for the girl to complete her education along with “symbolic reparation” through the publication of the measures taken by the State and a public recognition of the rights that had been violated.<sup>88</sup>

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<sup>86</sup> *Guzmán Albarracín y Otras v. Ecuador*, Judgment of June 24, 2020, Inter-Am. Ct. H.R. (Ser. C) No. 405, paragraphs 231-232. See also, for example, *Juvenile Reeducation Institute v. Paraguay*, Judgment of September 2, 2004 (Preliminary Objections, Merits, Reparations, and Costs), Inter-Am. Ct. H.R. (Ser. C) No. 112, paragraph 340.

<sup>87</sup> *The Yean and Bosico Children v. Dominican Republic*, Judgment of September 8, 2005 (Preliminary Objections, Merits, Reparations and Costs), Inter-Am. Ct. H.R. (Ser. C) No. 130, paragraph 235.

<sup>88</sup> *Monica Carabantes Galleguillos v. Chile*, Petition No. 12.046, Friendly Settlement, Inter-Am. Comm’n H.R., Report No. 33/02 (March 12, 2002), paragraphs 14-15.



60. In the case of *Juvenile Re-education Institute v. Paraguay*, where the Inter-American Court found that the State had failed to provide detained children with access to information, the remedy included the establishment of educational programmes, job-training programmes, and psychological and medical assistance for the victims.<sup>89</sup>
61. In the case of *Aloeboetoe et al. v. Suriname*, the Inter-American Court found that it was not sufficient to grant compensation to allow children to attend school where the school in the affected community had been closed down. As part of the compensation due, the State was under an obligation to reopen the school and staff it with teachers and administrative staff to allow it to function on a permanent basis.<sup>90</sup>
62. Another significant element of the Inter-American Court's approach to reparations is a consideration of structural discrimination. As the Inter-American Court observed in the "*Cotton Field*" Case, reparations in the context of structural discrimination against women and girls "must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable."<sup>91</sup>
63. The Inter-American Court has also ordered guarantees of non-repetition, including improved data collection, detecting and reporting potential violations, training of relevant personnel and providing guidance, support and assistance to victims of school-related sexual violence.<sup>92</sup>
64. Under Article 7 of the African Charter and article 25(a) of the Maputo Protocol, and in line with the jurisprudence of this Court and that of the African Commission and the international principles outlined above, the Respondent State has an obligation to satisfy the violation of the rights of women and girls who have been precluded from attaining their right to education due to the application of a

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<sup>89</sup> "*Juvenile Reeducation Institute*" v. *Paraguay*, paragraph 340.

<sup>90</sup> *Aloeboetoe et al. v. Suriname*, Inter-Am. Ct. H.R. Judgment of September 10, 1993, (Reparations and Costs), Inter-Am.Ct.H.R., (Ser. C) No. 15, paragraph 96.

<sup>91</sup> *González et al. ("Cotton Field") v. Mexico*, Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs), Inter-Am. Ct. H.R. (Ser. C) No. 205, paragraph 450.

<sup>92</sup> *Guzmán Albarracín y Otras v. Ecuador*, paragraph 245.

discriminatory policy over decades. Beyond a declaration of violation of rights, the State is obligated to provide transformative remedies.

65. In this case, as outlined in the Basic Guidelines, the Court should recognize the victims of the violations outlined by the Applicants. The definition of “victim” endorsed by the Basic Principles and Guidelines assumes that, although the violation of a right is a precondition for the right to reparation, the relationship between the right and the violation, for purposes of reparation, is mediated by the notion of harm.
66. The Court should consider fashioning remedies that address the rights violations taking into account the long-lasting effect of the harm that was meted out on the victims and their beneficiaries. The remedies granted by the Court should also be cognizant of the entrenched patriarchal and discriminatory policies that have led women and girls to experience a vicious cycle of poverty due to the violation of their right to education and their right to the highest attainable standard of health, including sexual and reproductive health. As iterated above, the remedies granted by the Court should aim not just at restoring the victim to their state before the violations but should have a transformative potential.

## V. CONCLUSION

67. This case presents the African Court with an opportunity to generate an important precedent in relation to states obligations to guarantee adolescents’ right to education and health, recognizing the interrelated nature of these rights. States’ efforts to respect, protect, and fulfil these rights should include adequate information and safeguards for the sexual and reproductive rights of girls and women and should recognize the critical role of education in the protection and promotion of sexual and reproductive rights. States should also be mindful of the foundational nature of the rights to education and health as essential to the enjoyment of other human rights.
68. As one of this Court’s first cases on matters related to the rights of women and girls, and specifically on girls’ right to education, the case also provides the court with

opportunity to develop its jurisprudence on appropriate and commensurate remedies for the violation of the right to education and interrelated rights.

69. Considering relevant international and regional standards, the jurisprudence of this Court, persuasive authority from other tribunals and expert bodies, and the analysis set forth above, the Initiative for Strategic Litigation in Africa, Human Rights Watch and Women's Link Worldwide respectfully invite the African Court to reflect the following elements in its consideration of and decision on this case:

- To ensure full enjoyment of the right to education, States should address structural discrimination, including cultural barriers based on stereotyped or traditional roles associated with girls and women. The removal of barriers to the completion of primary and secondary education should include steps to protect girls and women from being deprived of education because of pregnancy or motherhood, as well as measures to enable and support pregnant girls, young mothers and married girls to remain in or return to school.
- Respect for and protection and promotion of sexual and reproductive health and rights are essential to the full enjoyment of the right to the best attainable state of physical and mental health, the right to education, and other rights.
- Remedies for violations of the right to education, the right to health, and the cascading adverse impact of these violations on the enjoyment of other rights should reflect the full range of reparations under international human rights law identified in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. In line with the analysis of the Inter-American Court of Human Rights and the UN Special Rapporteur on violence against women, remedies should be transformative, addressing and correcting preexisting structural inequality.