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Mandate of the Working Group on Discrimination against Women and Girls

**Third-party submission by the
United Nations Human Rights Council's Working Group on
Discrimination against Women and Girls¹**

On Communication no. 0012/Com/001/2019

*Legal and Human Rights Centre and Center for Reproductive Rights (on behalf of
Tanzanian girls) against the United Republic of Tanzania*

**Under consideration by the
African Committee of Experts on the Rights and Welfare of the Child**

Geneva, 13 June 2021

¹ Ms Elizabeth Broderick (Chair), Ms Melissa Upreti (Vice Chair), Ms Dorothy Estrada-Tanck, Ms Ivana Radačić, and Ms Meskerem Geset Techane

I. Introduction

1. The African Committee of Experts on the Rights and Welfare of the Child (the Committee) in its letter transmitted on 16 April 2021 granted acceptance to the request by the UN Working Group on Discrimination against Women and Girls (the Working Group) to provide an *amicus curiae* brief in relation to Communication no. 0012/Com/001/2019 under the African Charter on the Rights and Welfare of the Child, in line with section XVII (2) of the Committee's revised Guidelines for the Consideration of Communications.
2. This brief is provided on a voluntary basis for the Committee's consideration without prejudice to, and should not be considered as a waiver, express or implied of, the privileges and immunities of the United Nations, its officials, and experts on missions, which include the experts of the Working Group on Discrimination against Women and Girls, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations. It shall not also be construed as a waiver by the Working Group of communications with State in accordance with the exercise of its mandate.
3. The Working Group on Discrimination against Women and Girls is an independent expert mechanism, known as Special Procedures, of the United Nations Human Rights Council (HRC), which is an inter-governmental body of the United Nations responsible for strengthening the promotion and protection of human rights globally. The HRC established the mandate of the Working Group in October 2010 in recognition of the fact that discrimination against women persists, despite progress made over the years in integrating women's human rights fully into domestic law through constitutional and legal reforms in many countries.² The Working Group is tasked with developing a dialogue with States and other actors on laws and practices that discriminate against women and girls or have a discriminatory impact on them. To fulfil its mandate, the Working Group conducts country visits at the invitation of the relevant Government; addresses communications to Governments on allegations of human rights violations falling within its mandate; and submits an annual thematic report to the HRC. It also acts as *amicus curiae* in cases which raise issues of discrimination against women and girls.³
4. Through the submission of this brief, the Working Group wishes to highlight the international human rights norms and standards relevant to the case under consideration by the Committee and the related international obligations of the State. The Working

² In June 2019 through resolution A/HRC/RES/41/6, the mandate name was changed from the Working Group on discrimination against women in law and practice to the Working Group on discrimination against women and girls with the view to examine the specific forms of discrimination that girls face and mainstream across all its work, and integrate age dimension in the fulfilment of its mandate (A/HRC/RES/41/6, para 11).

³ Amicus Curiae Briefs submitted by the Working Group are available at [OHCHR | Amicus Curiae](#)

Group notes that it has previously engaged with the Government of Tanzania on matters similar to those raised in the communication under consideration by the Committee.⁴

II. International human rights norms and standards

5. The case before the Committee concerns the lawfulness of the practice to subject Tanzanian girls to non-consensual mandatory pregnancy testing in schools; the expulsion of pregnant and married girls from schools and the denial of re-entry after childbirth; the illegal detention of pregnant girls; as well as the lack of access to reproductive and sexual health information and services which result in early pregnancies. The Working Group notes that the facts presented in the communication raise important questions regarding women's and girls' human rights and gender-based discrimination against women and girls, and might constitute a violation of Tanzanian girls' fundamental rights, including the right to equality and non-discrimination, the right to education, the right to health and the right to be protected from gender-based violence. In the present brief, the Working Group will outline international human rights norms and standards concerning these areas.

6. The Working Group recalls that Tanzania is party to nearly all the core international human rights treaties⁵ and that the African Charter on Human and Peoples' Rights, ratified by Tanzania in 1984, stipulates that "[t]he State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions" (art. 18).

Right to equality and non-discrimination

7. The Working Group recalls that the principles of equality, dignity, and non-discrimination are proclaimed in the Charter of the United Nations and are at the core of all the international human rights instruments. The Universal Declaration on Human Rights stipulates in Article 1 that "All human beings are born free and equal in dignity and rights". The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both acceded by Tanzania in 1976, are also founded on the recognition of the inherent dignity and the equal and inalienable rights of all humans. Moreover, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), ratified by Tanzania in 1985, prohibits discrimination against women in all spheres of their lives. Tanzania is also a party to the Convention against Discrimination in Education, ratified in 1979, which imposes on States the obligation to eliminate and prevent any form of

⁴See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23657> ; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23260>

⁵ See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=186&Lang=EN

discrimination in education and bans depriving any person or group of persons of access to education of any type or at any level.

8. Article 2 of ICCPR stipulates that States shall respect and ensure the rights of all individuals without distinction of any kind. Likewise, ICESCR lays down that States shall guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind. Both Covenants prohibit discrimination based on sex, gender and other status, such as marital status and age, among others.⁶ Furthermore, Article 3 of both Covenants provide that States shall ensure the equal right of men and women to the enjoyment of all human rights. Similarly, the Convention on the Rights of the Child (CRC), ratified by Tanzania in 1991, stipulates that States shall respect and ensure the rights of children without discrimination of any kind, including sex and other status (Article 2), which also resonates with the State's obligation under the African Charter on the Rights and Welfare of the Child (Article 3).⁷ According to these international standards discrimination bases on pregnancy or reproductive status contravenes the rights to be free from discrimination of any kind.
9. The elimination of discrimination, in law and practice, is an immediate obligation of the State, which entails, on the one hand, ensuring, for example, that the State's constitution, laws and policies are not discriminatory; and, on the other, adopting the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive discrimination, taking into account also the effects of multiple and intersecting forms of discrimination.⁸ Among these measures are those directed at eliminating prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women.⁹
10. Article 5 of the CEDAW calls for the adoption of measures aimed at modifying "the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". The same is enshrined under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) Article 2, ratified by Tanzania in 2007. The Working Group has underscored, in one of its thematic reports, that "this provision establishes a legal basis for the primacy of women's right to equality over discriminatory cultural patterns of conduct, including those stemming from religious edicts".¹⁰ As clarified by the Human Rights Committee, traditional, historical, religious or cultural attitudes cannot be used to justify violations

⁶ See for example CESCR, General Comment no. 20, UN Doc. E/C.12/GC/20, 2 July 2009.

⁷ Tanzania has ratified the ACRWC on 16/03/ 2003.

⁸ See, for example, CESCR, General Comment no. 20 on non-discrimination in economic, social and cultural rights UN Doc. E/C.12/GC/20, 2 July 2009.

⁹ CESCR, General Comment no. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, UN Doc. E/C.12/2005/4, 11 August 2005, para. 20.

¹⁰ A/HRC/29/40, para. 15.

of women's rights and the State has an obligation to take measures to overcome them.¹¹ The Human Rights Committee has emphasized that States have an obligation to eradicate, both through legislation and any other appropriate measures, all cultural or religious practices which jeopardize the freedom and well-being of female children.¹²

11. As set out in Article 10 of CEDAW, States are required to take all appropriate measures to eliminate discrimination against women, irrespective of their marital status, in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women, "the same conditions for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas." Furthermore, States have also the obligation to repeal or reform discriminatory laws, policies and practices in the area of sexual and reproductive health, including eradicating social barriers in terms of norms or beliefs that inhibit women, girls and adolescents from autonomously exercising their right to sexual and reproductive health¹³ (See further below).
12. In its reports, the Working Group has highlighted the continued reliance of States on cultural justifications for repealing legislation, adopting discriminatory laws or for failing to respect international human rights law and standards and fulfilling their obligations to realize women's and girls' rights and achieve gender equality.¹⁴ It has also drawn attention to the fact that girl children and adolescent girls face unique challenges from multiple and intersecting forms of discrimination, which are often neglected, and that persisting gender stereotypes may deprive them of agency and opportunities.¹⁵ It has recommended, among others, that States repeal all discriminatory laws and practices, including those that discriminate against women on traditional, cultural or religious grounds and laws that exclusively or disproportionately criminalize action or behaviour by women and girls; and that they institute measures to combat discriminatory social norms and harmful stereotypes about women's and girls' bodies, roles and capabilities.¹⁶
13. The Working Groups further recalls that the right to equality and non-discrimination entails also the obligation of the State to integrate, in formal and non-formal education, the principle of equality between men and women in the enjoyment of economic, social and cultural rights, which appears to be incompatible with the practices described in the communication under consideration by the Committee.¹⁷

¹¹ HRC, General Comment no. 28 on the equality of rights between men and women, UN Doc. CCPR/C/21/Rev.1/Add.10, para. 5.

¹² *Ibid.*, para. 28.

¹³ CESCR, General Comment no. 22 on the right to sexual and reproductive health, UN Doc. E/C.12/GC/22, 2 May 2017, paras 28 and 48.

¹⁴ See, for example, A/HRC/38/44.

¹⁵ *Ibid.*

¹⁶ A/HRC/38/44, para. 90.

¹⁷ CESCR, General Comment no. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, UN Doc. E/C.12/2005/4, 11 August 2005, para. 21. See also ICESCR, Article 13; ICEDAW, Article 10 (1) (c); Convention on the Rights of the Child, Article 29, among others.

14. Regulations requiring the expulsion of students from schools if they enter into marriage or if they are found pregnant constitute discriminatory law that are prohibited under the relevant international human rights standards. Laws that target girls on the ground of their marital or pregnancy status systematically discriminate them. Regardless of their marital status or pregnancy status, girls shall enjoy equal rights and protection under the law and States have, thus, the obligation to eliminate any laws that are discriminatory. The UN Committee on the Rights of the Child (CRC Committee) has already pronounced that such a practice constitutes discrimination under the Convention.¹⁸ The Community Court of Justice of Economic Community of West African States (ECOWAS Court) also rules the institution of a policy barring pregnant girls from school to be discriminatory and in violation of obligations under international law.¹⁹ States have the obligation to ensure all children enjoy their rights to education without any discrimination and the use of any status, including marital status, pregnancy or other to exclude them from school would amount to discrimination, in contravention to international human rights law.

Right to education

15. As stressed by the Committee on Economic Social and Cultural Rights (CESCR) and the Committee on the Elimination of All forms of Discrimination against Women (CEDAW Committee), not only education is a human right in itself, but it is also an indispensable means of realizing other human rights and ensuring gender equality and the empowerment of women.²⁰ States have an obligation under international human rights law to guarantee education to all individuals, without discrimination, by ensuring its availability, accessibility, acceptability and adaptability,²¹ and to promote equal participation of men and women, boys and girls, in schools and other education programmes.²² In the same vein, the CEDAW Committee has clarified that States have an obligation to protect girls and women from any form of discrimination that denies them access to all levels of education and to ensure that, where that occurs, they have recourse to avenues of justice.²³ The UN Special Rapporteur on the Right to Education also underscored that promoting and protecting the right to education and promoting

¹⁸ See CRC Committee, Concluding observations on the combined third to fifth periodic reports of Sierra Leone, CRC/C/SLE/CO/3-5, 1 November 2016, para. 34-35. See also CRC/C/SLE/CO/2, para. 64.

¹⁹ See *WASE & CSW-SL vs. The Republic of Sierra Leone*, ECOWAS Court, ECW/CCJ/JUD/37/19, 12 December 2019, page 28.

²⁰ CESCR, General Comment no. 13 on the right to education, UN Doc. E/C.12/1999/10, 8 December 1999; CEDAW, General Recommendation no. 36 on the right of girls and women to education, UN Doc. CEDAW/C/GC/36, 27 November 2017.

²¹ See, further, CESCR, General Comment no. 13 on the right to education, UN Doc. E/C.12/1999/10, 8 December 1999.

²² CESCR General Comment no. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, UN Doc. E/C.12/2005/4, 11 August 2005. See also HRC, General Comment no. 28 on the equality of rights between men and women, UN Doc. CCPR/C/21/Rev.1/Add.10.

²³ CEDAW, General Recommendation no. 36 on the right of girls and women to education, UN Doc. CEDAW/C/GC/36, 27 November, 2017, para. 7.

equality and non-discrimination are clearly interrelated duties in accordance with human rights norms.²⁴

16. In view of this, States are required to “closely monitor education including all relevant policies, institutions, programmes, spending patterns and other practices so as to identify and take measures to redress any de facto discrimination”.²⁵ As elaborated by the Human Rights Committee, articles 3 and 24 of the ICCPR on equality between men and women, and on protection of children, respectively, require States to set out relevant measures to ensure that girls are treated equally with boys in education.²⁶ In particular, States have the obligation to adopt legislation and policies to ensure the same admission criteria for boys and girls at all levels of education in order to guarantee equal access to education opportunities.²⁷ Article 28 of CRC unequivocally enshrines the right of every child to education on the basis of equal opportunity. This calls for the elimination of discriminatory admission criteria as required by the Convention on the Against of Discrimination in Education (Article 4) to ensure, by legislation, when necessary, that there is no discrimination in the admission of pupils to educational institutions, which applies to the use of discriminatory admission criteria for girls based on forced pregnancy test, among others. The Working Group recalls that ensuring access to public educational institutions and programmes on a non-discriminatory basis is a core obligation of States which requires immediate implementation.²⁸
17. Equal access to educational opportunities shall not be curtailed based on any status and the practice of expelling girl students owing to the marital or pregnancy status violates international human rights law on equal rights to education. In this regard, the CRC Committee²⁹ has emphasized that “discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured”³⁰ and has called upon States to develop policies that will allow adolescent mothers to continue their education.³¹ In pursuing policies and plans designed to achieve equal access by girls and boys to education, States are required to integrate measures to encourage pregnant girls to keep attending or returning to

²⁴ A/HRC/17/29, para 21.

²⁵ CESCR, General Comment no. 13 on the right to education, UN Doc. E/C.12/1999/10, 8 December 1999, para. 37.

²⁶ Human Rights Committee, General Comment no. 28: Article 3 (The Equality of Rights Between Men and Women), CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 28.

²⁷ CESCR General Comment no. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, UN Doc. E/C.12/2005/4, 11 August 2005, para. 30. See also A/HRC/17/29, para 38.

²⁸ See also CEDAW, General Recommendation no. 36 on the right of girls and women to education, UN Doc. CEDAW/C/GC/36, 27 November 2017. As clarified by CEDAW, States’ core obligations extend also to: ensuring that education conforms to the objectives set out in international standards, providing primary education for all, adopting and implementing a national educational strategy that includes the provision of fundamental, secondary and higher education and ensuring free choice of education, without interference from the State or third parties, subject to conformity with minimum educational standards.

²⁹ See also Articles 28 and 29 of the Convention on the Rights of the Child.

³⁰ CRC, General Comment no. 15 on the right of the child to the enjoyment of the highest attainable standard of health, UN Doc. CRC/C/GC/15, 17 April 2013, para. 56.

³¹ CRC, General Comment no. 4 on Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4, 21 July 2003.

school.³² It is further established that it is ‘compulsory for States Parties to facilitate the retention and re-entry of pregnant or married girls in schools’ through support programs.³³ It’s ruled by the ECOWAS Court that strategies and programmes must be designed to enable teenage mothers to attend school and support pregnant school girls in income generation.³⁴

18. As has been recalled above, the CEDAW also provides that States shall take all appropriate measures to eliminate discrimination against women in the field of education, including as regards conditions for access to studies, the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely (Article 10). However, as emphasised by the CEDAW the persistence of patriarchal systems and cultural norms and practices based on those systems and the traditional roles associated with girls and women, which constitute barriers to the enjoyment by girls and women of their right to education, including forced exclusion from school and confinement to the home because of child and/or forced marriage and pregnancy.³⁵ The Special Rapporteur on the Right to Education also highlighted that pregnancy and motherhood in teenage girls serve as common motives for discrimination in education; and that when pregnancy is a disciplinary offence teenagers are not only at risk of expulsion from school but may be forced to consider abortion if they wish to continue their studies.³⁶ Patriarchal practices that limit female autonomy and keep girls away from education usually involve early or unwanted marriages, pregnancies and motherhood.³⁷ It is also important to note that the failure of States to eliminate early marriage constitutes failure on their obligation to ensure access to education for girls on an equal basis with boys,³⁸ and protecting girls from the sexuality-related causes of exclusion and gender violence in schools is a vital requirement.³⁹

19. Educational institutions may often, instead of challenging entrenched discriminatory gender norms and practices, reinforce gender stereotypes and maintain “the reproduction of the female/male, subordination/domination hierarchies and the reproductive/productive and private/public dichotomies”.⁴⁰ Interventions towards reversing negative societal attitudes that reinforce discrimination and bias against pregnant girls attending school are imperative.⁴¹ In view of this, the CEDAW Committee has recommended that, in order to fulfil their international human rights obligations, States should, among others:

³² African Commission on Human and Peoples’ Rights and African Committee of Experts on the Rights and Welfare of the Child, *Joint General Comment on Child Marriage* (2018), para 31.

³³ *Ibid*, para 42.

³⁴ See ECOWAS Court, ECW/CCJ/JUD/37/19, page 33.

³⁵ *Ibid*. para. 52.

³⁶ E/CN.4/2006/45 8 (2006), para 76.

³⁷ *Ibid*, para. 71,

³⁸ *Ibid*, para. 52.

³⁹ *Ibid*, para 110.

⁴⁰ *Ibid*. Para. 16.

⁴¹ See ECOWAS Court, ECW/CCJ/JUD/37/19, page 32.

- a. Enact legislation that provides for the right to education, throughout the life cycle, for all girls and women, including all disadvantaged groups of women and girls;
- b. Eradicate and/or reform policies, institutional, administrative and regulatory directives and practices that directly or indirectly discriminate against girls or women within the education sector;
- c. Review and/or abolish laws and policies that allow the expulsion of pregnant girls and teachers and ensure that there are no restrictions on their return following childbirth;
- d. Formulate re-entry and inclusive education policies enabling pregnant girls, young mothers and married girls under 18 years of age to remain in or return to school without delay and ensure that such policies are disseminated to all educational establishments and administrators, as well as among parents and communities;
- e. Challenge and change patriarchal ideologies and structures that limit girls and women from freely and fully exercising and enjoying their human rights to, within and through education; and
- f. Protect girls and women from being deprived of their right to education based on patriarchal, religious or cultural norms and practices
- g. Adopt strategies to encourage and monitor school enrolment, attendance, retention and reintegration after dropout.⁴²

20. In its thematic report on discrimination against women in economic and social life, the Working Group has also emphasized that education of girls is key to quality of life for girls, adult women, families and communities and has warned about the existence of social and cultural barriers preventing girls' access to school.⁴³ It has recommended the adoption of good practices to combat non-attendance by girls, including making provision for pregnant girls and school-age mothers.⁴⁴

21. Obligation to take legislative measures as critical measures in ensuring equality and eliminating discrimination. In this regard, the Working Group recalls that, the CEDAW Committee has expressed concerns at the lack of explicit provisions in the education legislation covering the mainland Tanzania to prohibit the expulsion of pregnant girls from school, and the continued prevalence of the practice of mandatory pregnancy testing of girls as a precondition for admission to school and their expulsion if found to be pregnant. It has also expressed its concerns regarding the reports of sexual violence and abuse perpetrated by teachers, and the lack of disciplinary or criminal investigations and prosecutions of teachers for misconduct. The CEDAW Committee has recommended, among others, that Tanzania:

⁴² Ibid. Paras. 24, 27, 31. 55.

⁴³ A/HRC/26/39, 1 April 2014, para. 33ff.

⁴⁴ Ibid. para. 114.

“ensure the speedy completion and adoption of the re-entry guidelines on how to enable pregnant schoolgirls to continue with their studies, so as to ensure that girls who become pregnant while in school and adolescent mothers can continue their education in the mainstream system, including by addressing the stigmatization faced by young mothers upon return to school, and put an end to the practice of conducting mandatory pregnancy tests of girls at the beginning of the school year as a precondition for admission and expelling any girls found to be pregnant”.⁴⁵

22. Finally, the Working Group wishes to highlight that the right to education is intertwined with the right to the highest attainable standard of health, including reproductive and sexual health, which will be addressed in the next section. As has been clarified, for example, by the CESCR, the realization of the right to sexual and reproductive health requires that States also meet their obligations related to other human rights, including the right to education and the right to equality and non-discrimination, so as to ensure education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age appropriate.⁴⁶ Article 10 of CEDAW also encompasses under the right to education the ‘access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning’.

Rights to the highest attainable standard of health and life

23. As clarified by CESCR, the right to health is as an inclusive right that extends not only to timely and appropriate health care but also to access to health-related education and information, including on sexual and reproductive health.⁴⁷ CESCR has also clarified that the right to health includes the right to sexual and reproductive health which encompasses the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one’s body and sexual and reproductive health as well as the right to access a whole range of health facilities, goods, services and information.⁴⁸ For its part, CEDAW has indicated that States must eliminate discrimination against women in their access to health-care services throughout the life cycle, particularly in the areas of family planning, pregnancy and confinement and during the post-natal period, and must ensure the right to sexual health information, education and services for all women and girls, respectful of their privacy and confidentiality.⁴⁹

⁴⁵ CEDAW, concluding observations on the United Republic of Tanzania, UN Doc. CEDAW/C/TZA/CO/7-8, 16 March 2016, Para. 30.

⁴⁶ CESCR, General Comment no. 22 on the right to sexual and reproductive health, UN Doc. E/C.12/GC/22, 2 May 2017.

⁴⁷ CESCR, General Comment no. 14 The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000, para 11.

⁴⁸ CESCR, General Comment no. 22 on the right to sexual and reproductive health, UN Doc. E/C.12/GC/22, 2 May 2017.

⁴⁹ CEDAW, General Recommendation no. women and health, UN Doc. A/54/38/Rev.1, 1999. See also CEDAW, General Recommendation no. 35 on gender-based violence against women, UN Doc. CEDAW/C/GC/35, 26 July 2017.

24. The CESCR has noted that 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.⁵⁰ The CRC Committee has also clarified that States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs), regardless of their marital status and whether their parents or guardians consent.⁵¹ Moreover, the CRC Committee has indicated that adolescent girls who become pregnant should have access to health services that are sensitive to their rights and particular needs. It has recommended that States: (a) develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law, adequate and comprehensive obstetric care and counselling; (b) foster positive and supportive attitudes towards adolescent parenthood for their mothers and fathers; and (c) develop policies that will allow adolescent mothers to continue their education.⁵²
25. With regard to children more generally, the CRC Committee has stated that States should work to ensure that girls can make autonomous and informed decisions on their reproductive health and has clarified that sexual and reproductive health education should include self-awareness and knowledge about the body, including anatomical, physiological and emotional aspects, and should be accessible to all children, girls and boys.⁵³
26. In its thematic report on reasserting equality, countering rollbacks, the Working Group has recommended that States ensure respect for women's rights to make decisions about their own bodies and to receive comprehensive sexuality education so they can enjoy their right to sexual and reproductive health, including safe, legal and affordable access to contraception and termination of pregnancy.⁵⁴ Moreover, in its thematic report on discrimination against women with regard to health and safety, the Working Group has drawn attention to the fact that women's bodies are instrumentalized for cultural, political and economic purposes rooted in patriarchal traditions, which perpetuates

⁵⁰ CESCR, General Comment no. 14, The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000.

⁵¹ CRC, General Comment no. 4 on Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4, 21 July 2003, para. 28.

⁵² CRC, General Comment no. 4 on Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4, 21 July 2003, para. 39.

⁵³ CRC, General Comment no. 15 on the right of the child to the enjoyment of the highest attainable standard of health, UN Doc. CRC/C/GC/15, 17 April 2013.

⁵⁴ A/HRC/38/46, 14 May 2018.

taboos and stigmas concerning women's bodies and their traditional roles in society, especially in relation to their sexuality and to reproduction.⁵⁵

27. The Working Group has highlighted that early marriage and adolescent pregnancy have a long-lasting impact on girls' physical integrity and mental health. Pregnancy and childbirth are together the second leading cause of death among 15- to 19-year-old girls globally, putting them at the highest risk of dying or suffering serious lifelong injuries as a result of pregnancy. For example, up to 65 per cent of women with obstetric fistula, which is a severely disabling condition and often results in social exclusion, develop this condition as adolescents.⁵⁶ The Working Group has recommended, among other things, that States take effective measures to prevent child marriage and adolescent pregnancies and provide girls with comprehensive education based on scientific evidence on matters of health, including sexuality, and allow pregnant girls and adolescents to terminate unwanted pregnancies, as a measure of equality and health, so that they can complete their school education and protect them from the high risk to life and health, including from obstetric fistula, in continuing to bring a pregnancy to term.⁵⁷ (See further below).
28. The Working Group notes that the right to life may be implicated if girls and adolescents are compelled to seek out unsafe abortions or carry high-risk pregnancy, as a result of the type of practices mentioned in the communication under consideration. In this regard, the Working Group wishes to recall that the right to life requires that the State "help[s] women prevent unwanted pregnancies, and [...] ensure that they do not have to undergo life-threatening clandestine abortions".⁵⁸ In its General Comment on the right to life, the Human Rights Committee has indicated that the right to life encompasses the right to enjoy a life with dignity and that States should ensure access for women and men, and especially girls and boys, to quality and evidence-based information and education on sexual and reproductive health and to a wide range of affordable contraceptive methods and prevent the stigmatization of women and girls who seek abortion.⁵⁹ Moreover, States parties should ensure the availability of, and effective access to, quality pre- and post-natal and post-abortion care for women and girls, in all circumstances and on a confidential basis. In addition, the Human Rights Committee has indicated that States must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, which is mostly the case for early age pregnancies. Similarly the African Commission, has called for attention to address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems

⁵⁵ A/HRC/32/44, 8 April 2016.

⁵⁶ Ibid.

⁵⁷ Ibid, para. 105.

⁵⁸ HRC, General Comment no. 28 on the equality of rights between men and women, UN Doc. CCPR/C/21/Rev.1/Add.10, para. 10.

⁵⁹ HRC, General Comment no. 36 on the right to life, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 8.

and eliminating discriminatory laws and practices which impact on individuals' and groups' ability to seek healthcare.⁶⁰

29. Moreover, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to resort to unsafe abortions, and they should revise their abortion laws accordingly.⁶¹ The Working Group has recommended that States repeal restrictive laws and policies in relation to termination of pregnancy, especially in cases of risk to the life or health, including the mental health, of the pregnant woman, rape, incest and fatal impairment of the foetus and, noting that many countries where women have the right to abortion on request supported by affordable and effective family planning measures have the lowest abortion rates in the world, it has recommended that States should allow women to terminate a pregnancy on request during the first trimester or later in the specific cases listed above.⁶² The Working Group has also recommended that States allow pregnant girls and adolescents to terminate unwanted pregnancies, as a measure of equality and health, so that they can complete their school education and protect them from the high risk to life and health, including from obstetric fistula, in continuing to bring a pregnancy to term.⁶³

Access to information and sexuality education

30. Access to information on sexual and reproductive health and services and sexuality education are crucial to the promotion and protection of women and girls sexual and reproductive rights. Article 10 (h) of the CEDAW provides that States should ensure women's "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning". The Maputo Protocol establishes the right to family planning education (Article 14 (1) (g)) and furthermore the obligation of States to provide information, education and communication programmes for women, especially those in rural areas (Article 14 (2) (a)).
31. States have the obligation under international human rights law to adopt legal and policy measures to guarantee all individuals access to information and comprehensive sexuality education, including adolescents. According to the UN Special Rapporteur on the Right to Health, health related information and facilities must be accessible to all adolescents without discrimination on any grounds, which should include access to information on their health, as well on the nature, availability, location, costs and timing of services.⁶⁴ The Working Groups recalls that ensuring access to comprehensive

⁶⁰ African Commission on Human and Peoples' Rights, General Comment No. 3 on the African Charter on Human And Peoples' Rights: The Right to Life (Article 4) 2015.

⁶¹ Ibid.

⁶² A/HRC/32/44, 8 April 2016, para. 106.

⁶³ Ibid.

⁶⁴ See Report of the United Nations Special Rapporteur on the Health Report on the right to health of adolescents, A/HRC/32/32, 4 April 2016, para 30.

education and information on sexual and reproductive health is an immediate obligation of States⁶⁵ Information must be evidence-based and scientifically and medically appropriate and up-to-date and cover all aspects of sexual and reproductive health, including maternal health, contraceptives, family planning, the dangers of early pregnancies, sexually transmitted infections, HIV prevention, safe abortion and post-abortion care, among others.⁶⁶ Moreover, failure to ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their required curricula amounts to a violation of States' obligation to fulfil the right to sexual and reproductive health.⁶⁷

32. The CRC Committee has also emphasised that States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, regardless of their marital status and whether their parents or guardians consent.⁶⁸ It has stated that States should ensure that individuals can make free and informed decisions on their reproductive rights and has clarified that sexual and reproductive health education should include self-awareness and knowledge about the body, including anatomical, physiological and emotional aspects, and should be accessible to all children, girls and boys.⁶⁹ In the same vein, the African Commission on Human and Peoples' Rights (ACHPR) established that states have the obligation to provide access to complete and accurate information which is necessary for the respect, protection, promotion and enjoyment of health information and education on family planning/contraceptive and safe abortion.⁷⁰
33. As clearly established by the Special Rapporteur on the Right to Education, the right to education includes the right to sexual education; the right to comprehensive sexual education is recognized to be part of the right of persons to human rights education, which is crucial for realizing other fundamental rights, such as the right to health, the right to information and sexual and reproductive rights.⁷¹ It is underscored that the protection of the human right to comprehensive sexual education is especially important in ensuring the enjoyment of women's right to live free of violence and gender discrimination, taking into account the existing unequal power relations between men and women.⁷²

⁶⁵ See, for example, CESCR, General Comment no. 22 on the right to sexual and reproductive health, UN Doc. E/C.12/GC/22, 2 May 2017, para. 49.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, para. 63.

⁶⁸ CRC, General Comment no. 15 on the right of the child to the enjoyment of the highest attainable standard of health, UN Doc. CRC/C/GC/15, 17 April 2013, para. 69.

⁶⁹ *Ibid.*, para 60 & 69.

⁷⁰ ACHPR, General Comment no. 2, paras 28 & 51.

⁷¹ See Report of the United Nations Special Rapporteur on the Right to Education A/65/162, 23 July 2010, para 19 -20.

⁷² *Ibid.*

34. School curriculum is considered as part of States parties' duties to protect girls and women's rights, including sexual and reproductive rights. The CRC Committee has confirmed that sexual and reproductive health education should be a part of standard school curriculum.⁷³ The CEDAW Committee, in its General Comment No. 36 on the right to education emphasizes the need to institute "mandatory age appropriate curricula at all levels of education, on comprehensive sexuality education including sexual and reproductive health and rights, responsible sexual behaviour, prevention of early pregnancies and prevention of sexually transmitted diseases."⁷⁴
35. The Working Group stressed on the high importance of sexuality education and information. It noted that restrictions in many countries on girls' and women's access to unbiased, quality education, including evidence-based comprehensive sexuality education, and information about where and how to obtain essential health services prevent women from making free and informed decisions about their health and safety and hence obstruct proper, informed access to health care.⁷⁵ States have an obligation to provide education that facilitates access to scientific and technical knowledge which is of crucial importance with respect to questions of sexuality, reproduction and health education.⁷⁶ Moreover, States have an obligation to allow information about health matters to flow freely, without State interference on moral or other grounds. It also encompasses the possibility for non-State actors to disseminate information, including in relation to sexuality and sexual and reproductive health services while they should address and eliminate harmful and wrongful gender stereotypes that contribute to the violation of women's right to health and safety.⁷⁷
36. The Working Group has also recommended that States provide age-appropriate, comprehensive and inclusive sexuality education based on scientific evidence and human rights, for girls and boys, as part of the mandatory school programmes. It has indicated that sexuality education should give particular attention to gender equality, and responsible parenthood and sexual behaviour to prevent early pregnancies and sexually transmitted infections, among others.⁷⁸

Right to be free from gender-based violence

37. Gender-based violence against women and girls constitutes discrimination against them. It may take multiple forms and includes, among others, acts or omissions intended or likely to cause or result in physical, sexual, psychological or economic harm

⁷³ CRC, General Comment no. 15 on the right of the child to the enjoyment of the highest attainable standard of health, UN Doc. CRC/C/GC/15, 17 April 2013. para 59.

⁷⁴ CEDAW General Recommendation no.36 on the right of girls and women to education UN.Doc. CEDAW/C/GC/36. 06 November 2017. para 68.

⁷⁵ See Report of the Working Group on the issue of discrimination against women with regard to health and safety, A/HRC/32/44, 8 April 2016, para 95.

⁷⁶ Ibid, para 96.

⁷⁷ Ibid, para 97.

⁷⁸ Ibid. para. 108.

or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.⁷⁹ Violations of women's and girls' sexual and reproductive health rights are also forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.⁸⁰ The Human Rights Committee has indicated that the prohibition of cruel, inhuman or degrading treatment is meant to protect both the dignity and the physical and mental integrity of the individual and covers acts that cause physical pain as well as acts that cause mental suffering as is the case with different forms of gender based violence.⁸¹ The CRC Committee has further clarified that it also covers violence in all its forms against children in order to extract a confession, to extra-judicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will.⁸² It may also take a form of arbitrary deprivation of liberty. As noted by the Working Group, adolescent girls are particularly exposed to deprivation of liberty for breaking social norms related to sexual and reproductive behaviour, as seen harshly punished for early or extramarital pregnancies, be excluded from school and confined at home or in an institution during their pregnancy.⁸³

38. The Working Group notes that the type of practices referred to in the communication, including degrading physical searches, forced pregnancy testing, expulsion from school and illegal detention of pregnant girls, constitute violation of their right to privacy and dignity, their freedom of movement and bodily integrity, and cause irreparable harm on the girls' physical, psychological health and well-being, may amount to cruel, inhuman and degrading treatments and may constitute forms of gender-based violence. Moreover, preventing pregnant girls and adolescent mothers from attending public school denies them access to education and keeps them trapped in a cycle of gender-based violence and discrimination, exposing them to further human rights violations including forced marriage, sexual and/or labor exploitation, and female genital mutilation, among others.

39. As clarified by CEDAW Committee, States have an obligation to prevent gender-based violence by public authorities and institutions, including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct, among others.⁸⁴ They must also repeal discriminatory

⁷⁹ CEDAW, General Recommendation no. 35 on gender-based violence against women, UN Doc. CEDAW/C/GC/35, 26 July 2017

⁸⁰ CEDAW, General Recommendation no. 35 on gender-based violence against women, UN Doc. CEDAW/C/GC/35, 26 July 2017

⁸¹ HRC, General Comment no. 20 on Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, adopted at the Forty-fourth session of the Committee, 10 March 1992.

⁸² CRC, General Comment no. The right of the child to freedom from all forms of violence, UN Doc. CRC/C/GC/13, 18 April 2011.

⁸³ See Report of the Working Group on women deprived of liberty, A/HRC/41/33, 15 May 2019, para 44 .

⁸⁴ CEDAW, General Recommendation no. 35 on gender-based violence against women, UN Doc. CEDAW/C/GC/35, 26 July 2017; See also CRC, General Comment no. The right of the child to freedom from all forms of violence, UN Doc. CRC/C/GC/13, 18 April 2011.

evidentiary rules and procedures.⁸⁵ In its resolution 70/137, the General Assembly called upon all States to improve the safety of girls on the way to and from school, taking steps to ensure that all schools are accessible, safe, secure and free from violence and providing separate and adequate sanitation facilities that provide privacy and dignity. In its thematic report on discrimination against women with regard to health and safety, the Working Group has recommended that States take into account the impact of women's safety on their physical and mental health and protect women and girls from violence at home, on their way to or at school and in other public spaces and in health facilities.⁸⁶

III. Conclusions

40. The Working Group submits that the type of laws and practices evoked in the communication under consideration by the Committee constitute forms of discrimination against girls on multiple grounds, based on stigmatizing attitudes, negative beliefs and gender stereotypes, contrary to international human rights norms and standards. They perpetuate gender inequality in the country and violate women's and girls' human rights, including the rights addressed in this brief.

⁸⁵ Ibid. para. 29.

⁸⁶ A/HRC/32/44, 8 April 2016, para. 105 (c).