



GEORGETOWN UNIVERSITY LAW CENTER
International Women's Human Rights Clinic

June 13, 2014

Submission to the Committee on the Elimination of Discrimination against Women for its Half-Day General Discussion on Girls'/Women's Right to Education, Art. 10 of the Convention on the Elimination of All Forms of Discrimination against Women

I. Introduction and Background

The International Women's Human Rights Clinic ("IWHRC") at Georgetown University Law Center partners with grassroots women's human rights organizations on strategic litigation, fact-finding investigations, human rights reports, and legislative reform to prevent and redress discrimination against women. Since its founding in 1998, IWHRC faculty, fellows, and students have investigated violations of girls' and women's human rights, including *inter alia*, the rights to equality, health, and property. The right to education has been both the primary and secondary focus of many of the IWHRC's projects. For example, in 2014, the IWHRC partnered with Law and Advocacy for Women in Uganda to investigate the rights of girls and women in Ugandan schools and found that schools routinely fail to protect girls from sexual violence or to provide them with comprehensive sex education and contraception and also expel them for being pregnant. Another partnership in Uganda in 2012 found that pregnant school girls so feared expulsion and the end of their education that they risked their lives by resorting to unsafe abortions; some died as a result.¹ The IWHRC has also investigated practices such as early marriage, child domestic labour, female genital mutilation ("FGM"), and sexual violence—all of which lead to the impairment or end of girls' and women's right to education.

In addition to being a fundamental right under the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW" or the "Convention"),² education is girls' and women's lifeline to economic security and independence throughout the world. According to the World Bank, "investments in education determine women's ability to earn higher wages and to own and operate productive farms and firms."³ The importance of women's education cannot be overstated. By way of example, the United Nations Organization for Education, Science and Culture ("UNESCO") reports that education not only increases women's participation in the workforce but narrows gender wage gaps as well.⁴ Education can also save girls' and women's lives. In 2004, the United Nations Children's Fund reported that "women

¹ CTR. FOR REPRODUCTIVE RIGHTS, INT'L WOMEN'S HUMAN RIGHTS CLINIC & O'NEILL INSTITUTE FOR NATIONAL AND GLOBAL HEALTH LAW, *THE STAKES ARE HIGH: THE TRAGIC IMPACT OF UNSAFE ABORTION AND INADEQUATE ACCESS TO CONTRACEPTION IN UGANDA* 14, 17-18, 20-21, 23, 41, 46, 51 (2013).

² Convention on the Elimination of All Forms of Discrimination against Women, art. 10, U.N. Doc. A/34/46 (1979), 1249 U.N.T.S. 13 [hereinafter CEDAW].

³ ANA REVENGA & SUDHIR SHETTY, ET AL., WORLD BANK, *WORLD DEVELOPMENT REPORT 2012: GENDER EQUALITY AND DEVELOPMENT* 106 (2011), available at <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTWDRS/EXTWDR2012/0,,contentMDK:22999750~menuPK:8154981~pagePK:64167689~piPK:64167673~theSitePK:7778063,00.html>.

⁴ UNITED NATIONS ORGANIZATION FOR EDUCATION, SCIENCE AND CULTURE, *TEACHING AND LEARNING: ACHIEVING QUALITY FOR ALL* 148-50 (2014) [hereinafter UNESCO, *TEACHING AND LEARNING*], available at <http://unesdoc.unesco.org/images/0022/002256/225660e.pdf>.

with a primary education were 2.5 times more likely than women with no schooling to correctly identify the main ways to prevent HIV transmission.”⁵ The Committee itself has noted the critical role that education rights have on women’s lives: “[E]ducation is key to the advancement of women, and . . . the low level of education of women and girls remains one of the most serious obstacles to their full enjoyment of their human rights.”⁶

Despite the crucial importance of education to girls’ and women’s lives, they are routinely denied access to schooling and equality of opportunity within education systems around the world. The World Bank’s 2012 *World Development Report* showed that 53% of out-of-school youth worldwide are girls.⁷ Distance, sexual violence, early marriage, pregnancy,⁸ FGM,⁹ domestic labour,¹⁰ and gendered stereotypes at home and at school¹¹ are just a few of the factors that can deprive girls and women of their right to education.

This submission begins with an analysis of the core obligations of CEDAW States Parties with respect to the right to education. It then explores several common means by which girls and women are denied their right to education, including school fees, lack of adequate sanitary facilities, sexual violence, lack of sex education, inadequate access to contraception, and pregnancy-related expulsions. The submission concludes with recommendations to States Parties in order to protect, respect, and fulfill girls’ and women’s right to education under the Convention.

II. Nature and Scope of Key State Obligations Regarding Girls’/Women’s Right to Education

Article 10 of CEDAW requires States Parties to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.” The Article further specifies that this includes girls’ equal rights with boys

⁵ GLOBAL CAMPAIGN FOR EDUCATION, LEARNING TO SURVIVE: HOW EDUCATION FOR ALL WOULD SAVE MILLIONS OF YOUNG PEOPLE FROM HIV/AIDS 9 (2004), *available at* <http://www.campaignforeducation.org/docs/reports/arch/learn.pdf>. See also DR. ABDUL SAMAD ABDULLAH, ET AL., WORLD HEALTH ORG., HEALTH IN ASIA AND THE PACIFIC 13-15 (2008), *available at* http://www.wpro.who.int/health_research/documents/dhs_hr_health_in_asia_and_the_pacific_07_chapter_2_social_determinants_of_health.pdf?ua=1 (“Education is probably the most critical determinant of health for women, and for society in general, because evidence shows that the benefits of education for women and girls transcend generations.”).

⁶ Committee on the Elimination of Discrimination against Women, *Concluding Observations: South Africa* (48th Sess., 2011), ¶ 31, U.N. Doc. CEDAW/C/ZAF/CO/4 (2011) [hereinafter *Concluding Observations: South Africa*].

⁷ REVENGA & SHETTY, *supra* note 3, at 107.

⁸ See KHADIJAH FANCY, ET AL., PLAN INT’L, BECAUSE I AM A GIRL: THE STATE OF THE WORLD’S GIRLS 2012: LEARNING FOR LIFE 11 (2012), *available at* <https://plan-international.org/girls/reports-and-publications/the-state-of-the-worlds-girls-2012-learning-for-life.php?lang=en>; THE STAKES ARE HIGH, *supra* note 1, at 17.

⁹ UNITED NATIONS POPULATION FUND, LEGISLATIVE REFORM IN KENYA TO SPEED UP ABANDONMENT OF FGM/C STRONG GOVERNMENT POLICY TO SUPPORT NEW LAW (undated), *available at* https://www.unfpa.org/gender/docs/fgmc_kit/Kenya-1.pdf (“Since in many Kenyan communities FGM/C is considered a prerequisite for marriage, once the procedure is performed, the girls—some as young as 10 or 12—are often quickly married off and their formal education is at an end.”).

¹⁰ JUNE KANE, INT’L PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, INT’L LABOUR ORGANIZATION, HELPING HANDS OR SHACKLED LIVES? – UNDERSTANDING CHILD DOMESTIC LABOUR AND RESPONSES TO IT 49-50 (2004).

¹¹ See, e.g., Nikki van der Gaag, *Pushed into Poverty: How Might the Current Economic Crisis Affect Girls and Young Women*, in BECAUSE I AM A GIRL, THE STATE OF THE WORLD’S GIRLS 2009: GIRLS IN THE GLOBAL ECONOMY: ADDING IT ALL UP 27, 33, 30 (Jonathan Blagbough, ed. 2009), *available at* <http://plan-international.org/about-plan/resources/publications/campaigns/because-i-am-a-girl-girls-in-the-global-economy-2009/> (discussed *infra* Section II.B.).

“for access to studies and for the achievement of diplomas”¹² in all categories of both urban and rural schools and at all levels of education: from pre-school through “professional and higher technical education” and vocational training.¹³ States Parties must also ensure that women and men enjoy access to the same curricula and examinations,¹⁴ and “educational information to help to ensure the health and well-being of families.”¹⁵ Finally, States Parties must take affirmative measures to safeguard women’s and girls’ education rights by reducing the rate of female student drop-outs.¹⁶

There are two treaty provisions that—based on the IWHRC’s observation and experience—are particularly germane to the right to education: the right to non-discrimination and equality and the obligation to eliminate harmful stereotypes.

A. Non-Discrimination and Equality

“Discrimination against women” for purposes of the Convention means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁷ The Committee has made clear that the “effect or purpose” clause in this provision means that even “identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face.”¹⁸ Thus, education laws, policies, and practices that are neutral on their face may nonetheless be sex-discriminatory if they have the effect or purpose of denying women their right to education because they failed to account for pre-existing inequalities between men and women. For example, though families must pay school fees for boys as well as girls (where fees are required), such fees often keep more girls from schools than boys in large part because poor families are less likely to invest in their daughters’ education if, as is true in many countries, girls are widely expected to marry young and/or care for the household.¹⁹ As a result, the imposition of school fees can constitute indirect sex discrimination because of the disparate impact such fees have on girls.

¹² CEDAW, *supra* note 2, art. 10(a).

¹³ *Id.*

¹⁴ CEDAW, *supra* note 2, art. 10(b).

¹⁵ *Id.* art. 10(h).

¹⁶ *Id.* art. 10(f).

¹⁷ CEDAW, *supra* note 2, art. 1.

¹⁸ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women* (47th Sess. 2010), ¶ 5, U.N. Doc. CEDAW/C/GC/28 (2010) [hereinafter *CEDAW General Rec. 28*]. *See also, id.* ¶ 16 (“States parties shall ensure that there is neither direct nor indirect discrimination against women. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral in so far as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure.”).

¹⁹ *See infra* at Section II.B.

Additionally, States Parties must not only ensure that state actors refrain from discrimination,²⁰ they must also “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”²¹ The latter duty requires States Parties to exercise due diligence in preventing discrimination by private actors, which “include[s] the regulation of the activities of private actors with regard to education. . . .”²² As a consequence, States Parties must prevent and redress violations of girls’ and women’s right to education by private actors—be it by an individual teacher who sexually abuses a female student²³ or a private school administrator who expels a student for pregnancy.²⁴

B. Stereotypes and Harmful Cultural Practices

The Convention recognizes the harmful roles that stereotypes can have on women’s equality and requires that States Parties “take all appropriate measures . . . [t]o modify 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.”²⁵ The Committee has explained that practices such as forced marriage and FGM, which are based on “traditional attitudes” and “stereotyped roles,” can curtail women’s education.²⁶ It has also noted the long-term stunting effects that traditional practices and customary norms can have on girls’ and women’s right to education: “[W]hen minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted.”²⁷

Research demonstrates that traditional attitudes and stereotyped roles force girls out of school at rates higher than those of boys, particularly in situations of poverty. For example, in 2009 Plan International reported that, throughout the world, “[w]hen fathers lose their jobs and mothers have to go to work instead, young women are often pulled out of school to look after the household and their younger siblings. Likewise, if families are short of money, they are more likely to pull their daughters than their sons out of school.”²⁸ The same report noted that “[o]nce

²⁰ CEDAW, *supra* note 2, art. 2(d). This includes a duty to “ensure that State institutions, agents, laws and policies do not” directly or indirectly discriminate against women. *CEDAW General Rec. 28, supra* note 18, ¶ 35.

²¹ CEDAW, *supra* note 2, art. 2(e).

²² *CEDAW General Rec. 28, supra* note 18, ¶ 13.

²³ UNESCO, TEACHING AND LEARNING, *supra* note 4, at 31.

²⁴ See, e.g., Hope Mafaranga, et al., “26 Pregnant University Students Suspended,” *New Vision* (Apr. 26, 2014), available at <http://www.newvision.co.ug/news/654925-26-pregnant-university-students-suspended.html>.

²⁵ CEDAW, *supra* note 2, art. 5(a).

²⁶ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against women* (11th Sess. 1992), ¶ 11, U.N. Doc. A/47/38 at 1 (1993) [hereinafter *CEDAW General Rec. 19*] (“Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as . . . forced marriage . . . and female circumcision. . . . [T]he underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.”).

²⁷ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 21, Equality in marriage and family relations* (13th Sess., 1994), ¶ 36, U.N. Doc. A/49/38 at 1 (1994). See also *id.* ¶ 21 (“The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development.”).

²⁸ Van der Gaag, *supra* note 11, at 30.

girls have left, evidence shows they rarely return.”²⁹ Thus, the injury to girls’ education is permanent.

Similarly, girls are often deprived of education due to traditions such as early marriage. According to a March 2013 news report from India: “While girls attend primary school in roughly equal numbers to boys, the gap widens as they get older and more are forced to drop out to help with work at home or get married.”³⁰ The Committee has already expressed concern that practices such as early and forced marriage present barriers to girls’ education and has recommended that States Parties take measures to raise awareness at the harmful effects of these practices on girls’ and women’s rights, particularly the right to education.³¹

III. Trends in Violations of Girls’/Women’s Right to Education

Many laws, policies, practices, and actors conspire to deprive girls and women of their right to education. Below are several that, in the IWHRC’s opinion, present some of the greatest impediments to the right to education and merit particular attention from the Committee in this discussion.

A. School Fees

While countries are increasingly abolishing school fees, many schools throughout the world, particularly at the post-primary level, demand fees for tuition, uniforms, and textbooks.³² Though the imposition of school fees is gender-neutral, there is evidence that pressure to pay such fees results in girls being deprived of education at greater rates than boys. Families of limited means, when faced with the choice of sending some rather than all of their children to school, inevitably send their son(s) to school because of stereotypes regarding women’s roles in the home and broader economy.³³ For example, a 2002 study in China found that inability to pay primary school fees led 47% of girls to drop out of school as compared to only 33% of boys.³⁴ In junior secondary school those figures rose to 50% for girls but dropped to a mere 8% for

²⁹ *Id.*

³⁰ Rachel Williams, “Why Girls in India are Still Missing Out on the Education They Need,” *The Guardian* (Mar. 11, 2013), <http://www.theguardian.com/education/2013/mar/11/indian-children-education-opportunities>. See also Tamar Ezer, et al., Intl Women’s Human Rights Clinic, *Child Marriage and Guardianship Laws in Tanzania: Robbing Girls of their Childhood and Infantilizing Women*, 7 GEO. J. OF GENDER AND THE LAW 357, 390 (2006) (noting that in 2004, girls comprised 48% of primary school attendees in Tanzania versus 44% of secondary school attendees and only 33% of Form 6 graduates).

³¹ See, e.g., Committee on the Elimination of Discrimination against Women, *Concluding Observations: Togo* (53rd Sess., 2012), ¶¶ 30-31, U.N. Doc. CEDAW/C/TGO/CO/6-7 (2012) (noting “the negative impact of harmful practices, such as early and forced marriage, on girls’ education” and inviting Togo to “[r]aise awareness among communities, families, students, teachers and officials, especially men, about the importance of women’s and girls’ education” and to “provid[e] incentives for parents to send their daughters to school”).

³² WORLD BANK, SCHOOL FEES: A ROADBLOCK TO EDUCATION FOR ALL 2 (2004), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/10/14/000012009_20041014101818/Rend ered/PDF/301930PAPER0EdNotes1Userfee13.pdf (noting that textbook and uniform fees are collected by schools in “about half” of World Bank client countries and tuition fees are collected “in almost 40%” of the same).

³³ HUMAN RIGHTS WATCH, FAILING OUR CHILDREN: BARRIERS TO THE RIGHT TO EDUCATION 50 (2005), available at <http://www.hrw.org/reports/2005/09/12/failing-our-children> (“Traditional biases against educating girls often cause parents to give their sons priority over their daughters for schooling, particularly when school fees or poverty make it difficult for parents to send all of their children to school.”).

³⁴ Philip H. Brown & Albert Park, *Education and Poverty in Rural China*, 21 ECONOMICS OF EDUCATION REV. 523, 533 (2002).

boys.³⁵ Fortunately, evidence shows that “[r]educations in schooling fees erode the need for families to differentiate educational investments across children.”³⁶ In Malawi, for example, the elimination of school fees led to a reduction in the enrolment gap between boys and girls.³⁷

As noted above, school fees can give rise to indirect discrimination against girls and women insofar as they dissuade poor families from educating their daughters over their sons. The imposition of school fees thus violates Article 10 of the Convention because it fails “to ensure to [women] equal rights with men in the field of education.” Indeed, the Committee has already recognized that school fees, coupled with “traditional attitudes” about girls’ roles in the family and society at large, can often act as a barrier to girls’ education and has called on States Parties to abolish such fees.³⁸

B. Lack of Sanitary Materials and Facilities

Lack of sanitary pads at home and at school and lack of private latrines discourage menstruating girls from attending school, thereby putting them behind in their studies. In a 2011 article publishing survey results from Nyanza Province in Kenya, researchers reported that menstruating schoolgirls struggled to pay for sanitary pads and to find ways to manage their menstruation at schools due to inadequate water or lack of private washrooms.³⁹ As a result, sometimes girls would go home early or skip school altogether during their cycles.⁴⁰ Over half of girls in Nepali schools reported missing school due to menstruation with lack of privacy for cleaning/washing being the most common motivating factor for such absences, followed by lack of disposal and water systems.⁴¹

While girls and boys may have access to the same non-private latrines and inadequate water supplies at schools, research indicates that menstruation causes girls to bear a disproportionate burden of these deficiencies; so much so that they miss out on days of school, which can impair their academic progress. As such, lack of adequate sanitary facilities and pads amounts to indirect discrimination against girls and women and fails to “to ensure to them equal rights with men in the field of education” in violation of Article 10 of CEDAW. Moreover, insofar as days missed due to menstruation may lead to poor academic progress and eventual drop-out, failure to take the “appropriate measure[]” of providing private latrines and sanitary pads violates Article 10(f), which requires States Parties to reduce female drop-out rates. The

³⁵ *Id.*

³⁶ REVENGA & SHETTY, *supra* note 3, at 110.

³⁷ *Id.*

³⁸ See, e.g., Committee on the Elimination of Discrimination against Women, *Concluding Observations: Burkina Faso* (47th Sess., 2010), ¶¶ 31-32, U.N. Doc. CEDAW/C/BFA/CO/6 (2010) (noting with concern “that payment of school fees and social and traditional attitudes continue to keep girls out of school” and encouraging Burkina Faso to provide free universal basic education); Committee on the Elimination of Discrimination against Women, *Concluding Observations: China* (47th Sess., 2010), ¶¶ 27-28, U.N. Doc. (2010) (expressing concern over the “disproportionate” rates of illiteracy and school drop-outs among rural women and recommending that China “ensure that all rural girls complete the nine years of compulsory education, free of all miscellaneous fees and tuition”).

³⁹ Shannon A. McMahon, et al., “*The Girl with Her Period is the One to Hang Her Head*” *Reflections on Menstrual Management among Schoolgirls in Rural Kenya*, 11 BMC INT’L HEALTH & HUM. RTS. 1, 5 (2011), available at <http://www.biomedcentral.com/content/pdf/1472-698X-11-7.pdf>.

⁴⁰ *Id.* at 5-6.

⁴¹ WATERAID, IS MENSTRUAL HYGIENE AND MANAGEMENT AN ISSUE FOR ADOLESCENT SCHOOL GIRLS? A COMPARATIVE STUDY OF FOUR SCHOOLS IN DIFFERENT SETTINGS IN NEPAL 11-12 (2009), available at http://www.indiahabitat.org/qefl/link/Practices/wa_nep_mhm_rep_march2009.pdf.

Committee has recognized that lack of adequate sanitary facilities can impede girls' access to education and has recommended that States Parties take measures to ensure the availability of appropriate sanitary facilities at schools.⁴²

C. Lack of Sex Education and Inadequate Access to Contraception

Insufficient information and tools for protecting oneself from unwanted pregnancy and sexually transmitted infections (“STIs”), including HIV/AIDS, render girls and women vulnerable to both; and both can interrupt or end their education completely. According to the United Nations Population Fund (“UNFPA”), “[i]n developing countries, more than 40 per cent of girls have their first child before they reach the age of 20, many before the age of 18.”⁴³ Early pregnancies lead to a host of health complications, including obstetric fistula and death, and at a minimum often cause girls to drop out of school or be expelled.⁴⁴ UNESCO attributes such drop-outs to lack of sex education: “[i]neffective sexual and reproductive health education inhibits adolescents’ access to information and . . . contributes to school dropouts, especially among girls who have reached puberty.”⁴⁵ In addition, young women often lack access to contraception, leaving them vulnerable to risky, education-ending pregnancies as well as STIs.⁴⁶

The Committee has already recognized the nexus between early pregnancy and drop-outs.⁴⁷ Failure to provide sex education is a clear violation of Article 10(h) of CEDAW, which requires States Parties to provide “[a]ccess to . . . information and advice on family planning” and which research shows can safeguard girls’ and women’s right to education. According to

⁴² See, e.g., Committee on the Elimination of Discrimination against Women, *Concluding Observations: Zambia* (49th Sess., 2011), ¶¶ 29-30, U.N. Doc. CEDAW/C/ZMB/CO/5-6 (2011) (expressing concern at “inappropriate sanitary facilities for girls” at schools and urging Zambia to ensure that new schools include “appropriate sanitary facilities”) [hereinafter *Concluding Observations: Zambia*]; Committee on the Elimination of Discrimination against Women, *Concluding Observations: Democratic Republic of the Congo* (55th Sess., 2013), ¶ 28, U.N. Doc. CEDAW/C/COD/CO/6-7 (2013) (similar); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Equatorial Guinea* (53rd Sess., 2012), ¶ 32, U.N. Doc. CEDAW/C/GNQ/CO/6 (2012) (same).

⁴³ UNITED NATIONS POPULATION FUND, COMPREHENSIVE SEXUALITY EDUCATION: ADVANCING HUMAN RIGHTS, GENDER EQUALITY AND IMPROVED SEXUAL AND REPRODUCTIVE HEALTH 9 (2010), available at <http://www.unfpa.org/webdav/site/global/groups/youth/public/Comprehensive%20Sexuality%20Education%20Advancing%20Human%20Rights%20Gender%20Equality%20and%20Improved%20SRH-1.pdf> [hereinafter COMPREHENSIVE SEXUALITY EDUCATION].

⁴⁴ *Id.* See also THE STAKES ARE HIGH, *supra* note 1, at 17 (death of university student after unsafe abortion), 20-21 (expulsion), 41 (“government’s failure to insure sexuality education in schools”; denial of contraceptive services to unmarried girls), 46 (mother removes 14-year-old daughter from school after daughter’s unsafe abortion and hospitalization).

⁴⁵ YUSUF SAYED, UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION & UNITED NATIONS CHILDREN’S FUND, MAKING EDUCATION A PRIORITY IN THE POST-2015 DEVELOPMENT AGENDA 10 (2013), available at http://en.unesco.org/post2015/sites/post2015/files/Making_Education_a_Priority_in_the_Post-2015_Development_Agenda.pdf.

⁴⁶ COMPREHENSIVE SEXUALITY EDUCATION, *supra* note 43, at 9. See also ALISHA BJERREGAARD, CTR. FOR REPRODUCTIVE RIGHTS, FORCED OUT: MANDATORY PREGNANCY TESTING AND THE EXPULSION OF PREGNANT STUDENTS IN TANZANIAN SCHOOLS 31 (2013), available at <http://reproductiverights.org/en/document/tanzania-report-forced-out-mandatory-pregnancy-testing-expulsion> (“Many individual providers in Tanzania, motivated by personal biases and beliefs, restrict women’s and adolescent girls’ access to contraceptive methods on the basis of age or marital status, regardless of the fact that no medical, legal, or policy grounds exist for doing so.”).

⁴⁷ *Committee on the Elimination of Discrimination against Women, General Recommendation No. 12: Violence against Women* (8th Sess. 1989), ¶ 28, U.N. Doc. A/44/38 at 75 (1989) (noting that female students’ drop-out rates “are often due to premature pregnancy”).

UNFPA, “[s]ex and relationships education can reduce girls’ chances of an unwanted pregnancy or sexually transmitted infection, including HIV, and may thereby increase their chances of staying in school.”⁴⁸ Insofar as lack of sex education and access to contraception contribute to unplanned pregnancies which in turn lead to expulsions and drop-outs (see section E below), failure to provide either constitutes a breach of Article 10(f).

D. Exposure to Sexual Violence

Exposure to sexual violence—from harassment to rape—from their fellow students, teachers, and members of the community exposes girls and women to a host of physical and mental health injuries that can interrupt or derail their education entirely. A 2011 study by the American Association of University Women found that 56% of girls in U.S. grades 7 through 12 had experienced sexual harassment.⁴⁹ The same study detailed the debilitating effect sexual harassment can have on female students with over one-third of harassed girls reporting that they did not want to return to school because of the harassment, 34% saying that the harassment created problems for them while studying, and 19% reporting trouble sleeping.⁵⁰ Globally, girls and women are sexually harassed and abused by their fellow students as well as their teachers. For example, in 2013 UNESCO reported the findings of a survey in Malawi which revealed that “around one-fifth of teachers said they were aware of teachers coercing or forcing girls into sexual relationships.”⁵¹

Violence against women is a form of sex discrimination⁵² and when it occurs in schools it violates Article 10 of CEDAW. Where girls and women are targeted for sexual violence at school, they are denied the “same conditions . . . for access to studies and for the achievement of diplomas” in violation of Article 10(a) and when such violence drives girls from schools, Article 10(f) is violated as steps have not been taken to reduce the female student drop-out rate. The Committee has already recognized the catastrophic effects that sexual violence can have upon girls’ right to education and urged States Parties to take measures to prevent, investigate, and punish such abuse.⁵³

⁴⁸ INTER-AGENCY TASK TEAM ON HIV AND YOUNG PEOPLE, GLOBAL GUIDANCE BRIEFS: HIV INTERVENTIONS FOR YOUNG PEOPLE 2 (2008), available at <http://www.unfpa.org/webdav/site/global/groups/youth/public/EN-GlobalGuidance-kit.pdf>.

⁴⁹ CATHERINE HILL & HOLLY KEARL, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, CROSSING THE LINE: SEXUAL HARASSMENT AT SCHOOL 11 (2011), available at <http://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

⁵⁰ *Id.* at 22.

⁵¹ UNESCO, TEACHING AND LEARNING, *supra* note 4, at 31. See also CATHERINE BLAYA & ERIC DEBARBIEUX, EXPEL VIOLENCE! A SYSTEMATIC REVIEW OF INTERVENTIONS TO PREVENT CORPORAL PUNISHMENT, SEXUAL VIOLENCE AND BULLYING IN SCHOOLS 10 (2008), available at <https://plan-international.org/learnwithoutfear/files/expel-violence-english> (reporting research that showed “8% of 1041 16-17 year-old students questioned (55% of whom were girls) have had sex with teachers and 12% with ancillary staff”).

⁵² CEDAW General Rec. 19, *supra* note 26, ¶¶ 1, 6.

⁵³ See, e.g., *Concluding Observations: South Africa*, *supra* note 6, ¶¶ 31-32 (expressing “grave concern about the high number of girls who suffer sexual abuse and harassment in schools by both teachers and classmates, as well as the high number of girls who suffer sexual violence while on their way to/from school” and showing concern at “reports indicating that prostitution, exploitative sex and rape are perpetrated in connection with a child’s access to education” and urging South Africa to, *inter alia*, “establish reporting and accountability mechanisms to ensure that perpetrators of sexual abuse and harassment are prosecuted and punished”); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Papua New Guinea* (46th Sess., 2010), ¶¶ 37-38, U.N. Doc. CEDAW/C/PNG/CO/3 (2010) (same) [hereinafter *Concluding Observations: Papua New Guinea*]; *Concluding Observations: Zambia*, *supra* note 42, ¶¶ 29-30 (expressing concern about sexual harassment in school and

E. Pregnancy Testing and Expulsions

Many schools throughout the world expel students for pregnancy. Still others turn a blind eye to pregnant students who drop out of school due to fear of being expelled, stigma, cultural pressures to marry, or lack of services such as medical care and counseling. In either scenario—expulsion or drop-out—girls rarely return to school after giving birth. For example, a 2013 study by the Center for Reproductive Rights found that “[b]etween 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.”⁵⁴ Such expulsions often came on the heels of mandatory pregnancy testing in schools⁵⁵ and resulted in irreparable long-term harms such as driving young mothers into unemployment, commercial sex work, early marriage, and an unending “cycle of poverty.”⁵⁶ This “near-universal practice” of expelling or forcing pregnant girls from schools in mainland Tanzania persists despite the absence of any law, regulation, or policy,⁵⁷ let alone any medical justification,⁵⁸ for such expulsions.

The policy and practice of expelling pregnant students or failing to support them sufficiently such that they are compelled to drop-out clearly violates Article 10(f). Moreover, where only pregnant students (and not the male students responsible for their pregnancies)⁵⁹ are expelled, this violates Article 10(a), which requires the same conditions for access to studies and achievement of diplomas. The Committee has already urged States Parties to take measures to reduce pregnancy related drop-outs and expulsions and to facilitate the re-entry of girls into school after giving birth.⁶⁰

recommending that Zambia “[i]mplement a zero-tolerance policy to end violence against girls, sexual abuse and harassment in schools, and ensure that perpetrators are punished”).

⁵⁴ FORCED OUT, *supra* note 46, at 17.

⁵⁵ *Id.* at 54-73.

⁵⁶ *Id.* at 107-110.

⁵⁷ *Id.* See also Circular from Permanent Secretary of Education & Sports, Ministry of Education & Sports, to All Chief Administrative Officers, et al. (Sept. 21, 2009) (Uganda) (on file with authors) (stating that “It has been common practice that pupils and students who become pregnant during their education circle [sic] are discontinued from school and are prohibited from sitting their final examinations. There is not government policy or legislation that prevents pregnant pupils and students from completing their education circle [sic].”).

⁵⁸ There is no medical reason for dropping out of school when pregnant for the vast majority of pregnancies, just as there is no medical reason for most pregnant employees to stop working before delivery. Doctors have determined that women with uncomplicated pregnancies are not disabled from working until “near the termination of pregnancy, during labor, delivery, and the puerperium,” and that the disability period generally lasts about six to eight weeks after labor and childbirth. See American College of Obstetricians and Gynecologists, Policy Statement on Pregnancy-related Disabilities (1974), *quoted in Geduldig v. Aiello*, 417 U.S. 484, 500 n. 4 (1974) (dissenting opinion of Justice Brennan). This report was cited by the U.S. Congress when it enacted the Pregnancy Discrimination Act of 1978, amending Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e et seq., to add a new definition of sex discrimination prohibiting employers from laying off pregnant workers when they are able to work, 42 U.S.C. § 2000e-(k), just as employees with other medical conditions that do not affect their ability to work are permitted to continue their employment.

⁵⁹ See FORCED OUT, *supra* note 46, at 106.

⁶⁰ See, e.g., Committee on the Elimination of Discrimination against Women, *Concluding Observations: Grenada* (51st Sess., 2012), ¶¶ 29-30, U.N. Doc. CEDAW/C/GRD/CO/1-5 (2012) (expressing concern over “the persistence of structural and other barriers to quality education for girls and young women, including early pregnancy and teenage motherhood and societal attitudes, resulting in a higher drop-out rate for girls in secondary education” and recommending that Grenada “prevent dropouts of girls from schools and strengthen its efforts to encourage young women to return to school after pregnancy”); *Concluding Observations: South Africa*, *supra* note 6, ¶¶ 31-32 (same); *Concluding Observations: Papua New Guinea*, *supra* note 53, ¶¶ 37-38 (same); *Concluding Observations: Zambia*, *supra* note 42, ¶¶ 29-30 (expressing concern at pregnancy-related drop-outs and urging Zambia to

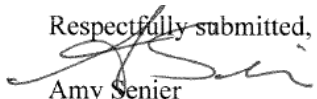
IV. Conclusions and Recommendations

In light of the aforementioned methods by which girls and women around the world are routinely denied their right to education, the IWHRC urges the Committee to incorporate the following guidance to States Parties in the forthcoming general recommendation on the right to education:


- State Parties should eliminate school fees at the primary, post-primary, and secondary school levels. They should also take measures to ensure that schools and families are aware of the abolition of school fees so that misconceptions about fees do not result in girls being kept out of school.
- States Parties should take legislative, administrative, and judicial measures to prevent, investigate, and punish sexual violence in schools. Such measures should include educating students, teachers, and other school staff about the spectrum of sexual harassment, which includes but is not limited to rape. States Parties should also put in place reporting and accountability measures to ensure that victims are able to report sexual violence to both school authorities and the criminal justice system and that perpetrators are punished. Measures should also include victim reparations, including but not limited to compensation and counseling.
- States Parties should provide private latrines for girls and women at schools, along with nearby sources of water—tap water where reasonably accessible.
- States Parties should develop and implement comprehensive sex education curricula and make contraception available in schools. Discrimination in the delivery of family planning services on the basis of sex, age, and marital status should be expressly prohibited.
- States Parties should prohibit the direct or constructive expulsion of pregnant students. They should also take measures to accommodate pregnant students by permitting pregnant students to remain in school up to their delivery dates unless there is a medical problem, providing medical support and counseling via school health staff where available, and providing tutoring and post-delivery re-entry assistance as soon as possible after delivery, including child care where possible. Mandatory pregnancy testing in schools should also be prohibited.
- States Parties should take measures to ensure that communities and families are aware of girls' and women's right to education and to combat traditional attitudes, customary norms, and stereotyped roles that lead to girls and women being denied access to education.

The measures above should apply to all levels of education—pre-primary through university—and to all schools—public, private, religious, and international, with one exception. School fees, as noted above, should be eliminated at the primary through secondary school levels.

Respectfully submitted,



Amy Senior
Supervising Attorney/Teaching Fellow



Susan Deller Ross
Professor of Law/Director

“[r]einforce its policy on the readmission to school of pregnant girls and young mothers, particularly in rural areas and enforce penalties where schools fail to comply”).