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Gender Review*

*Meeting our commitments to gender equality in education*

## **Country commitments to gender equality in education**

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Today more girls than ever go to school. However, despite progress, women and girls continue to face multiple barriers based on gender and its intersections with other factors, such as age, ethnicity, poverty, and disability, in the equal enjoyment of the right to quality education. This includes barriers, at all levels, to access quality education and within education systems, institutions, and classrooms, such as, amongst others:<sup>1</sup>

- harmful gender stereotypes and wrongful gender stereotyping
- child marriage and early and unintended pregnancy
- gender-based violence against women and girls
- lack of inclusive and quality learning environments and inadequate and unsafe education infrastructure, including sanitation
- poverty

The international community has committed through legal and political frameworks to achieving gender equality in all spheres, including education. These frameworks include obligations to protect and secure women and girls' right to education through the elimination of discriminatory barriers, whether they exist in law or in everyday life, and to undertake positive measures to bring about equality, including in access of, within, and through education.

This paper firstly sets out the legal and political frameworks on gender equality in education to which states have committed and then describes how they have committed.

In the second section, the content of states' commitments to achieve gender equality in education is explained, including the normative content of relevant provisions found in international and regional human rights treaties and the 2030 Agenda for Sustainable Development. This section also includes a classification of states according to what legal commitments to women and girls' right to education they have made.

The final section details how states can be held accountable for failure to meet their legal commitments to gender equality in education, including what mechanisms are available and examples of how these mechanisms have been used to hold states accountable.



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<sup>1</sup> RTE's dedicated webpage on women and girls' right to education provides an overview of these issues as well as information on states' obligations to ensure gender equality in education under international human rights law Available at [www.right-to-education.org/issue-page/marginalised-groups/girls-women](http://www.right-to-education.org/issue-page/marginalised-groups/girls-women) (Accessed 2 March 2018.)

# Table of contents

## 1. Global commitments to gender equality education

1.1 De jure commitment to gender equality in education .....	5
1.2 Political commitment to gender equality in education .....	7

## 2. The content of states' commitments to gender equality in education..... 8

2.1 The normative content of the right to education of women and girls at the international level 9	
2.1.1 Convention on the Elimination of All Forms of Discrimination against Women .....	9
2.1.2 UNESCO Convention against Discrimination in Education .....	12
2.1.3 International Covenant on Economic, Social and Cultural Rights.....	13
2.1.4 Convention on the Rights of the Child .....	13
2.1.5. Convention on the Rights of Persons with Disabilities .....	13
2.1.6 International Covenant on Civil and Political Rights .....	14
2.2 Nominal de jure commitment to gender equality in education: A classification .....	14
2.2.1 Results .....	18
2.2.2 Insights .....	20
2.2.2.a Reservations.....	21
2.2.3 Recommendations .....	23
2.3 The right to education of women and girls at the regional level.....	24
2.3.1 Africa .....	24
2.3.2 Arab.....	25
2.3.3 Asia.....	25
2.3.4 Europe.....	25
2.3.5 Inter-America .....	26
2.4 States global commitment to gender equality and quality education as part of the 2030 Agenda for Sustainable Development and Education 2030 .....	27

## 3. Holding states accountable for their legal commitments to gender equality in education..... 28

3.1 Legal accountability .....	28
3.2 International mechanisms .....	30
3.2.1 United Nations treaty bodies (UNTBs).....	30
3.2.2 UNESCO .....	33
3.2.3 Human Rights Council .....	33
3.2.4 Commission on the Status of Women .....	35
3.3 Regional mechanisms .....	35
3.3.1 Africa .....	36

3.3.2 Arab.....	38
3.3.3 Asia.....	38
3.3.4 Europe.....	38
3.3.5 Inter-America .....	39
3.4 Evidence of the impact of international law on national implementation.....	40
<b>4. Conclusion .....</b>	<b>43</b>

# 1. Global commitments to gender equality education

According to the Charter of the United Nations, the stated purposes of the United Nations (UN) are to promote and encourage ‘respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’, and to ‘achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character’,<sup>2</sup> which includes, ‘higher standards of living, full employment, and conditions of economic and social progress and development’.<sup>3</sup>

To these ends the international community has developed frameworks to secure and protect human rights and to achieve sustainable development. These frameworks include commitments to gender equality in education. Through these commitments, it is clear that states recognise the importance of gender equality, education, and gender equality in education to the individual, and its broader importance for the social, economic, political, cultural, and legal health of the state. However, the mode of commitment to each framework differs. And this has implications for the degree to which states can be held accountable for failure to effectively implement and realise gender equality in education.

## 1.1 De jure commitment to gender equality in education

Human rights are fundamental rights that inform the normative standards to which all societies should adhere. They are grounded in and promote human dignity, and protect all people from political, legal, social, and economic abuses. A key feature of human rights is universality. They apply to everyone on an equal and non-discriminatory basis.

Education is a human right because it is indispensable in protecting and promoting human dignity.

Human rights are given formal expression as legal rights, with human rights treaties forming the basis of the regime known as ‘international human rights law’. This means that states’ commitment to human rights is usually of a legal character (de jure). De jure commitment is when a state voluntarily consents to be bound by international law, usually through the ratification, accession, or succession<sup>4</sup> to a multilateral agreement concluded between states or other subjects of international law, such as international organisations, known as a ‘treaty’, ‘convention’, ‘charter’, or ‘covenant’.<sup>5</sup>

De jure commitment means that states can be held legally accountable for failure to comply with their obligations under international human rights law. International human rights law is accompanied by a system of international accountability mechanisms which have a range of procedures to conduce compliance and ensure states are held accountable.<sup>6</sup>

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<sup>2</sup> *Charter of the United Nations (adopted 24 October 1945, entered into force 24 October 1945) 1 UNTS XVI (UN Charter) Article 1.*

<sup>3</sup> *UN Charter Article 55.*

<sup>4</sup> *According to Article 2 (1) (b) of the Vienna Convention on Succession of States in respect of Treaties, succession is ‘the replacement of one State by another in the responsibility for the international relations of territory’. For further information, see, for example Distefano, G. and Hêche, A. 2014. State Succession in Oxford Bibliographies. Available at [www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0045.xml](http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0045.xml) (Accessed 26 September 2017.)*

<sup>5</sup> *Conventional law is one of three primary sources of law recognised by Statute of the International Court of Justice (adopted 24 October 1945, entered into force 24 October 1945) 33 UNTS 993 (ICJ Statute) Article 34.*

<sup>6</sup> See section 3.

The right to education on the basis of non-discrimination and equality is a recognised right under human rights law. Provisions relating to gender equality in education can be found in both general and specific international treaties apply, as well as treaties concluded in most regions of the world.

The most important treaty in relation to women and girls' human rights is the Convention on the Elimination of All Forms of Discrimination against Women (1979, CEDAW).<sup>7</sup> CEDAW applies the rights protected in the International Covenant on Economic, Social and Cultural Rights (1966, ICESCR), which gives legal force to the rights proclaimed in the Universal Declaration of Human Rights (1948, UDHR), to the specific circumstances of women and girls. It is therefore the most relevant, specific, and substantive treaty (*lex specialis*) in regards to the normative content and legal obligations of states on the issue of gender equality in education.

The UNESCO Convention Against Discrimination in Education (1966, CADE)<sup>8</sup> is the most comprehensive treaty on the issue of discrimination in education. It is also the only legally binding treaty entirely dedicated to education.

In terms of the right to education, the International Covenant on Economic, Social and Cultural Rights (1966, ICESCR)<sup>9</sup> is the most important treaty. All right to education clauses in international law emanate from Articles 13 and 14 of ICESCR. ICESCR, and its sister covenant, the International Covenant on Civil and Political Rights (1966, ICCPR),<sup>10</sup> which together with the Universal Declaration of Human Rights (1948, UDHR)<sup>11</sup> form the International Bill of Rights, includes comprehensive non-discrimination and equality clauses that apply to the right to education.

In addition, the thematic treaties, the Convention on the Rights of the Child (1989, CRC)<sup>12</sup> and the Convention on the Rights of Persons with Disabilities (2006, CRPD)<sup>13</sup> apply the right to education to specific groups, providing an intersectional application of non-discrimination in education, that is, the right to education as applied to girls and to girls with disabilities.

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<sup>7</sup> *Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW)*. Available at [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CEDAW\\_1979.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CEDAW_1979.pdf) (Accessed 18 September 2017.)

<sup>8</sup> *UNESCO Convention against Discrimination in Education (adopted 14 December 1960, entered into force 14 December 1960) 429 UNTS 93 (CADE)*

<sup>9</sup> *International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)*. Available at [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/ICESCR\\_1966\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/ICESCR_1966_en.pdf) (Accessed 18 September 2017.)

<sup>10</sup> *International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)*. Available at [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/ICCPR\\_1966.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/ICCPR_1966.pdf) (Accessed 18 September 2017.)

<sup>11</sup> *Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR)*

<sup>12</sup> *Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC)*. Available at [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRC\\_1989.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRC_1989.pdf) (Accessed on 18 September 2017.)

<sup>13</sup> *Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD)*. Available at [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRPD\\_2006\\_en.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRPD_2006_en.pdf) (Accessed on 18 September 2017.)

Although the primary source of international human rights law is human rights treaties, other sources of international law known as 'soft law',<sup>14</sup> which are material sources that do not give rise to binding legal obligations, have increasingly played a part in defining, elaborating, and expanding the scope of the right to education, including in relation to gender equality. Soft law includes documents such as treaty body interpretations (general comments/recommendations), guiding principles, declarations, cases, resolutions, etc. An example of a soft law instrument is the Declaration on the Elimination of Violence against Women (1993, Declaration).<sup>15</sup> It is not legally binding, however, it is based on the provisions of CEDAW and other human rights instruments,<sup>16</sup> and elaborates measures to eliminate violence against women (including in the field of education).<sup>17</sup> Declarations such as these are important because they may embody emerging norms (in whole or in part) which may eventually become or influence hard law (*lex ferenda*). In this case, the Declaration may have influenced the regional legally binding treaties: the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994, Convention of Belém do Pará)<sup>18</sup> and the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (2011, Istanbul Convention).<sup>19</sup>

## 1.2 Political commitment to gender equality in education

In 2015, states committed to the 2030 Agenda for Sustainable Development, which contains 17 goals (SDGs) aimed at 'eradicating poverty in all its forms and dimensions, combating inequality within and among countries, preserving the planet, creating sustained, inclusive and sustainable economic growth and fostering social inclusion.'<sup>20</sup> These include goals relating to quality education (SDG4) and gender equality (SDG5), highlighting the international community's recognition of the importance of both in achieving sustainable development. In addition, states have agreed to the Education 2030 Incheon Declaration and the Education 2030 Framework for Action,<sup>21</sup> which lays a roadmap for the implementation of SDG4.

Sustainable development frameworks are borne out of collective negotiations between states and myriad non-state actors, as is the case for human rights treaties. The concerns and content of human

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<sup>14</sup> For a short introduction to soft law, see, for example Fajardo, T. 2014. *Soft Law in Oxford Bibliographies*. Available at [www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0040.xml](http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0040.xml) (Accessed 21 September 2017.)

<sup>15</sup> Declaration on the Elimination of Violence against Women (proclaimed by General Assembly resolution 48/104 of 20 December 1993) (Doc. A/RES/48/104.)

<sup>16</sup> For further information, see RTE's legal factsheet for specific provisions of international and regional law relating to gender-based violence against women. Available at [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE\\_Gender-based\\_violence\\_against\\_women\\_and\\_girls\\_2017\\_En.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Gender-based_violence_against_women_and_girls_2017_En.pdf) (Accessed 2 March 2018.)

<sup>17</sup> *Ibid.*, Article 4 (j).

<sup>18</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (adopted June 9 1994, entered into force 5 March 1995) 33 ILM 1429 (1994) (Convention of Belém do Pará)

<sup>19</sup> Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS No.210 (Istanbul Convention)

<sup>20</sup> United Nations General Assembly (UNGA). Resolution 70/1 (21 October 2015) (Doc. A/RES/70/1.) para. 13

<sup>21</sup> UNESCO et al. 2015. *Education 2030 Incheon Declaration and Framework for Action: Towards inclusive and equitable quality education and lifelong learning for all* (adopted 22 May 2015). (Doc. ED-2015/Education2030/1.) Available at [www.right-to-education.org/resource/education-2030-incheon-declaration-and-framework-action](http://www.right-to-education.org/resource/education-2030-incheon-declaration-and-framework-action) (Accessed 28 September 2017.)

rights law and sustainable development overlap significantly, for example, they both seek to dismantle the systemic barriers that cause economic, social, political, and gender inequality and which are at the root of many human rights violations. However, the frameworks differ in that the SDGs (and its predecessor the Millennium Development Goals) are meant to galvanise concerted action over a relatively short period of time (15 years). This contrasts with human rights law which is an ongoing, progressive project to establish agreed standards of behaviour of all states towards their citizens (and non-citizens) on the basis of protecting and promoting human dignity and ensuring ‘freedom, justice and peace in the world’.<sup>22</sup>

The difference in purpose and temporal scope of the SDGs and human rights law helps explain the difference in the mode of commitment to each. Human rights commitment is generally legal and is therefore formal and enduring, with consequences for non-compliance. Sustainable development agendas are not legal in character with commitments to such frameworks being political in nature. Both frameworks, however, given the political and legal structure of the international arena, rely on the political will of the state to implement their commitments.

The salient difference between political and de jure commitment is that when states fail to implement their legal obligations the possibility of legal accountability exists. The accountability associated with sustainable development commitments is softer and cannot be enforced through independent international mechanisms, such as courts or UN treaty bodies. However, as with human rights law, domestic accountability mechanisms, including judicial, quasi-judicial, and non-judicial, can and should be established.

Although the 2030 Agenda is primarily a political agenda, certain goals and associated targets do intersect with international law meaning that they are subject to existing legal commitments. Among the regimes of law that apply are human rights,<sup>23</sup> environmental law, and labour law, all of which have associated accountability mechanisms which can be engaged.

## 2. The content of states’ commitments to gender equality in education

Frameworks that seek to achieve gender equality in education generally include three components: 1. the normative standard (or desired outcome), 2. how this may be achieved in practice, and 3. states’ obligations to implement 2. in order to realise 1.

This section focuses on the content of the legal and political frameworks addressing gender inequality in education. This includes the content of international human rights treaties (section 2.1) and regional human rights treaties (2.3) which embody a normative commitment to the equal enjoyment of the right to education of women and girls on a non-discriminatory basis, proscribing certain actions detrimental to this goal, as well as prescribing positive measures that may be required to bring about the goal, for instance, the removal of certain barriers that impede women and girls’ right to education.

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<sup>22</sup> UDHR Preamble.

<sup>23</sup> See RTE’s table linking the content of SDG4 with provisions in human rights law. Available at [www.right-to-education.org/issue-page/education-2030](http://www.right-to-education.org/issue-page/education-2030) (Forthcoming)

This section also briefly looks at the content of political commitments of states under the 2030 Sustainable Development Agenda (2.4).

On the basis of the content of the international human rights framework, section 2.2 classifies all states according to their level of de jure commitment to the right to education of women and girls, as guaranteed by the most relevant international human rights treaties.

### 2.1 The normative content of the right to education of women and girls at the international level

International human rights treaties addressing gender equality in education range from highly relevant and specific (subsections 2.1.1-2.1.2) to general treaties that guarantee women and girls' right to education through a combination of general provisions on non-discrimination with specific provisions on the right to education (2.1.3 & 2.1.6), or provide for intersectional approaches to gender equality in education (2.1.4-2.1.5).

#### 2.1.1 Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (1979, CEDAW) interprets and applies the right to education, as articulated in International Covenant on Economic, Social and Cultural Rights (1966, ICESCR), in a way that considers the specific needs and circumstances of women and girls.

Article 10 of CEDAW is the most comprehensive provision on women and girls' right to education in international law. It sets forth the normative content and states' obligations in relation to the elimination of discrimination against women and ensuring equal rights with men in the field of education, including:

- the same conditions for access to studies and diplomas at all educational levels, in both urban and rural areas
- the same quality of education<sup>24</sup>
- the elimination of any stereotyped concept of the roles of men and women<sup>25</sup>
- the same opportunities to benefit from scholarships and other study grants
- the same access to programmes of continuing education, including literacy programmes, particularly those aimed at reducing the gender gap in education
- the reduction of female student drop-out rates and programmes for women and girls who have left school prematurely
- the same opportunity to participate in sports and physical education
- access to educational information on health, including advice on family planning

A number of other CEDAW provisions are also relevant to achieving gender equality in education.

Article 1 defines discrimination against women as:

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.

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<sup>24</sup> For further information on quality education, see RTE's page. Available at [www.right-to-education.org/issue-page/education-quality](http://www.right-to-education.org/issue-page/education-quality) (Accessed 28 September 2017.)

<sup>25</sup> For further information on gender stereotypes, see RTE's legal factsheet *Gender stereotypes and the right to education*. Available at [www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE\\_Gender\\_%20stereotypes\\_and\\_the\\_right\\_to\\_education\\_2017\\_En.pdf](http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Gender_%20stereotypes_and_the_right_to_education_2017_En.pdf) (Accessed 28 September 2017.)

Article 2 sets out the legal and policy measures states should undertake to eliminate discrimination against women and therefore applies to the totality of rights found in CEDAW. This includes legal and policy measures related to the implementation of the right to education on a non-discriminatory basis.

Article 3 requires states to take all appropriate measures in the political, social, economic, and cultural fields to ensure that women can exercise and enjoy their human rights and fundamental freedoms on a basis of equality with men.

Article 4 permits temporary special measures to accelerate de facto equality between men and women, as long as these measures do not maintain unequal or separate standards, and are discontinued when the objectives of equality of opportunity and treatment have been achieved.

Article 5 informs similar provisions adapted to the case of education in Article 10 and requires states to take appropriate measures to eliminate gender stereotyping, prejudices, discriminatory cultural practices, 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. It also requires states to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the roles of men and women in the upbringing of their children.

Article 7 is on the right to participate in public and political life, including the right to vote, hold public office, and participate in civil society. These rights are fundamental in ensuring that gender perspectives and issues are considered when laws, policies, and other measures affecting gender equality in education are designed, formulated, and implemented.

Article 11 is on the right to work. Subparagraph (1) (c) provides for the right to vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.

Article 14 focuses on the rights of rural women. Subparagraph (d) sets out the right to education of rural women, which includes the right to obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency.

Lastly Article 16 sets out the rights of women in regards to marriage and family life. It guarantees women the same right to marry as men;<sup>26</sup> prohibits forced marriage;<sup>27</sup> guarantees the same rights and responsibilities during marriage and at its dissolution;<sup>28</sup> guarantees the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children;<sup>29</sup> and the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.<sup>30</sup>

Marriage, pregnancy, and motherhood can often interrupt or end a woman's education. Therefore equal rights in relation to marriage and parenting are vital in ensuring that women and girls can exercise and enjoy their human rights, including the right to education.

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<sup>26</sup> CEDAW Article 16 (1) (a).

<sup>27</sup> CEDAW Article 16 (1) (b).

<sup>28</sup> CEDAW Article 16 (1) (c).

<sup>29</sup> CEDAW Article 16 (1) (d).

<sup>30</sup> CEDAW Article 16 (1) (e). *This provision complements Article 10 (h) on access to educational information and advice on family planning. This article, however, goes further in that specifies that a woman's decision to have children, the number of children, and the spacing between children, should be made 'freely and responsibly.'*

Article 16 (2) expressly prohibits child marriage and requires states to set a minimum age of marriage.<sup>31</sup> Child marriage can lead to violations of the right to education, as well as a number of other rights.<sup>32</sup> Children who get married are more likely to drop-out of school; this is especially true of girls who become pregnant, which often follows child marriage.<sup>33</sup>

Children who are not in school are also more likely to get married<sup>34</sup> demonstrating the link between Article 10 and Article 16. Further, harmful gender stereotypes underpin the notion that marriage and parenthood are distinctly female domains and therefore Article 16 is closely related to obligations under Article 5.

The Committee on the Elimination of Discrimination against Women has issued an authoritative interpretation of Article 10 in General Recommendation 36 on girls' and women's right to education,<sup>35</sup> which elaborates the legal obligations of states under CEDAW to eradicate the discriminatory barriers preventing girls from enjoying their right to education and implement measures to bring about equality in practice, and makes concrete and actionable legal and policy recommendations which would bring states into compliance with CEDAW. In doing so, the Committee introduces a novel approach to understand the full nature of the right: the 'tripartite human rights framework', which consists of rights of access to education, rights within education, and rights through education.

Rights of access to education 'involves participation and is reflected in the extent to which girls/boys, women/men are equally represented; and the extent to which there is adequate infrastructure at the various levels to accommodate the respective age cohorts.'<sup>36</sup> Accessibility comprises three elements: physical accessibility which requires availability of adequate infrastructure; technological accessibility for those unable to attend school, such as through information and communication technologies in distance and open learning settings; and economic accessibility, which means education must be free from pre-school to the secondary level, and progressively free at the tertiary level.

Rights within education corresponds closely with the concepts of 'acceptability' and 'quality' and goes 'beyond numerical equality and aims at promoting substantive gender equality in education.

<sup>31</sup> *The UN Committee on the Rights of the Child and the UN Committee on the Elimination of Discrimination against Women have stated that the minimum age for marriage should be 18 for both men and women. See Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child. 2014. 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, para. 20. (Doc. CEDAW/C/GC/31-CRC/C/GC/18).*

<sup>32</sup> *Child marriage is a violation of Article 23 of the International Covenant on Civil and Political Rights on the right to marry, where marriage is defined as requiring 'free and full consent'. It violates physical integrity rights and the right to be free from violence and exploitation because it often leads to violence, both emotional and physical, including sexual violence and rape, and in certain regions of the world is closely related to female genital mutilation. It violates a child's right to express her views and her right to make decisions for herself. Child marriage can also affect girls' right to health as early pregnancy and childbirth, which often follows child marriage, leads to higher than average maternal morbidity and mortality rates.*

<sup>33</sup> *See Girls Not Brides's page on education. Available at [www.girlsnotbrides.org/themes/education/](http://www.girlsnotbrides.org/themes/education/) (Accessed 28 September 2017.)*

<sup>34</sup> *Ibid.*

<sup>35</sup> *UN Committee on the Elimination of Discrimination against Women. 2017. General Recommendation No. 36 girls' and women's right to education. (Doc. CEDAW/C/GC/36.) (CEDAW General Recommendation 36)*

<sup>36</sup> *CEDAW General Recommendation 36, para. 15.*

It therefore concerns equality of treatment and opportunity as well as the nature of gender relations between female and male students and teachers in educational settings. This dimension of equality is particularly important given that it is society that shapes and reproduces gender-based inequalities through social institutions, and educational institutions are critical players in this regard. Instead of challenging entrenched discriminatory gender norms and practices, schooling, in many societies, reinforces gender stereotypes and maintains the gender order of society expressed through the reproduction of the female/male, subordination/domination hierarchies and the reproductive/productive, private/public dichotomies.<sup>37</sup>

Rights through education 'define ways in which schooling shapes rights and gender equality in aspects of life outside the sphere of education. The absence of this right is particularly evident when education, which should be transformational, fails to significantly advance the position of women in the social, cultural, political and economic fields thereby denying their full enjoyment of rights in these arenas. A central concern is whether certification carries the same value and social currency for women as for men. Global trends disclose that, in many instances, even where the educational attainment of males is lower than that of females, males occupy better positions in these arenas.'<sup>38</sup>

### 2.1.2 UNESCO Convention against Discrimination in Education

The UNESCO Convention against Discrimination in Education (1960, CADE)<sup>39</sup> prohibits all forms of discrimination in education, including on the basis of sex. CADE defines discrimination in Article 1, which is more specific than CEDAW's definition, as it applies solely to education, for example, it refers to discrimination in both access to and quality of education and to gender-segregated schools:

any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

- (a) Of depriving any person or group of persons of access to education of any type or at any level;
- (b) Of limiting any person or group of persons to education of an inferior standard;
- (c) Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
- (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.

2. For the purposes of this Convention, the term 'education' refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

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<sup>37</sup> *Ibid.*, para. 16.

<sup>38</sup> *Ibid.*, para. 17.

<sup>39</sup> For further information, see UNESCO. 2005. *Commentary on the Convention against Discrimination in Education*. Available at <http://unesdoc.unesco.org/images/0014/001412/141286e.pdf> (Accessed 25 August 2017.)

Article 2 (a) of CADE permits the establishment or maintenance of gender-segregated educational systems or institutions, provided they offer equivalent access to education, teaching staff with the same standard of qualifications, infrastructure and equipment of the same quality, and the opportunity to study the same or equivalent subjects. Article 2 (c) permits the establishment or maintenance of private education institutions as long as the 'object of the institutions is not to secure the exclusion of any group'.

Article 3 of CADE sets out States parties' legal obligations regarding domestic implementation, including legislative, policy, and administrative measures to eliminate and prevent discrimination in education.

Article 4 sets out states' obligations to 'formulate, develop and apply a national policy which...will tend to promote equality of opportunity and of treatment in the matter of education', this includes measures to ensure that anyone who has not received or completed their primary education can complete their education and that teacher training be provided without discrimination.

### 2.1.3 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (1966, ICESCR) guarantees the right to education of everyone on the basis of equality and non-discrimination (Articles 13 and 14) and expressly prohibits discrimination on the basis of sex (Articles 2 (2) and 3). In its general comment on the right to education, the Committee on Economic, Social and Cultural Rights applies obligations under Articles 2 (2) and 3 to the right to education, clarifying, inter alia, that temporary measures to bring about de facto equality between the sexes in relation to education are legitimate as long as such affirmative action does not lead to the 'maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.'<sup>40</sup> The Committee also provides that states:

must 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. Educational data should be disaggregated by the prohibited grounds of discrimination.<sup>41</sup>

### 2.1.4 Convention on the Rights of the Child

Article 2 (2) of the Convention on the Rights of the Child (1989, CRC) prohibits discrimination on the grounds of sex. When read with Articles 28 and 29 on the right to education and the aims of education, respectively, there is a clear legal obligation to ensure equality and non-discrimination in education. In addition, the aims of education, provided for under Article 29 (1), include: 'The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples'.

### 2.1.5. Convention on the Rights of Persons with Disabilities

Article 6 of the Convention on the Rights of Persons with Disabilities (2006, CRPD) recognises that girls with disabilities can be subject to multiple discrimination and obliges states to 'take all appropriate measures to ensure the full development, advancement and empowerment of women' regarding CRPD rights, including the right to education, guaranteed under Article 24. The Committee on the Rights of Persons with Disabilities in its interpretation of Article 24 in General Comment 4 provides

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<sup>40</sup> *UN Committee on Economic, Social and Cultural Rights (CESCR). 1999. General Comment 13: The Right to Education (Art. 13 of the Covenant), para. 32. (Doc. E/C.12/1999/10.) (CESCR General Comment 13)*

<sup>41</sup> *CESCR General Comment 13, para. 37.*

that states must identify and remove barriers and put in place specific measures to ensure that the right to education of women and girls with disabilities is not hampered by gender and/or disability-based discrimination, stigma, or prejudice.<sup>42</sup>

Article 8 (1) (b) recognises that gender stereotypes can intersect with stereotypes about people with disabilities, and requires states to: ‘adopt immediate, effective and appropriate measures to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life’.

#### 2.1.6 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (1996, ICCPR), although it does not have a comprehensive right to education clause, it does guarantee educational freedom (Article 18(4)), equality between men and women in respect of civil and political recognised rights (Article 3), and has an autonomous non-discrimination clause (Article 26) which applies to ‘any field regulated and protected by public authorities.’<sup>43</sup> The Human Rights Committee has explained that: ‘when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.’ On this interpretation, under the ICCPR, there is an obligation to ensure that education laws and regulations do not discriminate against women and girls.

#### 2.2 Nominal de jure commitment to gender equality in education: A classification

In order to ascertain the level of de jure commitment to gender equality in education across states, the Right to Education Initiative has developed a classification<sup>44</sup> based on whether states have ratified the most relevant international human rights treaties guaranteeing the right to education of women and girls.<sup>45</sup> This classification is an ordinal scale with six tiers, with tier one capturing those states most legally committed and tier six capturing those states with no or minimal legal commitment. This classification only sheds light on a state’s de jure commitment to gender equality in education. It does not reflect a state’s actual commitment, political will, implementation, or realisation of gender equality in education.

Level of de jure commitment to gender equality in education is based on ratification of human rights treaties that guarantee the full<sup>46</sup> right to education of women and girls on a non-discriminatory basis, which are the:

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<sup>42</sup> UN Committee on the Rights of Persons with Disabilities. 2016. Article 24: The Right to Inclusive Education, para. 44. (Doc. CRPD/C/GC/4.). For further information see RTE’s page on the right to education of persons with disabilities. Available at [www.right-to-education.org/issue-page/marginalised-groups/persons-disabilities](http://www.right-to-education.org/issue-page/marginalised-groups/persons-disabilities) (Accessed 28 September 2017.)

<sup>43</sup> UN Human Rights Committee. 1989. General Comment 18: Non-discrimination, para. 12. (Doc. HRI/GEN/1/Rev.1 at 26 (1994)) (CCPR General Comment 18)

<sup>44</sup> This classification is not meant to be definitive, comprehensive, or entirely objective. Rather it is intended as an informative tool to examine states’ de jure commitment to gender equality in education.

<sup>45</sup> This method excludes regional treaties and optional protocols.

<sup>46</sup> As opposed to an aspect of the right to education, e.g., ICCPR, or the right to education of a specific group, e.g., CRPD.

- Convention on the Elimination of All Forms of Discrimination against Women
- UNESCO Convention Against Discrimination in Education
- International Covenant on Economic, Social and Cultural Rights<sup>47</sup>

The classification prioritises ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) because it is *lex specialis* with regard to women and girls' right to education. Legal commitment to CEDAW is considered to confer legal obligations on the most substantive and specific provisions on the issue of gender equality in education<sup>48</sup> with many of the provisions not expressly provided for by ICESCR or CADE,<sup>49</sup> or any other international human rights treaty. For the purposes of the classification, states that have not ratified CEDAW will not be considered to be amongst the most highly legally committed to gender equality in education.

Ratification of CEDAW is, therefore, categorised differently to that of ICESCR and CADE.<sup>50</sup> Whereas ICESCR and CADE are measured dichotomously (has the state ratified ICESCR/CADE: Yes or no?), CEDAW is measured by how legally committed states are to the right to education of women and girls. The categorisation below better captures the nuances that influence the level of commitment to gender equality in education:

- ratification without standing reservation(s) affecting the right to education or non-discrimination
- ratification with standing reservation(s) affecting the right to education or non-discrimination<sup>51,52</sup>

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<sup>47</sup> *The Convention on the Rights of the Child (CRC) is also an important treaty in relation to substantive content and obligations on gender discrimination in education. However, the CRC was dropped as its content is similar to the International Covenant on Economic, Social and Cultural Rights: their non-discrimination and equality clauses are identical as are substantive provisions on the right to education. The only major difference is that ICESCR applies to both women and girls, and CRC applies mainly to girls. In addition, the CRC was dropped to make classification clearer. The CRC has near universal ratification (every state except the United States) meaning that in classifying states by tiers, ratification of the CRC added no differentiating information.*

<sup>48</sup> *See section 2.1.1 for information on the content and obligations related to gender equality in education found in CEDAW.*

<sup>49</sup> *CADE includes provisions not provided for by CEDAW or ICESCR, but to lesser extent than CEDAW. For example, CADE explicitly deals with gender segregated schools. See section 2.1.2 for further information.*

<sup>50</sup> *Ideally, ICESCR would be measured using the same categorisation as for CEDAW but due to time and resource constraint this is not possible at this time. CADE does not allow states to enter reservations.*

<sup>51</sup> *CEDAW provisions considered to affect the right to education and non-discrimination clauses: Articles 1 (definition of discrimination against women); 2 (on legal and policy measures to eliminate discrimination against women); 3 (on taking all appropriate measures to ensure equality in political, social, economic, and cultural fields); 4 (1) (on special temporary measures); 5 (on eliminating customs, practices, and prejudice based on the notion of female inferiority, and family education); 7 (on participation in political and public life); 10 (on the right to education); 11 (1) (c) (right to vocational training); 14 (d) (on the right to education of rural women); and 16 (1) (a) (b) (e) (2) (on marriage and family life). See section 2.1.1 for further information on these provisions.*

<sup>52</sup> *Not all reservations affecting the articles in the above footnote were counted as reservations. Where reservations are specific and it is clear that only a certain aspect of the article was reserved not related to gender inequality in education, the reservation was not coded as such. For instance, Lesotho's reservation to Article 2: 'The Government of the Kingdom of Lesotho declares that it does not consider itself bound by article 2 to the extent that it conflicts with Lesotho's constitutional stipulations relative to succession to the throne of the Kingdom of Lesotho and law relating to succession to chieftainship.' In this case the reservation is specific*

- signatory (signals intent to be legally bound by the treaty; moral or political commitment)
- non-signatory

As the above categorisation indicates, the highest level of de jure commitment to CEDAW is ratification without reservation(s). The Vienna Convention on the Law of Treaties (1969, VCLT)<sup>53</sup> defines a reservation as:

a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.<sup>54</sup>

Reservations are evidence of diminished commitment to gender equality in education because they signal a state's unwillingness to be bound by provisions that oblige them to take action to realise gender equality in education or provisions potentially affecting the right to education of women and girls.<sup>55</sup> An example is Iraq's reservation: 'Approval of and accession to this convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g)'. Article 2 (f) reads:

2. States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women

This reservation has been objected to by many states<sup>56</sup> as being against the 'object and purpose' of the treaty (which is prohibited by Article 19 (c), VCLT).<sup>57</sup> Nevertheless, it is clear that Iraq is only legally committed to gender equality in education insofar as it refuses to implement Article 2 (f).

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*and does not affect the legal obligations of the reserving state to implement the remaining content of said article. In contrast, where reservations are general in nature (that is, in relation to individual provisions or CEDAW as a whole), they are coded as reservations which may affect women and girls' right to education. An example is Pakistan's reservation: 'The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.'*

<sup>53</sup> Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT)

<sup>54</sup> *Ibid.*, Article 2 (1) (d).

<sup>55</sup> For some reservations it was difficult to determine whether it signified reduced commitment to gender equality in education and judgement had to be applied, for example: The United Arab Emirates (UAE) entered a reservation to Article 2 (f) which reads: 'The United Arab Emirates, being of the opinion that this paragraph violates the rules of inheritance established in accordance with the precepts of the Shariah, makes a reservation thereto and does not consider itself bound by the provisions thereof.' Although this reservation is ostensibly a specific reservation on inheritance, which would not affect the right to education of women and girls, a plain reading of this reservation would seem to suggest that the UAE does not consider itself bound by Article 2 (f) in its entirety rather than in regards to inheritance. It was therefore coded as a reservation potentially affecting legal commitment to gender equality in education.

<sup>56</sup> By Germany, Mexico, Netherlands, and Sweden.

<sup>57</sup> For further information on reservations, for example, the effect of a reservation incompatible with the object and purpose of a treaty and how to determine the object and purpose of a treaty, see UN. 2011. Report of the International Law Commission. Sixty-third session (26 April-3 June and 4 July-12 August 2011). (Doc. A/66/10/Add.1.)

The scores for states' level of legal commitment to CEDAW are then combined with ratification scores for ICESCR and CADE. States are then categorised into six tiers representing level of de jure commitment to gender equality in education. The tiers are as follows:

**Tier one** includes states with the highest levels of de jure commitment to gender equality in education. It comprises countries that have ratified CEDAW without reservation(s), and ratified both CADE and ICESCR.

**Tier two** includes states that have ratified CEDAW without standing reservation(s) affecting the right to education and non-discrimination, and have ratified either CADE or ICESCR.

**Tier three** includes states that have ratified CEDAW without standing reservation(s) affecting the right to education and non-discrimination, and have not ratified CADE and ICESCR.

**Tier four** includes states that have ratified CEDAW with standing reservation(s) affecting the right to education and non-discrimination, and have ratified either CADE or ICESCR.

**Tier five** includes states that have ratified CEDAW with standing reservation(s) affecting the right to education and non-discrimination, and have not ratified CADE and ICESCR.

**Tier six** includes states not party to CEDAW.

<b>Table 1: Nominal de jure commitment classification, by criteria</b>				
Tier	State party to CEDAW	Reservation(s) to CEDAW	State party to CADE	State party to ICESCR
Tier one	✓	X	✓	✓
Tier two	✓	X	State party to one of either CADE or ICESCR	
Tier three	✓	X	X	X
Tier four	✓	✓	State party to one of either CADE or ICESCR	
Tier five	✓	✓	X	X
Tier six	X	n/a	n/a	n/a

The first two tiers include all states that have ratified CEDAW without reservation(s) affecting women and girls' right to education, in addition to varying degrees of de jure commitment to other important human rights treaties.

The third tier includes only those states that have ratified CEDAW without reservations(s) and have not ratified either ICESCR or CADE.

The fourth and fifth tiers comprise states that have ratified CEDAW but have entered reservation(s) that are currently in force. This category of states still signals higher de jure commitment than being a signatory because reservations may only limit some obligation(s) regarding gender equality in

education and reservations can be withdrawn and do not necessarily reflect a permanent state of affairs.

The sixth tier includes all those states that are not party to CEDAW. States that have not ratified CEDAW and are not legally bound by CEDAW (although they may be bound to ICESCR<sup>58</sup> and/or CADE,<sup>59</sup> or other human rights treaties). This tier also includes signatory states. Being a signatory, in general, carries no legal obligations, only moral and political obligations. However being a signatory signals intent to, in the future, be legally bound by the treaty.<sup>60</sup>

### 2.2.1 Results

Tier one	Tier two	Tier three	Tier four	Tier five	Tier six
Afghanistan	Angola	Andorra	Algeria	Malaysia	Holy See
Albania	Austria	Antigua and Barbuda	Bahamas	Micronesia (Federated States of)	Iran (Islamic Republic of)
Argentina	Azerbaijan	Bhutan	Bahrain	Oman	Niue
Armenia	Belgium	Botswana	Bangladesh	Qatar	Palau
Australia	Bolivia (Plurinational State of)	Comoros	Brunei Darussalam	Singapore	Somalia
Barbados	Burundi	Cook Islands	Egypt	United Arab Emirates	Sudan
Belarus	Cabo Verde	Fiji	India		Tonga
Belize	Cambodia	Kiribati	Iraq		United States of America
Benin	Cameroon	Marshall Islands	Israel		
Bosnia and Herzegovina	Canada	Mozambique	Jordan		
Brazil	Chad	Myanmar	Lebanon		
Bulgaria	Colombia	Nauru	Maldives		
Burkina Faso	Cuba	Saint Kitts and Nevis	Malta		
Central African Republic	Democratic Republic of the Congo	Saint Lucia	Mauritania		
Chile	Korea	Samoa	Monaco		
China	Democratic Republic of the Congo	South Sudan	Morocco		
Congo	Republic of the Congo	Tuvalu	Niger		
Costa Rica	Djibouti	Vanuatu	Pakistan		
Côte d'Ivoire	El Salvador		Saudi Arabia		
Croatia	Equatorial Guinea		Syrian Arab Republic		
Cyprus	Eritrea		Tunisia		
Czech Republic	Estonia				
Denmark	Ethiopia				
Dominica	Gabon				
Dominican Republic	Gambia				
Ecuador	Ghana				
Finland					

<sup>58</sup> *Iran, Somalia, and Sudan.*

<sup>59</sup> *Iran.*

<sup>60</sup> *Signing a treaty is the first step in ratifying a treaty. VCLT Article 14 (1) (c).*

France	Greece				
Georgia	Grenada				
Germany	Guinea-Bissau				
Guatemala	Guyana				
Guinea	Haiti				
Honduras	Iceland				
Hungary	Ireland				
Indonesia	Japan				
Italy	Kenya				
Jamaica	Lao People's				
Kazakhstan	Democratic				
Kuwait	Republic				
Kyrgyzstan	Lesotho				
Latvia	Liechtenstein				
Liberia	Lithuania				
Libya	Malawi				
Luxembourg	Mexico				
Madagascar	Namibia				
Mali	Nepal				
Mauritius	Papua New				
Mongolia	Guinea				
Montenegro	Paraguay				
Netherlands	Republic of				
New Zealand	Korea				
Nicaragua	San Marino				
Nigeria	Sao Tome and				
Norway	Principe				
Panama	State of				
Peru	Palestine				
Philippines	Suriname				
Poland	Switzerland				
Portugal	Thailand				
Republic of	Timor-Leste				
Moldova	Trinidad and				
Romania	Tobago				
Russian	Turkey				
Federation	Turkmenistan				
Rwanda	Viet Nam				
Saint Vincent	Yemen				
and the	Zambia				
Grenadines					
Senegal					
Serbia					
Seychelles					
Sierra Leone					
Slovakia					
Slovenia					
Solomon					
Islands					
South Africa					
Spain					

Sri Lanka					
Swaziland					
Sweden					
Tajikistan					
The former Yugoslav Republic of Macedonia					
Togo					
Uganda					
Ukraine					
United Kingdom of Great Britain and Northern Ireland					
United Republic of Tanzania					
Uruguay					
Uzbekistan					
Venezuela (Bolivarian Republic of)					
Zimbabwe					
<b>87 (44%)</b>	<b>57 (29%)</b>	<b>18 (9%)</b>	<b>21 (11%)</b>	<b>6 (3%)</b>	<b>8 (4%)</b>

### 2.2.2 Insights

189 states have ratified, acceded, or succeeded to CEDAW, which is 96% of UN Member States. Nearly half of all states (87; 44%) are considered to have the highest level of de jure commitment to gender equality in education. Most states cluster around the two highest tiers (144; 73%). The highest three tiers capture 162 states (82%) which means that 82% of states have not entered reservations affecting gender equality in education to CEDAW. 27 states (18%) have entered reservations, and 8 (4%) states are not legally committed to CEDAW.

It should be reiterated that this classification only sheds light on nominal de jure commitment. The classification does not differentiate between sincere legal commitment and insincere legal commitment. It then follows that certain states falling within the higher tiers may not actually be sincerely committed to achieving gender equality in education. This means, for those states, there will be no association between de jure commitment and its track record in practice. It may also be the case that a state is sincerely legally committed but lacks the capacity to effectively implement its de jure obligations, leading to poor outcomes and a lack of enjoyment of the right to education. In the latter case, de jure commitment is clearly meaningful and indicates the political will to achieve gender equality in education, in the former, this is not the case.

Take, for example, Afghanistan, a tier one country. According to Arne Strand, Afghanistan possesses ‘a will to prioritize education’,<sup>61</sup> but as Human Rights Watch points out, despite ‘impressive progress the government and its donors have made in getting girls to attend school’, girls’ education is ‘not a completed task’.<sup>62</sup> According to the Brookings Institute: ‘Afghanistan has the highest level of gender disparity in primary education in the world, with only 71 girls in primary school for every 100 boys. Only 21 percent of girls complete primary education.’<sup>63</sup>

On the other hand, in Tanzania, also tier one, in 2015, 30 out of every 100 girls dropped out of school due to pregnancy.<sup>64</sup> Many schools routinely force girls to undergo pregnancy tests and expel girls who are found to be pregnant, give birth, or get married, bringing an early end to their formal education. On June 22 2017, President John Magufuli stated: ‘As long as I’m president, no pregnant students will be allowed to return to school.’<sup>65</sup> This statement is a clear abnegation of Tanzania’s de jure commitments to achieving gender equality in education.

Whilst there may be uncertainty as to the sincerity of de jure commitment of certain states at the higher tiers, which should be examined on a case-by-case basis, for the lower tiers, the legal action of entering a reservation does say something about a state’s de jure commitment to women and girls’ right to education on the basis of non-discrimination.<sup>66</sup>

#### 2.2.2.a Reservations

Since its adoption, 78 states (41% of States parties) have entered reservations to CEDAW. However, 47 states have withdrawn a total of 112 reservations to specific provisions.<sup>67</sup> As of 25 September 2017, there are approximately 161 reservations to specific provisions made by 51 states. Most reservations to CEDAW are to Article 29 (on disputes between states and accepting the jurisdiction of the International Court of Justice to arbitrate in cases where a resolution cannot be agreed).

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<sup>61</sup> See Strand, A. 2015. *Expanding and improving the quality of girls’ education in Afghanistan*. Brookings Institute. Available at [www.brookings.edu/blog/education-plus-development/2015/08/19/expanding-and-improving-the-quality-of-girls-education-in-afghanistan/](http://www.brookings.edu/blog/education-plus-development/2015/08/19/expanding-and-improving-the-quality-of-girls-education-in-afghanistan/) (Accessed 29 September 2017.)

<sup>62</sup> Human Rights Watch. 2017. ‘I won’t be a doctor, and one day you’ll be sick’: Girls’ access to education in Afghanistan, p. 7. Available at [www.right-to-education.org/resource/i-won-t-be-doctor-and-one-day-you-ll-be-sick-girls-access-education-afghanistan](http://www.right-to-education.org/resource/i-won-t-be-doctor-and-one-day-you-ll-be-sick-girls-access-education-afghanistan) (Accessed 17 October 2017.)

<sup>63</sup> Strand, *op. cit.*

<sup>64</sup> For further details, see RTE et al’s press release *Tanzania: Stop threatening rights groups*. Available at [www.right-to-education.org/news/tanzania-stop-threatening-rights-groups](http://www.right-to-education.org/news/tanzania-stop-threatening-rights-groups) (Accessed 29 September 2017.)

<sup>65</sup> *Ibid.*

<sup>66</sup> A reservation, however, does not necessarily signify insincere de jure commitment to gender equality in education, because reservations may be entered for entirely legitimate reasons, in fact, valid reservations may actually indicate that a state takes its de jure commitments very seriously because by modifying the effect of certain provisions, it is indicating that it intends to comply, albeit to a lower standard.

<sup>67</sup> A single reservation may include reservations to several provisions. Where this is the case, the number of provisions is counted. For example, Malaysia’s reservation is counted as five reservations: ‘The Government of Malaysia declares that Malaysia’s accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia’ law and the Federal Constitution of Malaysia. With regard thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles 9 (2), 16 (1) (a), 16 (1) (c), 16 (1) (f) and 16 (1) (g) of the aforesaid Convention.’

No state has entered a reservation on the right to education. However, 27 states (18%) have made 44 reservations on other provisions which may affect the right to education as applied to women and girls.

**Table 3: Number of reservations affecting gender equality in education, by CEDAW article**

Art. 1	Art. 2	Art. 3	Art. 5	Art. 7	Art. 10	Art. 11(1)(c)	Art. 16	General
0	12	0	4	0	0	1	20	7

As table 3 shows, Articles 2 and 16 have the most substantive reservations entered against them.

Reservations to Article 2 are problematic because Article 2 on the legal and policy measures States parties agree to undertake in order to eliminate gender discrimination applies to all articles of CEDAW, including Article 10 on education. Without the elimination of discriminatory laws and policies, the legal protection of women and girls' right to education, and measures to ensure gender equality in education, a state cannot fully and effectively discharge its obligations under Article 10.

Likewise, reservations to Article 16, on the discrimination and unequal treatment women and girls face in the private spheres of marriage and family life, are problematic because marriage, and in particular child marriage, can have a deleterious impact on a girl's education.

In addressing reservations to CEDAW, the Committee on the Elimination of Discrimination against Discrimination has stated:

Reservations to articles 2 and 16 perpetuate the myth of women's inferiority and reinforce the inequalities in the lives of millions of women throughout the world. They continue to be treated in both public and private life as inferior to men, and to suffer greater violations of their rights in every sphere of their lives.<sup>68</sup>

Amnesty International further highlights that reservations to Article 2 and 16 'mean that discrimination against women is effectively sustained in law and practice, and deny women...protection against discrimination.'<sup>69</sup>

Reservations have also been made to Article 5 which requires states to take appropriate measures to eliminate gender stereotyping, prejudices, discriminatory cultural practices, 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. It also requires states to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the roles of men and women in

<sup>68</sup> UN Committee on the Elimination of Discrimination against Women. 2006. *Report of the Committee on the Elimination of Discrimination against Women, 18th Session, 19th Session, January 19-February 6 1998, June 22-July 10 1998, para. 47. (DOC. A/53/38.Rev.1.)*

<sup>69</sup> Amnesty International. 2004. *Reservations to the Convention on the Elimination of All Forms of Discrimination against Women: Weakening the protections of women from violence in the Middle East and North Africa region, p. 15.*

the upbringing of their children. As Marsha A. Freeman argues: 'A reservation to Article 5 suggests that a State party does not wish to examine closely and address the fundamental attitudinal issues that underlie sex discrimination.'<sup>70</sup>

There are also seven reservations that are general in nature.<sup>71</sup> This means the reservation affects several substantive CEDAW provisions. Reservations of this nature include two main types. Those invoking national legislation as nullifying obligations under CEDAW<sup>72</sup> and those which assert that any provisions in conflict with Sharia shall not apply.<sup>73</sup> Reservations to CEDAW citing Sharia are widespread with the majority of reservations to Articles 2 and 16 being on the basis of Sharia.

### 2.2.3 Recommendations

States that are serious about achieving gender equality in education should make every effort to ensure they are highly legally committed to the right to education of women and girls as guaranteed in international human rights treaties.

States should take the following actions to increase their level of de jure commitment and get to tier one, the highest level of de jure commitment to the right to education of women and girls.

**Tier two** states have no standing reservations to CEDAW and have only ratified or acceded to one of either CADE or ICESCR. Tier two states should therefore ratify or accede to whichever of CADE or ICESCR it is not State party.

**Tier three** states have no standing reservations to CEDAW and have not ratified CADE and ICESCR. Tier three states should therefore ratify or accede to both CADE and ICESCR.

**Tier four** states have standing reservation(s) to CEDAW and have only ratified or acceded to one of either CADE or ICESCR. Tier four states should therefore immediately withdraw its reservation(s) to CEDAW, and should ratify or accede to whichever of CADE or ICESCR it is not State party.

**Tier five** states have standing reservation(s) to CEDAW and have not ratified CADE and ICESCR. Tier five states should therefore immediately withdraw reservation(s) to CEDAW, and ratify or accede to both CADE and ICESCR.

**Tier six** states have not ratified or acceded to CEDAW. Tier six states should therefore ratify CEDAW if it is a signatory to CEDAW, or ratify or accede to CEDAW if it is not State party, and ratify or accede to both CADE and ICESCR, if they are not already State party.

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<sup>70</sup> Freeman, MA. 2009. *Reservations to CEDAW: An analysis for UNICEF*, p. 8. Available at [www.unicef.org/gender/files/Reservations\\_to\\_CEDAW-an\\_Analysis\\_for\\_UNICEF.pdf](http://www.unicef.org/gender/files/Reservations_to_CEDAW-an_Analysis_for_UNICEF.pdf) (Accessed 29 September 2017.)

<sup>71</sup> Where the reservation is formulated in a way that does not specify specific articles but may affect multiple provisions. Reservations to Articles 2 and 6 can also be general but are not counted as such for the purposes of this classification.

<sup>72</sup> Monaco and Tunisia. Such reservations are not permitted by Article 27, VCLT and are therefore invalid.

<sup>73</sup> Brunei Darussalam, Mauritania, Oman, Pakistan, and Saudi Arabia.

Lastly, every state should ensure that de jure commitment to CEDAW is translated into national implementation, including through legislative and judicial means.

### 2.3 The right to education of women and girls at the regional level

Women and girls face different barriers in relation to their education in different regions of the world. The right to education, although universal, takes on specific meanings when interpreted and applied in light of shared regional customs, traditions, cultures, values, etc. Regional human rights treaties, therefore, guarantee the right to education in an adapted form—one that acknowledges the barriers common to the region, as well as reflecting the universal and region-specific aims of education.

Regional law is a form of international law concluded by regional bodies, such as the African Union in Africa, the Organization of American States in the Americas, ASEAN in Asia, the League of Arab States in the MENA region, and the Council of Europe and the European Union in Europe.

#### 2.3.1 Africa

Africa is the only region that has a human rights treaty dedicated specifically to women and girls. Article 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003, Protocol)<sup>74</sup> tasks States parties with eliminating all forms of discrimination against women in education, including obligations to:

- eliminate gender stereotypes in textbooks, syllabuses, and the media
- protect women and girls from all forms of abuse, including sexual harassment in schools and other educational institutions, and provide for sanctions against the perpetrators of such practices
- provide access to counselling and rehabilitation services to women who suffer abuses and sexual harassment
- integrate gender sensitisation and human rights education at all levels

Under the Protocol states must promote:

- literacy amongst women
- education and training at all levels, in all disciplines, particularly in the sciences and technology
- enrolment and retention of girls in formal and non-formal education settings, including fundamental education programmes

The Protocol also commits States parties to taking action on a number of issues affecting women and girls' right to education, including:

- eliminate discrimination against women (Article 2)
- ban female genital mutilation (Article 5 (b))
- set the minimum age of marriage for girls at 18 (Article 6 (b))
- ensure the effective participation and representation of women in decision-making (Article 9 (2))
- guarantee reproductive and health rights (Article 14)

The right to education of girls is also comprehensively protected by a number of other African treaties.

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<sup>74</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) OAU Doc. CAB/LEG/66.6 (Sept. 13, 2000).

Article 13 of the African Youth Charter (2006, AYC)<sup>75</sup> sets out the right to education as applied to African youth (defined by the AYC as every person between the ages of 15-35 years), including provisions:

- requiring that curricula include information on cultural practices that are harmful to the health of young women and girls (Article 13 (3) (f))
- that girls and young women who become pregnant or get married have the opportunity to continue their education (Article 13 (4) (h))
- on the introduction of scholarship and bursary programmes to encourage entry into post-primary school education and into higher education for outstanding youth from disadvantaged communities, especially young girls (Article 13 (4) (l))
- to establish and encourage participation of all young men and young women in sport, cultural and recreational activities as part of holistic development (Article 13 (4) (m))
- to promote culturally appropriate, age specific sexuality and responsible parenthood education (Article 13 (4) (n))

Article 11 of the African Charter on the Rights and Welfare of the Child (1990)<sup>76</sup> requires States parties to take special measures to ensure equal access to education for girls (Article 11 (3) (e)) and to take 'all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue their education on the basis of their individual ability' (Article 11 (6)).

### 2.3.2 Arab

In the Arab region, the Arab Charter on Human Rights (2004)<sup>77</sup> guarantees equality between men and women and non-discrimination in Article 3 and the right to 'compulsory and accessible' primary education without discrimination of any kind in Article 41.

### 2.3.3 Asia

In Asia, the non-legally binding ASEAN Human Rights Declaration (2012)<sup>78</sup> guarantees the right to education in Article 31 and non-discrimination as a general principle, but not as a human right.

### 2.3.4 Europe

In Europe, the European Convention on Human Rights (1950)<sup>79</sup> guarantees the right to non-discrimination in Article 14 which read with Article 2 of the Protocol to the European Convention on Human Rights (1958)<sup>80</sup> on the right to education, prohibits discrimination in education on the basis of

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<sup>75</sup> *African Youth Charter (adopted 2 July 2006, entered into force 8 August 2009).*

<sup>76</sup> *African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc. CAB/LEG/24.9/49 (1990) (ACRWC).*

<sup>77</sup> *Arab Charter on Human Rights (adopted 15 September 1994, entered into force 15 March 2008) reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005).*

<sup>78</sup> *Association of Southeast Asian Nations (ASEAN) Human Rights Declaration (adopted 18 November 2012).*

<sup>79</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) ETS No.005 (ECHR).*

<sup>80</sup> *Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ETS No.009.*

sex. In addition, Protocol 12 to the European Convention on Human Rights (2000)<sup>81</sup> prohibits discrimination in the enjoyment of any legal right as set out in national laws.

The European Social Charter (revised) (1996)<sup>82</sup> prohibits discrimination under Article E, provides that the state takes all necessary measures to provide for free primary and secondary education and encourage regular attendance under Article 17, and the right to vocational guidance (Article 9) and training (Article 10).

The Convention on Preventing and Combating Violence against Women and Domestic Violence (2011, Istanbul Convention) identifies education as a key area in which to take measures to eliminate gender-based violence and its causes, and requires states to take:

the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.<sup>83</sup>

The Charter of Fundamental Rights of the European Union (2010),<sup>84</sup> which applies to EU institutions and bodies, and EU member states when they are acting within the scope of EU law, guarantees the right to education (Article 14), non-discrimination (Article 21), and equality between women and men (Article 23).

In addition, the Council of Europe has a non-legally binding Recommendation of the Committee of Ministers to member states on gender mainstreaming in education (2007).<sup>85</sup>

### 2.3.5 Inter-America

In the inter-America region the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)<sup>86</sup> prohibits discrimination under Article 3 and the right to education under Articles 13 and 16.

Articles 34, 49 and 50 of the Charter of the Organization of American States (1948)<sup>87</sup> guarantee various aspects of the right to education.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994, Convention of Belém do Pará) states that all women have the right to be free from violence which includes the right to freedom from all forms of discrimination and the right to be

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<sup>81</sup> *Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms ETS No.177.*

<sup>82</sup> *European Social Charter (revised) ETS No.163.*

<sup>83</sup> *Istanbul Convention Article 14.*

<sup>84</sup> *Charter of Fundamental Rights of the European Union OJ C 326, 26.10.2012, pp. 391–407.*

<sup>85</sup> *Recommendation of the Committee of Ministers to member states on gender mainstreaming in education (adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies) CM/Rec(2007)13.*

<sup>86</sup> *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No 69.*

<sup>87</sup> *Charter of the Organisation of American States (as amended) (adopted 30 April 1948, entered into force 13 December 1951) OAS Treaty series No. 1-C and 61.*

‘educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination’ (Article 6).

Lastly, the Inter-American Democratic Charter (2001)<sup>88</sup> calls for the elimination of gender discrimination (Article 9) and states that a quality education be available to all, including women and girls’ (Article 16).

#### 2.4 States global commitment to gender equality and quality education as part of the 2030 Agenda for Sustainable Development and Education 2030

The 2030 Agenda for Sustainable Development (the ‘Agenda’) includes two goals relevant to gender equality in education: SDG4 and SDG5. The content of both goals are largely aligned with human rights standards.

SDG4 commits states to: ‘Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.’ In order to meet this goal, the Agenda specifies targets and means of implementation, amongst which are various commitments to gender equality in education.

Target 4.1 requires states to ensure that all girls and boys complete free and quality primary and secondary education.

4.2 requires states to ensure that all girls and boys have access to quality early childhood development, care and pre-primary education.

4.3 requires states to ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university.

4.5 requires states to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable.

4.6 requires states to ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy.

4.7 requires that states ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture’s contribution to sustainable development.

4.A requires states to implement SDG4 by building and upgrading education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all.

SDG5 on gender equality reads: ‘Achieve gender equality and empower all women and girls.’ It also includes targets and means of implementation related to gender equality in education.

5.1 requires states to end all forms of discrimination against all women and girls everywhere.

5.2 requires states to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

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<sup>88</sup> *Inter-American Democratic Charter (adopted 11 September 2001).*

5.3 requires states to eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

5.4 requires states to recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.

5.6 requires states to ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.

5.C requires states to adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

Other relevant targets and means of implementation, include:

1.B Create sound policy frameworks at the national, regional and international levels, based on pro-poor and gender-sensitive development strategies, to support accelerated investment in poverty eradication actions.

3.7 By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.

6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations

10.3 Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.

16.1 Significantly reduce all forms of violence and related death rates everywhere.

16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children.

16.B Promote and enforce non-discriminatory laws and policies for sustainable development.

### **3. Holding states accountable for their legal commitments to gender equality in education**

Frameworks guaranteeing gender equality in education are often accompanied by mechanisms that provide access to justice for victims of violations, by holding states accountable, to varying extents, for failure to meet their commitments. Accountability mechanisms at the international level include: judicial mechanisms such as courts; quasi-judicial mechanisms such as commissions, committees, and charter-based bodies; and non-judicial mechanisms, such as the special procedures of the Human Rights Council.

#### **3.1 Legal accountability**

Human rights treaties require de jure commitment and as a result associated accountability mechanisms can hold states legally accountable for violations of human rights codified in the treaty.

The primary way this is done is through the submission of complaints (or communications, petitions, claims, etc.) by anyone who feels their human rights have been violated by the state and provided certain criteria, as determined by the treaty or mechanism, are met. The mechanism then issues a decision or judgment as to whether the complainant's human rights have been violated, and if so, the mechanism may order the state to remedy the situation. However, the ability of legal mechanisms to enforce their decisions varies depending on the treaty in question.

States tend to comply with the judgments of judicial mechanisms associated with regional human rights treaties, namely, the European Court of Human Rights and the Inter-American Court of Human Rights, which are also strongest in their ability to enforce their decisions. International mechanisms, that is, those associated with the United Nations, which are quasi-judicial or non-judicial in nature, have limited ability to enforce their decisions. This lack of enforcement is the primary weakness of international human rights law and a major barrier to accountability at the international level. Ultimately, treaty compliance and effective implementation are the responsibility of the state because no international or regional mechanism has the authority to compel compliance.

In addition to adjudicating complaints, some international mechanisms have a complementary monitoring function. This is done through periodic reporting by states on the measures they have taken to implement the treaty to the mechanism. The mechanism then evaluates state compliance with the treaty through an examination of the state's report and, if permitted, third party evidence. The mechanism then issues its evaluation and recommendations, which the state is then expected to act on. Although monitoring does not constitute accountability, monitoring can highlight violations and human rights issues and may lead to changes in law, policy, and practice.

Under the 2030 Agenda for Sustainable Development there are no embedded accountability mechanisms akin to those associated with international human rights law. Processes known as 'follow-up and review' do exist but they function more like monitoring mechanisms and are entirely voluntary.

<sup>89</sup>

The following sections describe the human rights mechanisms at the international and regional levels competent to deal with complaints regarding women and girls' rights.

Note that all the mechanisms below are free to access and a lawyer is not needed to submit a complaint,<sup>90</sup> with the exception of the regional courts.

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<sup>89</sup> At the national level, states are expected to establish inclusive monitoring mechanisms to track progress and review implementation. Outcomes from national level monitoring will provide the basis to inform regional and international mechanisms. Regional follow-up and review mechanisms are currently being developed, where the focus will be on peer learning and exchange of best practices. In addition, UN Regional Economic Commissions and regional political and technical bodies will be involved, as well as civil society. At the international level, the 2030 Agenda is monitored by the High-Level Political Forum (HLPF). However, states are not obliged to undergo national reviews. The HLPF meets annually to keep track of global progress on implementation, provide political leadership and guidance, and address new and emerging issues, especially those of an international nature.

<sup>90</sup> However, for the judicial and quasi-judicial mechanisms which require the exhaustion of all domestic remedies, the case will have had to have been brought to national mechanisms by lawyers.

### 3.2 International mechanisms

<b>Table 4: International human rights mechanisms</b>		
Forum	Complaints	Monitoring
UN treaty bodies		
CEDAW	Yes—non-binding	Yes
CESCR	Yes—non-binding	Yes
CRC	Yes—non-binding	Yes
CRPD	Yes—non-binding	Yes
CCPR	Yes—non-binding	Yes
UNESCO Committee on Conventions and Recommendations	Yes—non-binding	Yes
Human Rights Council		
Universal Periodic Review	No	Yes
Human Rights Complaint Procedure	Yes—non-binding	No
Special procedures	Yes—non-binding	No
UN Women Commission on the Status of Women	Yes—non-binding and no individual redress	No

#### 3.2.1 United Nations treaty bodies (UNTBs)

The core human rights treaties, that is, those concluded by the UN, establish a mechanism, known as a ‘UN treaty body’, in the text of the treaty.<sup>91</sup> UN treaty bodies generally have three accountability mechanisms. Treaty bodies can hear individual and group complaints,<sup>92</sup> inter-state complaints,<sup>93</sup> and initiate confidential inquiries on grave or systematic violations, if the state is party to the treaty in question and has accepted the competence of the body to hear complaints against it (through ratification of an optional protocol or making a declaration to that effect), and the complaint itself meets certain criteria as specified by the treaty body. Third party interventions are also possible under these mechanisms, providing civil society an international avenue for highlighting violations at the national level.

Treaty bodies do not have the legal authority to enforce their decisions under complaints procedures. Rather UN treaty bodies tend to enter into dialogue and work with states in order to conduce compliance through propitiatory rather than contentious means.

The most relevant UN treaty body to submit a complaint to on the issue of gender inequality in education is the Committee on the Elimination of Discrimination against Women (the Committee) which monitors the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (1979, CEDAW). The Committee is competent to hear individual and collective complaints, inter-state complaints, and conduct inquiries into grave or systematic violations by a state, provided the state has ratified CEDAW and the Optional Protocol to the Convention on the

<sup>91</sup> Article 18, CEDAW; Article 17, ICESCR; Article 44, CRC; Article 35, CRPD; Article 9, ICERD; Article 4, ICCPR; Article 73, ICRMW

<sup>92</sup> For further information, see OHCHR. 2013. *Individual Complaint Procedures under the United Nations Human Rights Treaties*. Available at [www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf](http://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf)

<sup>93</sup> *Inter-state complaints procedures have never been used.*

Elimination of All Forms of Discrimination against Women (1999, OP-CEDAW).<sup>94</sup> Optional protocols are treaties that elaborate substantive areas related to the treaty<sup>95</sup> to which it is a protocol or establish procedures related to the treaty, usually a communications and inquiry procedure. They are separate treaties from their associated treaty and have to be ratified, acceded to, and signed separately. For optional protocols that establish a communications procedure, the state must ratify both the optional protocol and the human rights treaty in question. In doing so, states effectively confer, through means of a treaty, the right of individuals and groups to submit a complaint on alleged violations of CEDAW to the Committee.

Complaints submitted to the Committee must meet the following criteria in order to be heard:

- it is in writing
- it is not anonymous
- all domestic remedies must have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief<sup>96</sup>

Article 4 of OP-CEDAW states that complaints will be considered inadmissible if:

- the same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement (non-duplication)
- it is incompatible with the provisions of CEDAW
- it is manifestly ill-founded or not sufficiently substantiated
- it is an abuse of the right to submit a communication
- the facts that are the subject of the communication occurred prior to the entry into force of the OP-CEDAW for the State party concerned unless those facts continued after that date

Once a complaint has been submitted, the Committee can order interim measures to 'avoid possible irreparable damage to the victim or victims of the alleged violation.'<sup>97</sup> The Committee then transmits the complaint to the State party,<sup>98</sup> and then considers the complaint in a closed session.<sup>99</sup> This examination leads to a decision as to whether CEDAW has been violated, which is shared with all parties, and if so the Committee may make recommendations to the State party.<sup>100</sup> The state must

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<sup>94</sup> *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (adopted 6 October 1999, entered into force 22 December 2000) 2131 UNTS 83 (OP-CEDAW). As of 25 August 2017 OP-CEDAW has been ratified by 109 States parties. An updated list of States parties can be accessed at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=IV-8-b&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-8-b&chapter=4&clang=en)*

<sup>95</sup> *See, for example, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. States can ratify, accede, or sign optional protocols on substantive areas, without having had ratified, acceded, or signed the treaty to which it is a protocol. This is the case for the United States which has ratified both substantive protocols to the CRC but has yet to ratify the CRC itself.*

<sup>96</sup> *This is because international human rights law is based on the principle of subsidiarity whereby states have the primary responsibility to secure human rights and international human rights mechanisms should only have a supervisory function, unless the state has not provided effective remedies at the national level and international and regional mechanisms are the only means of redress.*

<sup>97</sup> *OP-CEDAW Article 5.*

<sup>98</sup> *Ibid., Article 4 (2).*

<sup>99</sup> *Ibid., Article 5 (2).*

<sup>100</sup> *Ibid., Article 7 (3).*

then submit within six months, a written response, including information on any action taken to address the complaint and the recommendations of the Committee.<sup>101</sup> The Committee may also follow-up with the state on the measures taken during its following review.<sup>102</sup>

If a country has not ratified CEDAW and OP-CEDAW, there are alternative UN treaty bodies that can be engaged.

The Committee on Economic, Social and Cultural Rights (CESCR) is competent to hear individual and collective complaints, inter-state communications, and conduct inquiries against states that have ratified the International Covenant on Economic, Social and Cultural Rights (1966, ICESCR) and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008, OP-ICESCR).<sup>103</sup> The complaints procedure is similar to the procedure established under OP-CEDAW except the complaint 'must demonstrate it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance'.<sup>104</sup> In addition, the admissibility criteria are slightly stricter:

- the complaint must be submitted within one year of exhausting all domestic remedies, unless the complainant can demonstrate it has not been possible to do so<sup>105</sup>
- the complaint cannot be based exclusively on media reports<sup>106</sup>

Lastly, a key difference between the procedures is that CESCR, instead of determining a case on its merits, can pursue a friendly settlement between willing parties.<sup>107</sup> This opens up dialogue between the state and the petitioner, and they negotiate a settlement which may include acknowledgement of the role of the state in the violation and measures to remedy the violation.

The Committee on the Rights of the Child, which monitors the Convention on the Rights of the Child (1989, CRC), has the most recent complaints procedure, established under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (2011, OP3-CRC).<sup>108</sup> The procedure works in much the same way as CESCR's except that it makes provision to ensure children are not manipulated into making complaints<sup>109</sup> and that all complainants shall not be subject to 'human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee'.<sup>110</sup>

If a complaint concerns a girl with disabilities, the most relevant UNTB to submit a communication to is the Committee on the Rights of Persons with Disabilities, which oversees the Convention on the Rights Of Persons with Disabilities (2006, CRPD), provided the victim of a violation of the CRPD falls

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<sup>101</sup> *Ibid.*, Article 7 (4).

<sup>102</sup> *Ibid.*, Article 7 (5).

<sup>103</sup> *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013) (Doc. A/63/435.) (OP-ICESCR)*

<sup>104</sup> *Ibid.*, Article 4.

<sup>105</sup> *Ibid.*, Article 3 (2) (a).

<sup>106</sup> *Ibid.*, Article 3 (2) (e).

<sup>107</sup> *OP-ICESCR Article 7.*

<sup>108</sup> *Optional Protocol to the Convention on the Rights of the Child on a communications procedure (adopted 14 July 2011, entered into force 14 April 2014) (Doc. A/HRC/RES/17/18.) (OP3-CRC)*

<sup>109</sup> *Ibid.*, Article 3 (2).

<sup>110</sup> *Ibid.*, Article 4 (1).

within the jurisdiction of a State party to the CRPD and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (2008, OP-CRPD).<sup>111</sup>

Lastly, the Human Rights Committee, which oversees the International Covenant on Civil and Political Rights (1966, ICCPR), can receive complaints on issues of discrimination and educational freedom, provided the state in question is State party to the Optional Protocol to the International Covenant on Civil and Political Rights (1966, OP-ICCPR).<sup>112</sup>

It should be noted that although UN treaty bodies have dealt with a small number of communications on the right to education, no UN treaty body has adjudicated on a specific case of gender discrimination in education.<sup>113</sup>

### 3.2.2 UNESCO

UNESCO has a confidential complaints procedure competent to receive complaints from individuals, groups of individuals, and NGOs on the right to education.<sup>114</sup> Complaints can be submitted to the Committee on Conventions and Recommendations under similar criteria to OP-ICESCR. UNESCO's 193 Member States are all subject to this procedure regardless of which, if any, treaties have been ratified by the state. As this procedure is confidential, communications are not made public for 20 years after their resolution, it is difficult to assess the efficacy of this mechanism.

### 3.2.3 Human Rights Council

The Human Rights Council<sup>115</sup> is an inter-governmental body within the UN system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations. Unlike UN treaty bodies (composed of independent experts) which review state performance according to a specific treaty, the Human Rights Council is made up of states (47 United Nations Member States elected by the UN General Assembly) and has the ability to discuss all thematic human rights issues and situations. Its human rights mandate is not restricted by treaty, country, or issue, making it a unique political institution.

The Human Rights Council's primary monitoring mechanism is the Universal Periodic Review (UPR), under which all UN Member States undergo a review of its human rights performance every four and a half years. During the UPR process states indicate what actions they have taken to fulfil their human rights obligations and other states are able to criticise, question, and/or praise their human rights record. Further, states can make recommendations, which the reviewed state can support (states

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<sup>111</sup> *Optional Protocol to the Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2518 UNTS 283*

<sup>112</sup> *Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966 entered into force 23 March 1976) 999 UNTS 171.*

<sup>113</sup> See section 3.4 for further details.

<sup>114</sup> For further information on the UNESCO procedure for claiming in the event of human rights violations related to the UNESCO mandate, see [www.claiminghumanrights.org/unesco\\_procedure.html](http://www.claiminghumanrights.org/unesco_procedure.html) (Accessed 17 October 2017.)

<sup>115</sup> For further information on the Human Rights Council, see [www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx](http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx) (Accessed 17 October 2017.)

support an average of 75% of recommendations)<sup>116</sup> and by doing so agree to take action to implement that recommendation. An example is Portugal which recommended the following to Bhutan, and which Bhutan supported:

Take further measures to address the decline of female enrolment in schools, in order to ensure that young women complete their secondary education.<sup>117</sup>

The Human Rights Council also has a number of charter-based bodies with procedures allowing for access to justice at the international level.

The Human Rights Complaint Procedure<sup>118</sup> is confidential and non-treaty based, and applies to all UN Member States—making it the only universal complaint procedure. It deals with complaints that ‘address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.’<sup>119</sup> The complaint procedure addresses communications submitted by individuals, groups, or non-governmental organisations that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations. OHCHR claims that an average of 3400 complaints are made each year.<sup>120</sup>

Two distinct working groups—the Working Group on Communications (WGC) and the Working Group on Situations (WGS)—are responsible for examining complaints. The WGC examines if the complaint fulfils the admissibility criteria.<sup>121</sup> If so, it transfers the complaint to the WGS. The WGS meets twice a year to consider new complaints as well as the progress made on complaints submitted in the previous years. After receiving advice of the WGC, it presents the Human Rights Council with a report on the case and makes recommendations on the course of action to take.

A range of special procedures with either a thematic or country-specific mandate can receive and investigate communications<sup>122</sup> on violations that have, may or are likely to occur, that fall within the mandate of the procedure. Communications to special procedures, however, do not need to meet the strict criteria of judicial and quasi-judicial mechanisms, for instance, domestic remedies do not need to be exhausted and other mechanisms can be dealing with the matter. Regarding gender inequality in education, the most relevant special procedures are the:

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<sup>116</sup> OHCHR. *Human Rights Council*. (nd), p. 8. Available at [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/HRC\\_booklet\\_En.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/HRC_booklet_En.pdf) (Accessed 29 September 2017.)

<sup>117</sup> Human Rights Council Report of the Working Group on the Universal Periodic Review: Bhutan (1 July 2014) (Doc. A/HRC/27/8) recommendation 118.85

<sup>118</sup> For a description of the UN Human Rights Bodies complaints procedure see [www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx](http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx) (Accessed 5 January 2017.)

<sup>119</sup> OHCHR. *Human Rights Council*. (nd) p. 14. Available at [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/HRC\\_booklet\\_En.pdf](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/HRC_booklet_En.pdf) (Accessed 29 September 2017.)

<sup>120</sup> *Ibid.*

<sup>121</sup> See OHCHR page on the Human Rights Complaints Procedure for information regarding admissibility [www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx](http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx) (Accessed 29 September 2017.)

<sup>122</sup> See OHCHR page on special procedures and communications [www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx) (Accessed 29 September 2017.)

- Special Rapporteur on the right to education<sup>123</sup>
- Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity<sup>124</sup>
- Special Rapporteur on violence against women, its causes and consequences<sup>125</sup>
- Working group on the issue of discrimination against women in law and in practice<sup>126</sup>

### 3.2.4 Commission on the Status of Women

UN Women's Commission on the Status of Women (CSW)<sup>127</sup> has a non-judicial complaints procedure, which is more an evidence collecting mechanism to identify emerging trends and patterns of injustice and discriminatory practices against women for the purpose of policy formulation and development of strategies for the promotion of gender equality. CSW does not take decisions on the merits of the communication and therefore does not provide an avenue for the redress of individual grievances.

### 3.3 Regional mechanisms

Regional legal frameworks give rights-holders the possibility of bringing their complaints to regional mechanisms, provided the state in question is party to the relevant regional instrument, that all domestic remedies have either been exhausted or deemed insufficient, and that the case is not being dealt with by another mechanism (non-duplication). Regional mechanisms,<sup>128</sup> specifically courts, are the strongest accountability mechanisms at the international level, able to issue legally binding decisions. However, courts, with the exception of the European Court of Human Rights, have heard very few cases on the right to education, let alone cases on gender discrimination in education. In fact, the African Court on Human and Peoples' Rights and the Inter-American Court of Human Rights have not adjudicated on a single case of gender discrimination in education. However, it should be stressed that although there are relatively few cases, regional mechanisms do offer viable and important avenues for redress.

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<sup>123</sup> For further information on submission of information and individual complaints to the UN Special Rapporteur on the right to education, see [www.ohchr.org/EN/Issues/Education/SREducation/Pages/IndividualComplaints.aspx](http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/IndividualComplaints.aspx) (Accessed 29 September 2017.)

<sup>124</sup> For information on complaints to the Independent Expert on sexual orientation and gender identity [www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx) (Accessed 29 September 2017.)

<sup>125</sup> For further information on individual complaints to the Special Rapporteur on violence against women, its causes and consequences [www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Complaints.aspx](http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Complaints.aspx) (Accessed 29 September 2017.)

<sup>126</sup> For information on submitting information to the Working Group on discrimination against women in law and in practice [www.ohchr.org/EN/Issues/Women/WGWomen/Pages/SubmissionInformation.aspx](http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/SubmissionInformation.aspx) (Accessed 29 September 2017.)

<sup>127</sup> For information on submitting communications to the Commission on the Status of Women [www.unwomen.org/en/csw/communications-procedure](http://www.unwomen.org/en/csw/communications-procedure) (Accessed 29 September 2017.)

<sup>128</sup> For further information on regional human rights mechanisms, see [www.right-to-education.org/page/regional-human-rights-mechanisms](http://www.right-to-education.org/page/regional-human-rights-mechanisms) (Accessed 29 September 2017.)

**Table 5: Regional human rights mechanisms**

Region	Forum	Complaints	Monitoring
Africa	African Court on Human and Peoples' Rights	Yes—issues binding judgments and advisory opinions	No
	ECOWAS Court of Justice	Yes—issues binding judgments	No
	African Commission on Human and Peoples' Rights	Yes—non-binding	Yes
	African Committee of Experts on the Rights and Welfare of the Child	Yes—non-binding	Yes
Arab	Arab Human Rights Committee	No	Yes
Asia	ASEAN Intergovernmental Commission on Human Rights	No	No
Europe	European Court of Human Rights	Yes—issues binding judgments	No
	European Committee on Social Rights	Yes—competent to receive collective complaints and issue declaratory decisions	Yes
Inter-America	Inter-American Commission on Human Rights	Yes—if states fail to comply with its recommendations it can refer the matter to the Inter-American Court of Human Rights	Yes
	Inter-American Court of Human Rights	Yes—issues binding judgments and advisory opinions	No

### 3.3.1 Africa

In Africa, there are four human rights mechanisms competent to hear cases on gender equality in education.

The African Court on Human and Peoples' Rights (ACTHPR)<sup>129</sup> can adjudicate on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), the African Charter on the Rights and Welfare of the Child (1990), and 'any other relevant human rights treaty ratified by the state concerned.'<sup>130</sup> Consequently there is hardly a single right at the international level that cannot be subject to protection in the African system. It has advisory and contentious jurisdiction, and any decision it renders is legally binding.<sup>131</sup> It can also order remedies, including: declaratory relief,

<sup>129</sup> On 18 July 2008 the Protocol on the Statute of the African Court of Justice and Human Rights was adopted. The Protocol merges the African Court on Human and Peoples' Rights and the Court of Justice of the African Union. The Protocol has not yet entered into force. The Protocol can be accessed at <https://au.int/en/treaties/protocol-statute-african-court-justice-and-human-rights> (Accessed 29 September 2017.)

<sup>130</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004) OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997) Article 7.

<sup>131</sup> Article 30, Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights states: 'The States Parties to the present Protocol undertake to comply

orders for legislative change, and compensation. Execution of its decisions is overseen by the Assembly and Council of Ministers of the African Union in order to guarantee compliance.<sup>132</sup>

The ACtHPR's jurisdiction is accepted by 30 African Union Member States<sup>133</sup> which means complaints can be brought against those 30 states by the African Commission on Human and Peoples' Rights (see below), States parties to the Court's Protocol, and African inter-governmental organisations. However, only eight states<sup>134</sup> have recognised its jurisdiction to hear complaints brought by individuals or ngos. As of 30 August 2017, the ACtHPR has received 147 applications and finalised 32 cases.<sup>135</sup>

There are also two sub-regional courts both of which do not require claimants to exhaust domestic remedies. The Economic Community of West African States Community Court of Justice has the power to issue binding decisions on human rights violations brought by individuals in 15 West African states.<sup>136</sup> The remedies available include declaratory relief, compensation, and specific orders. The Court has handed down around 150 human rights decisions so far, including on the right to education<sup>137</sup> and on violations of CEDAW.<sup>138</sup> The East African Court of Justice may also in the future have its jurisdiction extended to cover human rights violations.<sup>139</sup>

There are also two quasi-judicial mechanisms operating in Africa. Like UN treaty bodies, their decisions are not legally binding and work on the basis of persuasion and dialogue with states.

The African Commission on Human and Peoples' Rights (ACmHPR) was established by the African Charter on Human and Peoples' Rights (1981, ACHPR)<sup>140</sup> to which all African Union Member States except South Sudan are party.<sup>141</sup> Like the ACtHR it can deal with complaints arising from African and international human rights instruments.<sup>142</sup> The ACmHPR accepts communications<sup>143</sup> from individuals,

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*with the judgement in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.'*

<sup>132</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights Articles 29 and 31.

<sup>133</sup> A list correct as of 16 January 2017 can be accessed at [www.african-court.org/en/images/Basic%20Documents/Ratification\\_and\\_Deposit\\_of\\_the\\_Declaration\\_final-jan\\_2017.pdf](http://www.african-court.org/en/images/Basic%20Documents/Ratification_and_Deposit_of_the_Declaration_final-jan_2017.pdf) (Accessed 20 September 2017.)

<sup>134</sup> Benin, Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Tanzania, and Tunisia.

<sup>135</sup> Cases can be found at [www.african-court.org/en/index.php/cases/2016-10-17-16-18-21#finalised-cases](http://www.african-court.org/en/index.php/cases/2016-10-17-16-18-21#finalised-cases) (Accessed 29 September 2017.)

<sup>136</sup> Benin, Burkina Faso, Cape Verde, Ivory Coast, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal, and Togo.

<sup>137</sup> Socio-Economic Rights and Accountability Project (SERAP) v Nigeria and Another (2010) AHRLR 145 (ECOWAS 2010). Available at [www.chr.up.ac.za/images/files/documents/africancases/country/nigeria/Socio-Economic%20Rights%20and%20Accountability%20Project%20v%20Nigeria%20\(ECOWAS\).pdf](http://www.chr.up.ac.za/images/files/documents/africancases/country/nigeria/Socio-Economic%20Rights%20and%20Accountability%20Project%20v%20Nigeria%20(ECOWAS).pdf) (Accessed 29 September 2017.)

<sup>138</sup> See, for example, the recent case Dorothy Njemanze & 3 Others v Nigeria ECW/CJ/APP/17/14.

<sup>139</sup> For more details, see [www.ijrcenter.org/regional-communities/east-african-court-of-justice/](http://www.ijrcenter.org/regional-communities/east-african-court-of-justice/) (Accessed 30 September 2017.)

<sup>140</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (ACHPR) Article 30.

<sup>141</sup> An up-to-date list of States parties to the ACHPR can be found at [www.achpr.org/instruments/achpr/ratification/](http://www.achpr.org/instruments/achpr/ratification/) (Accessed 2 October 2017.)

<sup>142</sup> ACHPR Article 60.

<sup>143</sup> *Ibid.*, Articles 55 and 56.

groups of individuals, non-governmental organisations,<sup>144</sup> and states, and has made a number of decisions on the right to education and freedom from discrimination.<sup>145</sup> The ACmHPR's mandate also includes a monitoring function where it considers periodic reports submitted by States parties, as well as reports from members of the Commission and its special mechanisms (rapporteurs, committees, and working groups).

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) was established by the African Charter on the Rights and Welfare of the Child (1990, ACRWC)<sup>146</sup> which has 41 States parties.<sup>147</sup> It is empowered to hear communications from individuals, groups of individuals, and ngos alleging violations of the ACRWC; go on fact-finding missions; interpret the provisions of the ACRWC, as well receive and review state reports. The communications procedure of the ACERWC and the Committee on the Rights of the Child are unique in that they deal exclusively with communications regarding children's rights, giving voice to a group that are particularly vulnerable and one often denied access to justice at the national level.<sup>148</sup> They are also both relatively new human rights mechanisms with the potential to make a real impact in the protection of the rights of the child.

### 3.3.2 Arab

The Arab Human Rights Committee has a monitoring mechanism, overseeing states' compliance with the Arab Charter on Human Rights (2004), but does not have a complaints mechanism.

### 3.3.3 Asia

In Asia, there is the ASEAN Intergovernmental Commission on Human Rights but it is not competent to receive complaints.

### 3.3.4 Europe

The European Court of Human Rights (ECtHR) is competent to accept complaints from any person, non-governmental organisation, or group of individuals claiming to be the victim of a violation by any one of the 47 States parties<sup>149</sup> to the European Convention on Human Rights (1950, ECHR). As the right to education is provided for in Additional Protocol 1 (1952, Protocol), a state must ratify the Protocol in order for the ECtHR to accept complaints relating to the right to education. The ECtHR has built up a body of cases on the right to education,<sup>150</sup> including on issues affecting and related to the right to education of girls.<sup>151</sup>

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<sup>144</sup> Including *amicus curiae*.

<sup>145</sup> For a list of finalised decisions, see [www.achpr.org/communications/decisions/?a=873](http://www.achpr.org/communications/decisions/?a=873) (Accessed 29 September 2017.)

<sup>146</sup> ACRWC Articles 32-46.

<sup>147</sup> An up-to-date list of States parties can be found at [www.achpr.org/instruments/child/](http://www.achpr.org/instruments/child/) (Accessed 2 October 2017.)

<sup>148</sup> For further information on access to justice of children see CRIN's page on access to justice which includes country reports for each country [www.crin.org/en/home/law/access](http://www.crin.org/en/home/law/access) (Accessed 2 October 2017.)

<sup>149</sup> An up-to-date list of States parties can be found at [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p\\_auth=8nz1vUq4](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=8nz1vUq4) (Accessed 2/10/2017.)

<sup>150</sup> Right to education cases can be found at [https://hudoc.echr.coe.int/eng#{"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"violation":\["P1-2"\]}](https://hudoc.echr.coe.int/eng#{) (Accessed 2 October 2017.)

<sup>151</sup> See section 3.4.

On finding a violation of the ECHR, the ECtHR can order a range of remedies, including: awarding just satisfaction (monetary compensation for the damages suffered),<sup>152</sup> recommending the state enact, amend, or repeal legislation, as well as specific remedies, such as ordering the state to readmit a student. However, it should be stressed that although states are bound by the decisions of the ECtHR and must execute them accordingly,<sup>153</sup> the ECtHR is not competent to quash any national law or judgment. The Committee of Ministers of the Council of Europe is responsible for enforcing ECtHR judgments.<sup>154</sup>

The European Committee of Social Rights (ECSR) is competent to receive collective (not individual) complaints and monitor compliance with the European Social Charter (revised) (1996, ESC). The ECSR can only receive collective complaints against the 15 states that have ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995).<sup>155</sup> The Committee only allows collective complaints from a restricted list of organisations.<sup>156</sup> Only Finland has recognised the right of national ngos to lodge collective complaints against it. On reviewing a collective complaint the ECSR issues a declaratory decision, this decision however cannot be enforced at the national level. Decisions are overseen by the Committee of Ministers of the Council of Europe, which may make recommendations to the state concerned. The ECSR has decided a number of complaints on education.<sup>157</sup>

### 3.3.5 Inter-America

The Inter-American Commission on Human Rights (IACmHR) is mandated to protect and promote human rights in the 35 Member States of the Organization of American States ('OAS').<sup>158</sup> The IACmHR can receive petitions from individual, groups of individuals, and ngos<sup>159</sup> regarding violations by OAS Member States of rights guaranteed in OAS instruments, including the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988, Protocol of San Salvador) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994, Convention of Belém do Pará), if ratified by the state in question.

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<sup>152</sup> *The state is also required to cover the cost of bringing the case. If the ECtHR finds that there has been no violation, then the applicant is not liable for the state's legal expenses.*

<sup>153</sup> *ECHR Article 46 (1): 'The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.'*

<sup>154</sup> *ECHR Article 46 (2): 'The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.'*

<sup>155</sup> *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints ETS 158. An up-to-date list of States parties can be found at [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p\\_auth=2f4kcfLp](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=2f4kcfLp) (Accessed 3 October 2017.)*

<sup>156</sup> *European Trade Union Confederation (ETUC), for employees; Business Europe and International Organisation of Employers (OIE), for employers; certain international non-governmental organisations (INGOs) holding participatory status with the Council of Europe; social partners at national level; employers' organisations and trade unions in the country concerned.*

<sup>157</sup> *ECSR can be found at [http://hudoc.esc.coe.int/enq#{\"ESCDCType\":\"FOND\",\"Conclusion\",\"Ob\"}](http://hudoc.esc.coe.int/enq#{\) (Accessed 3 October 2017.)*

<sup>158</sup> *Charter of the Organization of American States Article 106.*

<sup>159</sup> *American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) OAS Treaty Series No. 36 (ACHR) Article 44.*

A petition may result in a friendly settlement or the IACmHR may make recommendations.<sup>160</sup> If the state refuses to comply with the IACmHR's recommendations then the IACmHR may refer the case to the Inter-American Court of Human Rights. In 2016, 16 of the 2567 cases received by the IACmHR were referred to the Inter-American Court of Human Rights for further action.

The Inter-American Court of Human Rights (IACtHR) was established by the American Convention on Human Rights (1969).<sup>161</sup> It has both adjudicatory and advisory jurisdiction. The IACtHR's advisory function involves issuing advisory opinions on interpretation and conformity of national laws and policies with OAS instruments. In relation to its adjudicatory jurisdiction, it is entitled to consider cases submitted to it by the IACmHR or by OAS States parties (there is no individual right of petition), that have accepted the jurisdiction of the IACtHR. The IACtHR can order remedies, including fair compensation, as well as interim measures.<sup>162</sup> Decisions of the IACtHR have binding force<sup>163</sup> but there is no enforcement mechanism, as such, rather in cases of non-compliance the matter is referred to the General Assembly of the OAS which then issues recommendations to the state.<sup>164</sup>

### 3.4 Evidence of the impact of international law on national implementation

The object and purpose of human rights treaties is the protection and enjoyment of human rights at the national level. For human rights to be meaningfully enjoyed by all, states must domestically implement the provisions of the treaties they ratify. Domestic implementation includes, inter alia, measures such as:

- guaranteeing access to justice,<sup>165</sup> through, for instance, constitutional protection of a justiciable right to education<sup>166</sup> and ensuring the availability of redress mechanisms
- amending, supplementing, or drafting implementing legislation
- formulating policies to implement legislation
- allocating adequate resources, including financial resources
- putting in place mechanisms providing for transparency, inclusive participation, and accountability

There are many instances where international human rights law has been domestically implemented, including in the protection of women and girls' right to education.<sup>167</sup>

In the Hong Kong case, *Equal Opportunities Commission v Director of Education*,<sup>168</sup> it was found that the system used to determine the transition of students from primary to secondary school (known as

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<sup>160</sup> Cases of the IACmHR can be found at [www.oas.org/en/iachr/decisions/merits.asp](http://www.oas.org/en/iachr/decisions/merits.asp) (Accessed 4 October 2017.)

<sup>161</sup> ACHR Article 33.

<sup>162</sup> *Ibid.*, Article 63.

<sup>163</sup> *Ibid.*, Article 68.

<sup>164</sup> *Ibid.*, Article 65.

<sup>165</sup> For further information, see UN Committee on the Elimination of Discrimination against Women. 2015. *General Recommendation on Women's Access to Justice*. (Doc. CEDAW/C/GC/33.)

<sup>166</sup> See RTE's page on justiciability. Available at [www.right-to-education.org/issue-page/justiciability](http://www.right-to-education.org/issue-page/justiciability) (Accessed 20 September 2017.)

<sup>167</sup> A list of domestic cases can be found in Global Justice Center's Cedaw Casebank [www.globaljusticecenter.net/publications/advocacy-resources/751-cedaw-casebank](http://www.globaljusticecenter.net/publications/advocacy-resources/751-cedaw-casebank) (Accessed 29 September 2017.)

<sup>168</sup> *Hong Kong Equal Opportunities Commission v Director of Education* HCAL001555/2000 [www.globaljusticecenter.net/files/EOCv.DeptoofEducation.pdf](http://www.globaljusticecenter.net/files/EOCv.DeptoofEducation.pdf) (Accessed 29 September 2017.)

SSPA) was discriminatory against girls. The case, brought by the Equal Opportunities Commission which was formed pursuant to the Sex Discrimination Ordinance, Chapter 480 (the Ordinance), argued that the SSPA breached the Ordinance. The court, in coming to its decision, deemed the Ordinance to implement CEDAW, and so must be read in light of CEDAW's provisions. Articles 2 (on implementation), 4.1 (on temporary special measures to bring about equality), and 10 (on education) were used in the court's reasoning. As a result of this case, the Education Department changed its original policy.<sup>169</sup> According to ESCR-Net:

Following this decision in 2001, over 100 female students were transferred to more favorable schools and following 2002 the rankings and seat allotments are no longer based on gender. Because of the success of this case, the Equal Opportunity Commission has received at least two more sex discrimination complaints concerning the SSPA system, both in 2003.<sup>170</sup>

In the Botswana case, *Dow v Attorney-General of Botswana*,<sup>171</sup> the High Court found, inter alia, that the children of a Botswanan woman, Dow, and an American man, who were denied financial assistance for their university education were financially prejudiced because the denial of this benefit was due to a discriminatory law, the Citizenship Act (the Act), that provided that the nationality of any child born in Botswana would be determined exclusively by the nationality of the father. Dow argued that the Act denied her and her children equal protection and that the Act discriminated on the basis of sex, despite Botswana's constitution not expressly prohibiting such discrimination. The High Court held that although Botswana had yet to ratify CEDAW, the constitution should be interpreted to prohibit discrimination on the basis of sex. When Botswana ratified CEDAW in 1995, it amended the Citizenship Act to give equal rights to men and women with respect to the citizenship of their children.

Domestic laws have also been enacted or amended as a result of CEDAW ratification, for instance, in Fiji, the minimum age of marriage was equalised to 18 for men and women by the Marriage Act (Amendment) Decree of 2009, bringing it into compliance with the CRC and CEDAW.

The strongest protection of human rights is at the national level. International mechanisms are supplementary and meant as a last resort, if domestic mechanisms fail or do not exist. However, international mechanisms tend to have limited ability to enforce their decisions. Nonetheless, there are examples where international human rights law and associated mechanisms have contributed to the realisation of the right to education of women and girls through adjudication.

The European Court of Human Rights ruled<sup>172</sup> that Swiss authorities acted in line with the European Convention on Human Rights, when it prevented two Muslim parents from removing their daughters from mixed swimming classes as mandated by the school curriculum. The ECtHR accepted that the state had interfered with the parents' right to freedom of religion, but ruled that it did not amount to a breach of the right as it was carried out lawfully and with the legitimate aim of aiding the girls' social integration. The ECtHR unanimously ruled that the best interests of the children involved was

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<sup>169</sup> Yeung, Y. (ed). 2007. *The First Decade: The Hong Kong SAR in Retrospective and Introspective Perspectives*. The Chinese University Press; Hong Kong, p. 171.

<sup>170</sup> ESCR-Net case summary of *Hong Kong Equal Opportunities Commission v Director of Education* [www.escr-net.org/caselaw/2009/equal-opportunities-commission-v-director-education-no-1555-2000](http://www.escr-net.org/caselaw/2009/equal-opportunities-commission-v-director-education-no-1555-2000) (Accessed 29 September 2017.)

<sup>171</sup> *Dow v Attorney-General* 1991 BLR 233 (HC). Available at [www.elaws.gov.bw/displaylrpage.php?id=2616&dsp=2](http://www.elaws.gov.bw/displaylrpage.php?id=2616&dsp=2) (Accessed 29 September 2017.)

<sup>172</sup> *Osmanoğlu and Kocabaş v Switzerland* App no 29086/12 (ECtHR, 10 January 2017). RTE news item on the case can be found at [www.right-to-education.org/news/court-rules-swiss-muslim-girls-must-attend-mixed-sex-swimming-lessons](http://www.right-to-education.org/news/court-rules-swiss-muslim-girls-must-attend-mixed-sex-swimming-lessons) (Accessed 17 October 2017.)

paramount and noted that the state had offered to make some concessions for the children to accommodate their religious background. The ECtHR emphasised that inclusive schooling played a special role in the process of social integration, particularly where children of foreign origin were concerned, and took precedence over the parents' religious or philosophical convictions.

The Inter-American Commission on Human Rights, in a case concerning a student, Mónica Carabantes Galleguillos, who was expelled from a private school for being pregnant,<sup>173</sup> facilitated a friendly settlement, whereby Chile agreed to award Mónica Carabantes a special scholarship while she was enrolled in higher education, as well as publicise a then recent amendment to the Education Act, which contains provisions on the rights of pregnant students or nursing mothers to have access to educational establishments.

In terms of UN treaty bodies, as noted above, no committees have dealt with communications specifically on gender inequality in education. However, the Committee on the Elimination of Discrimination against Women (the Committee) has dealt with two cases engaging Article 10 (h). In a 2004 petition<sup>174</sup> in which a Hungarian Roma woman was subjected to coerced sterilisation, the Committee found that her Article 10 (h) right, which is part of CEDAW's right to education clause, and guarantees the right to 'access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning' was violated.

Similarly, in a communication alleging that an executive order that sought to regulate access to contraception in Manila violated several provisions of CEDAW, the Committee conducted an inquiry into grave and systematic violations of CEDAW.<sup>175</sup> The Committee found violations of Article 12 (right to health), read alone; Article 12, read in conjunction with Articles 2 (c), 2 (d), 2 (f) (legislative and policy measures to eliminate gender-based discrimination), 5 (on gender stereotypes and family education), and 10 (h) (access to reproductive health educational information); and Article 16 (1) (e) (right to decide the number and spacing of children and access to education in order to exercise this right), read alone.

On finding a violation of Article 10 (h), the Committee recommended the Philippine government integrate age-appropriate education on reproductive and sexual health into school curricula.

In addition, there have been UN treaty body communications on a range of pertinent issues, for instance, on discrimination on the basis of sex and/or gender, equality before the law, gender stereotyping,<sup>176</sup> violence against women,<sup>177</sup> and marriage. The fact that UN treaty bodies have not dealt with communications specifically concerning gender discrimination in education does not mean

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<sup>173</sup> IACHR. Report No. 33/02 (Friendly Settlement), Mónica Carabantes Galleguillos, Petition 12, 046, Chile, March 12 2002. Available at <http://cidh.org/annualrep/2002eng/Chile12046.htm> (Accessed 17 October 2017.)

<sup>174</sup> Committee on the Elimination of Discrimination against Women Communication No. 4/2004 (Doc. CEDAW/C/36/D/4/2004.)

<sup>175</sup> Committee on the Elimination of Discrimination against Women. 2015. Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. (Doc. CEDAW/C/OP.8/PHL/1.) Analysis by Simone Cusack available at <https://opcedaw.wordpress.com/2015/09/20/inquiry-into-access-to-contraception-in-manila-cedaw-committee-finds-that-the-philippines-violated-cedaw/> (Accessed 18 October 2017.)

<sup>176</sup> See, for example, communications gathered by Optional Protocol to CEDAW. Available at <https://opcedaw.wordpress.com/tag/gender-stereotyping-2/> (Accessed 18 October 2017.)

<sup>177</sup> Committee on the Elimination of Discrimination against Women Communication No. 46/2012 (Doc. CEDAW/C/63/D/46/2012.)

that such fora are not viable avenues for redress. Their underutilisation perhaps more accurately reflects a lack of awareness of these mechanisms.

## 4. Conclusion

This report shows that the human rights framework regarding women and girls' right to education is comprehensive. Not only does it address the persistent barriers many women and girls face in exercising and enjoying the right to education, it also sets out a vision for what gender equality in education looks like and the means by which it may be achieved.

Further, this report shows that the majority of states are highly legally committed to women and girls' right to education and the achievement of gender equality in education. This commitment is buttressed by political commitment to SDGs on achieving gender equality and quality education by 2030.

However, despite a strong human rights framework to which states are generally highly committed and the availability of numerous accountability mechanisms, there is a paucity of complaints on gender discrimination in education at the international level, suggesting they have been underutilised. Given how prevalent, persistent, and grave we know the issue of gender inequality in education to be, these mechanisms offer a viable opportunity to hold states accountable, and individuals whose rights have been violated, civil society, and all competent stakeholders should seek to uphold the rights of women and girls in these fora.