

# **School re-entry policies: A Human Rights and cultural conundrum for pregnant and parenting adolescents in Lesotho**

Submitted in partial fulfilment of the requirements of the degree  
Master of Philosophy in Sexual and Reproductive Rights in  
Africa by

**Puleng Relebohile Letsie**

Student number: 12118479

Prepared under the supervision of **Professor Charles Ngwena**, Centre for Human Rights at the Faculty of Law



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
YUNIBESITHI YA PRETORIA

University of Pretoria

**September 2021**

## DECLARATION

---

I declare that this mini dissertation 'School re-entry policies: A Human Rights and cultural conundrum for pregnant and parenting adolescents in Lesotho' which I hereby submit for the degree Master of Philosophy (MPhil) at the Faculty of Law, University of Pretoria, is my work and has not been previously submitted by me for a degree at this or any other tertiary institution.

---



**Name: Puleng Relebohile Letsie**

**Student No: 12118479**

**Date: 15 September 2021**

# DEDICATION

---

This dissertation is dedicated to all the women and girls who have not managed to complete their education, and have been subjected to dehumanising, embarrassing, discriminatory, stigmatising and humiliating situations, either because of their sex, marital status, pregnancy or motherhood.

You fought a good fight, and your names will go into the 'unwritten' history books as warriors!

My late grandfather, Ntate Tšeliso Morai – your love for education, success and pure elegance continues to inspire us and drives us to be the best people that we can be – even in your absence. Continue to rest in peace – you came, you saw, and you conquered!

## ACKNOWLEDGEMENTS

My application for the scholarship to study at the Centre for Human Rights at the University of Pretoria in 2019 was out of a passion to satisfy my long-term yearning to study human rights, especially at the University of Pretoria. As a gender and human rights activist, I always felt that there is a missing piece in the work I have been doing – personally and professionally. That critical gap was my all-time question when I heard of or worked to support those whose rights have been violated, and that question is always, '*What does the law say?*'.

I am therefore grateful to the Centre for Human Rights for affording me the opportunity to study human rights at this world-class institution – my dream has been fulfilled! I, therefore, hope to be a better and more informed human rights advocate and activist. Even though COVID-19 denied us (class of 2020) the opportunity to fully enjoy the practical experiences of this course, the Centre leadership, the lecturers and the whole team were supportive.

The two ladies who continuously held my hand, shared updates, and tips with me on this journey – 'Mamokuena Makhema – you demonstrated to me that even us ' non-lawyers can definitely do this! Leone Nezi-Madzinga, I don't even know where to start! When the going got tough, you said, we can do this.....in 2021 and not later! Your companionship, attention to detail and always 'having my back' have immensely contributed to this study, as you reminded me of the power of partnerships. You pushed me out of my comfort zone and ensured that we march towards the finishing line in one piece!

My dear family – my mother 'Mapuleng Esther Letsie, Aunt Puseletso Morai, sister Pinkie Refuoe Letsie, uncle Mpiti Morai, and my challenger – my son Litšitso Letsie. When some (possibly including myself) exclaimed my 'craziness' to enrol for this MPhil during the last year of my Doctoral studies, you kept me going and I never felt alone even when I became a bit skeptical. One thing we all knew was that giving up was not an option! Kea leboha Bakuena!

I am truly indebted to Professor Charles Ngwena for his leadership, support, guidance, coaching and great and empowering supervision in this study. Regardless of what qualifications one already has, each learning experience is unique, driven by the interactions with the great scholars I have met in this journey. While I am happy to have completed my studies, I will greatly miss listening to Prof Ngwena and trying to absorb all the wisdom through his inspirational and rich lectures and supervision discussions. I hope our paths will cross again Prof.

Finally, I thank God the Almighty for everything that I have, and for his guidance in my life.

## SUMMARY

The high levels of early and unintended pregnancy among adolescents in African countries including Lesotho are attributed to various factors. These include inaccessibility, negative and unfavourable community attitude towards adolescent contraceptive uptake and use, poor knowledge of sexual and reproductive health issues including sexuality education, high levels of poverty and vulnerability, negative socio-cultural practices such as child marriage, and increasing sexual and gender-based violence. Adolescent pregnancy and parenting are usually associated with poor health, social exclusion, and stigma, leading to girls' suspension and sometimes expulsion from school.

Most African governments have adopted laws and developed policies protecting the rights of all children, including adolescents' rights to enrol and be retained in school. These rights are to be always protected, including during pregnancy and motherhood. Aiming to explore the challenges in implementing policies and guidelines on school re-entry, this dissertation argues that despite the constitutional, legal and policy provisions to protect pregnant and parenting adolescent girls, punitive and discriminatory strategies against them undermine countries' human rights commitments.

Using the socio-legal approach, the study attributes the legal, policy and strategy implementation challenges, especially those on sexual and reproductive health and education to influences of family, societal, religious and cultural beliefs and practices. It proposes more comprehensive, innovative, gender transformative, targeted and rights-based interventions; and supportive policies and strategies to facilitate continuous awareness creation, social and attitudinal change, and social justice to address adolescents' specific needs and justify the state's obligations and legal duties to respect, protect and fulfil citizen's rights in Lesotho.

## List of acronyms and abbreviations

ADH	Adolescent Health
AGYW	Adolescent girls and young women
AU	African Union
CESCR	Committee on Economic, Social and Cultural Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPW	Children's Protection and Welfare
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CRINSA	Child Rights Network in Southern Africa
CSE	Comprehensive Sexuality Education
ECOSOC	Economic and Social Council of the United Nations
ESA	Eastern and Southern African
EUP	Early and Unintended Pregnancy
FPE	Free Primary Education
GCTI	Gender and Culture Transformative Implementation
ICPD	International Conference on Population and Development
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
LMIC	Low- and Middle-Income Countries
MoET	Ministry of Education and Training
MGYSR	Ministry of Gender and Youth, Sports and Recreation
NSDP	National Strategic Development Plan
NYCA	National Youth Council Act
NYCR	National Youth Council Regulations
OAU	Organisation of African Unity
SADC	Southern Africa Development Community
SRHR	Sexual and reproductive health and rights
SDGs	Sustainable Development Goals
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational Scientific and Cultural Organisation
UNICEF	United Nations International Children's Emergency Fund
WPAY	World Programme of Action for Youth



# TABLE OF CONTENTS

DECLARATION .....	ii
DEDICATION.....	iii
ACKNOWLEDGEMENTS .....	iv
SUMMARY .....	v
List of acronyms and abbreviations.....	vi
<b>CHAPTER 1: STUDY OVERVIEW .....</b>	<b>1</b>
1.1. Background .....	1
1.2. Problem Statement .....	3
1.3. Research Aim.....	6
1.4. Research Objectives .....	6
1.5. Research Question .....	6
1.6. Sub Questions .....	7
1.7. Research Methodology.....	7
1.8. Rationale and Significance of the Research.....	7
1.9. Theoretical Approach.....	7
1.10. Literature Review .....	8
1.11. Study Structure.....	12
<b>CHAPTER 2: LAWS, POLICIES AND SCHOOL RE-ENTRY IN LESOTHO .....</b>	<b>14</b>
2.1. Introduction .....	14
2.2. The Legal and Policy Environment.....	15
2.2.1. International and regional human rights instruments .....	16
2.2.2. National legislation .....	19
<i>The Constitution of Lesotho</i> .....	20
<i>Children’s Protection and Welfare Act 2011</i> .....	22
<i>Education Act 2010</i> .....	23
<i>National Youth Council Act 2008</i> .....	25
2.2.3. Policy.....	26
<i>Lesotho School Health and Nutrition Policy</i> .....	26
<i>Adolescent Health Policy 2006</i> .....	29
<i>Gender and Development Policy 2018</i> .....	30
2.3. Customary Law .....	31
2.4. Conclusion.....	33



<b>CHAPTER 3: LINKAGES BETWEEN HUMAN RIGHTS, POLICY, AND CULTURE</b> .....	35
3.1. Introduction .....	35
3.2. International and Regional Human Rights Commitments .....	36
3.2.1. Universal Declaration of Human Rights (UDHR) .....	37
3.2.2. Convention on the Rights of Persons with Disabilities (CRPD) .....	39
3.2.3. The United Nations Convention on the Rights of the Child (CRC) and the General Comment No. 20 .....	39
3.2.4. International Covenant on Economic, Social and Cultural Rights (ICESCR) ...	40
3.2.5. The United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).....	41
3.2.6. African Charter on Human and Peoples' Rights.....	42
3.2.7. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa .....	43
3.3. Culture and National legislation .....	44
3.4. Conclusion .....	46
<b>CHAPTER 4: IMPLEMENTATION EFFECTS OF THE SCHOOL RE-ENTRY GUIDANCE IN LESOTHO</b> .....	48
4.1. Introduction .....	48
4.2. Effects of school re-entry guidance on pregnant and parenting adolescents in Lesotho .....	49
4.2.1. Cultural .....	52
4.2.2. Educational.....	53
4.2.3. Economic .....	54
4.2.4. Psychological.....	55
4.2.5. Sociocultural .....	55
4.3. The role of social change and social justice in the promotion and protection of human rights. ....	56
4.4. Conclusion .....	58
<b>CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS</b> .....	60
5.1. Introduction .....	60
5.2. Relevance of National, Regional and Global commitments .....	61
5.3 Recommendations .....	62
5.3.1. Recommendations to non-state actors.....	62
5.3.2. Recommendations to the government of Lesotho .....	63
5.4. Conclusion .....	64
Bibliography .....	65



## CHAPTER 1: STUDY OVERVIEW

### 1.1. Background

Adolescence is the developmental period that occurs between 10 and 19 years of age. This phase is characterised by immense opportunity and significant vulnerability.<sup>1</sup> The Eastern and Southern African region is marked by some of the highest adolescent pregnancy rates globally; one in four women between the ages of 20-24 years bears a child before the age of 18.<sup>2</sup> Furthermore, in this region, 30% of new HIV infections occur among adolescent girls and young women (AGYW) aged 15-24. During this period, many young people become sexually active, and this leads to increased vulnerability to sexually transmitted infections including HIV, unplanned pregnancy, and complications related to early pregnancy and childbirth. Adolescent pregnancy also results in poorer maternal and child health as well as higher levels of maternal mortality.<sup>3</sup> These challenges are further exacerbated by girls missing school or dropping out altogether due to pregnancy and the responsibilities of motherhood. Eventually, adolescent girls' potential opportunities for economic and social development are reduced, negatively affecting the health, nutrition, and overall welfare of their children.

In comparison to other low and middle-income countries (LMIC), African countries have higher adolescent pregnancy rates. This can be attributed to several factors, including inaccessibility to contraceptives, the negative community attitude and perceptions around adolescent contraceptive use, lack of knowledge of sexual and reproductive health issues, lack of sexuality education, high levels of poverty and vulnerability, harmful socio-cultural practices including child marriage, and ever-increasing sexual and gender-based violence.<sup>4</sup> Despite the progress made by governments and their partners, adolescent pregnancy and childbirth rates are still high, calling for more comprehensive interventions at all levels.

In many developing countries such as Lesotho, adolescent pregnancy is associated with poor health, social exclusion, and stigma. Discussions and references to sex before marriage are considered taboo in Lesotho, and this usually informs the level and extent of adolescents' exposure to information and education about sex and sexuality. This remains the case despite early exposure to sexual experiences among adolescents coupled with a lack of accurate

---

<sup>1</sup> GM Kassa *et al.* 'Prevalence and determinants of adolescent pregnancy in Africa: A systematic review and Meta-analysis' (2018) 15 *Reproductive Health* at 10.

<sup>2</sup> UNAIDS 'Women and HIV: A spotlight on Adolescent Girls and Young Women' (2019) 8.

<sup>3</sup> UNICEF 'Addressing the needs of adolescent and young mothers affected by HIV in Eastern and Southern Africa' (2020) 5.

<sup>4</sup> Kassa (n 1) 2.

knowledge about reproduction and sexuality. All these factors put unmarried adolescent mothers at risk of developing adverse psychological and behavioural problems that have the potential to negatively affect their lives and those of their children.<sup>5</sup> In most instances, adolescent girls suffer more negative consequences than their male counterparts.

Most African governments, including Lesotho, have adopted laws and developed policies that protect the rights of all children, including adolescents' rights to enrol and be retained in school.<sup>6</sup> These rights are to be protected at all times, even during pregnancy and motherhood. However, the implementation of the laws and policies is marred with repetitive challenges and discriminatory practices, especially against girls. The rights of pregnant adolescents and young mothers to education are usually violated both at school and in communities. The use of punitive and discriminatory practices against pregnant adolescents and adolescent mothers continue to undermine these human rights compliant policies.<sup>7</sup>

There are strong links between early and unintended pregnancy and school dropout in Sub-Saharan Africa. Complex factors that include social and economic pressures on families and on adolescent girls contribute to school dropout rates.<sup>8</sup> Other factors include poverty, gendered social norms within communities leading to early marriage, parental and peer influence, limited hygiene and health facilities, and lack of competent teacher counsellors. Some policies exclude pregnant and parenting learners from school whilst others support continuation of and re-entry into school. To guarantee girls' rights to education during or after pregnancy, twenty-six African countries have in place some form of law, policy, or strategy.<sup>9</sup>

---

<sup>5</sup> TV Lehana & L van Rhyn 'A Phenomenological investigation of experiences of pregnancy by unmarried adolescents in Maseru' (2003) 8 *Health SA Gesondheid* at 27.

<sup>6</sup> T Tuwor & M Sossou 'Gender discrimination and education in West Africa: Strategies for maintaining girls in school' (2008) 12 *International Journal of Inclusive Education* at 364.

<sup>7</sup> Y Ruzibiza "They are a shame to the community ...' stigma, school attendance, solitude and resilience among pregnant teenagers and teenage mothers in Mahama refugee camp, Rwanda' (2021) 16 *Global Public Health* at 765.

<sup>8</sup> I Yakubu & WJ Salisu 'Determinants of adolescent pregnancy in sub-Saharan Africa: A systematic review' (2018) 15 *Journal of Reproductive Health* at 2.

<sup>9</sup> J Birchall *Early marriage, pregnancy and girl child school dropout* (2018) 7.

Lesotho is one of the countries with legislation that aims to promote and protect the right to education for all.

## 1.2. Problem Statement

Early and unintended pregnancies contribute to an increasing number of adolescents who prematurely leave school.<sup>10</sup> This leads to opportunity losses for young women and girls, especially in realising their potential; a considerable number do not return to school to continue their education after pregnancy. It is estimated that 50% of teenagers who drop out of school do so due to pregnancy, with less than 20% of adolescent mothers completing high school.<sup>11</sup> Some of the adverse consequences of adolescent pregnancy and motherhood include low self-esteem and motivation and low educational aspirations, leading to poor academic performance among those who resume their studies. However, male counterparts or fathers are rarely tasked to support mothers in childrearing and in most cases are less affected academically and socially.<sup>12</sup> This is further exacerbated by the fact that some adolescent pregnancies are a result of sexual and gender-based violence, abuse, incest and/or inter-generational relationships.

In the Eastern and Southern African (ESA) region, rural areas bear the most burden of early and unintended pregnancies, especially among girls from the poorest households and those with lower education levels.<sup>13</sup> Poverty is deemed to be a predisposing factor as it leads to the vulnerability of adolescent girls. These girls are in dire need of money, other resources, and material goods, which they mostly acquire through transactional sexual relationships, for example, engaging in risky sexual practices and relationships with older men who sometimes provide for their basic needs or provide gifts in exchange for sexual favours or relationships. In some countries in the region, child marriage is prevalent and is a cultural practice, usually resulting in adolescent pregnancy, especially in rural areas.<sup>14</sup> Other culturally driven practices such as initiation ceremonies also lure and pressurise girls to marry early or have early sexual experiences. Socially, girls that are deemed too old are ridiculed for not being married. Incest,

---

<sup>10</sup> M Grant & K Hallman 'Pregnancy-Related school dropout and prior school performance in KwaZulu-Natal, South Africa' (2008) 4 *Studies in Family Planning* at 369.

<sup>11</sup> D Meekers & A Ghyasuddin 'Pregnancy-Related school dropouts in Botswana' (1999) 53 *Population Studies* at 195.

<sup>12</sup> KR Sekhoetsane 'The Stress of Teenage Motherhood: The need for multi-faceted intervention programs' Unpublished Masters Dissertation, North-West University, 2012.

<sup>13</sup> UNICEF 'Case study on delaying adolescent pregnancy and child marriage in the Kingdom of Lesotho' (2021) 5.

<sup>14</sup> CO Odimegwu & N Mutanda 'Covariates of high-risk sexual behaviour of men aged 50 years and above in sub-Saharan Africa' (2017) 14 *SAHARA Journal of Social Aspects of HIV/AIDS Research Alliance* at 162.

sexual coercion and/or sexual assault, as well as child sexual abuse also fuel premature adolescent pregnancy.<sup>15</sup>

Lesotho is one of the smallest countries in the region with a population of about 2.2 million people and is enclaved by South Africa. Lesotho is divided into ten administrative districts, and it has four ecological zones namely, the lowlands, highlands, foothills and the Senqu river valley. The majority of the population (almost 60%) is in the lowlands/urban areas.<sup>16</sup> As mentioned above, in sub-Saharan Africa, adolescent girls and young women account for 25% of new HIV infections among adults, and globally, young women aged 15 to 24 are twice as likely to be infected with HIV than their male counterparts.<sup>17</sup> Lesotho is one of the countries with a high HIV burden with a national HIV prevalence of 25.6%.<sup>18</sup>

Teenage pregnancy in Lesotho is higher than in most countries in the region, estimated at 19%, with 56% of these pregnancies being unplanned and occurring in 15-19 years aged young women.<sup>19</sup> This is attributed to various factors including the limited access to and utilisation of Sexual and Reproductive Health services and contraceptives among sexually active adolescents. These adolescent pregnancies result in poor educational outcomes and physical, economic, and emotional outcomes, further exacerbated by high levels of stigma and discrimination within the community, at school, and at home.<sup>20</sup>

Given the increasing rates of adolescent pregnancy and motherhood in Lesotho, mechanisms should be implemented to protect the rights of pregnant and parenting adolescents. Despite some constitutional, legal and policy provisions that aim for the protection of these adolescent girls, the implementation of those instruments is lacking. Even though some of these adolescent girls may continue with school while pregnant and return to school following childbirth, they face myriad challenges, including emotional stress due to the economic pressures of motherhood, and as noted, stigma and discrimination, which are sometimes

---

<sup>15</sup> UNESCO 'Situational analysis on early and unintended pregnancy in Eastern and Southern Africa' (2018) 4.

<sup>16</sup> IG Francis 'The effect of Household Characteristics on Adolescent Childbearing in Lesotho' Unpublished Dissertation, University of the Witwatersrand, 2008.

<sup>17</sup> S Madiba & M Putsoane 'Testing Positive and Disclosing in Pregnancy: A phenomenological study of the experiences of adolescents and young women in Maseru, Lesotho' (2020) *2020 AIDS Research and Treatment* at 2.

<sup>18</sup> Lesotho Ministry of Health 'Lesotho Population Based HIV Impact Assessment (LePHIA)' (2017) 45.

<sup>19</sup> Ministry of Health [Lesotho] & ICF International 'Lesotho Demographic and Health Survey 2014' (2016) 83.

<sup>20</sup> NN Nkosi & E Pretorius 'The influence of teenage pregnancy on education: Perceptions of educators at a secondary school in Tembisa, Gauteng' (2019) 55 *Social Work* at 112.

perpetrated by the schools or individual teachers that make it almost impossible for girls to continue with school.

As such, parenting adolescents are sometimes ridiculed by both teachers and learners, are humiliated, and denied the necessary attention afforded to other learners. They face hostility, condemnation, threats of dismissal, lack of encouragement, insensitive treatment, and general lack of support from teachers and the school.<sup>21</sup> Research has highlighted that some Lesotho schools neither adequately assist nor support pregnant and parenting adolescent girls, socially, emotionally or educationally.<sup>22</sup> Some of the key challenges they face include the difficult educational conditions, for example, teachers and schools make it clear that they are not trained in maternal and child health issues. In some instances, parents are called to accompany their pregnant adolescent girls to school, to 'take care of them in case anything happens'.<sup>23</sup>

These barriers hindering girls' continuing with their education during pregnancy and parenting endure notwithstanding legislative protections for pregnant and parenting adolescent girls. This can be attributed to the absence of proper and clear guidelines, limited accountability, and limited implementation of the laws by the Ministry of Education and Training. Similarly, community and faith leaders are not actively involved in the management of schools as expected, through representation on school boards, as they would challenge some of these discriminatory practices.

Despite the legal and policy instruments that advocate for inclusive education for all in Lesotho, such as Article 28 of the Constitution (Education for All), the National Youth Council Act (2008), Lesotho School Health and Nutrition Policy, and the National Youth Policy (2003), cultural and social norms play a critical role in the lack of implementation. Pregnant and

---

<sup>21</sup> D Akella & M Jordan 'Impact of social and cultural factors on teenage pregnancy' (2014) 8 *Journal of Health Disparities Research and Practice* at 59.

<sup>22</sup> SH Phafoli & EJ Van Aswegen 'Variables influencing delay in antenatal clinic attendance among teenagers in Lesotho' (2007) 49 *South African Family Practice* at 4.

<sup>23</sup> CM Molapo *et al* 'Schooling-going mothers' experiences in relation to teachers: A case of high schools in Leribe district, Lesotho' (2014) 5 *Mediterranean Journal of Social Sciences* at 1275.

parenting adolescents continue to face a plethora of challenges in their quest for quality education in Lesotho.

### **1.3. Research Aim**

This study aims to explore the challenges in implementing school re-entry policies and guidelines in Lesotho.

### **1.4. Research Objectives**

- To highlight the implementation challenges of school re-entry guidance and related policy in Lesotho
- To highlight the human rights violations experienced by pregnant and parenting adolescent girls within the school setting
- To critically analyse the influence of culture and social practices on the implementation of the protective laws, policies and guidance for pregnant and parenting adolescents
- To discuss the linkages between human rights, policy, and culture in relation to the education sector's legislative and policy oversight role
- To highlight how early and unintended pregnancy and the limited implementation of guidance and policy documents affect access, participation, and educational outcomes of school-going pregnant and parenting girls.

### **1.5. Research Question**

What are the human rights implications of the limited implementation of school re-entry policy guidance for adolescent girls in Lesotho?



### **1.6. Sub Questions**

- What is the level of implementing the school re-entry policy guidance in Lesotho?
- What are the human rights violations experienced by school-going pregnant and parenting adolescent girls?
- What is the role of culture in the implementation of school re-entry guidance in Lesotho?
- What are the linkages or relationships between human rights, policy and culture within the education sector's legislation and policy implementation and oversight?
- What is the impact of the non-implementation of the school re-entry policy guidance on adolescent girls?

### **1.7. Research Methodology**

This study used a desktop methodology, where data collection was through a desk review coupled with content analysis of relevant documents on early and unintended pregnancy in Lesotho, the implementation of the school re-entry guidance as well as the implications of its implementation. Primary sources' analysis included human rights treaties, case law, and national legislation and policies. Appropriate and relevant secondary sources such as books, journals, and reports were utilised to highlight the influence of sociocultural issues on legislative and policy implementation among adolescent girls.

### **1.8. Rationale and Significance of the Research**

This study will draw connections between policy, its implementation, the country's human rights commitments, and the implications of the limited implementation of the school re-entry legislative and policy guidance on adolescent girls in Lesotho. It will contribute to new and innovative ways to harmonise human rights commitments, national legislation, sociocultural dynamics and the health and economic impact on adolescent girls. As such, the study will consider these aspects holistically.

It is important to understand the interaction and overlaps between the shared social rules and customs, social institutions, indigenous practices and available laws and policies in the context of adolescent health and wellbeing. The relationship between community and cultural normative systems *and* laws and policies will highlight the underlying factors that lead to the limited implementation of these laws and policies, and the impact of this limited implementation on adolescent girls in Lesotho.

### **1.9. Theoretical Approach**

To highlight the strong linkages between human rights and socio-cultural issues and dynamics, the study utilised a socio-legal approach. This provides an interdisciplinary method of analysis of the relationship between the legal phenomenon and wider society. This has also

enabled the study to analyse the relationships between the law, legal phenomenon, and wider society. The socio-legal approach aims to comprehend and unpack the law as an instrument of social control. It facilitates advocacy for new laws, legal reviews and other strategies to overcome challenges in implementing existing laws and policies, as it originates and functions in a society and for society.<sup>24</sup>

The 'socio-legal methodology also focuses on how the law actually functions in society as it draws upon legal realism'.<sup>25</sup> Its emphasis is on the inseparability of the law from the social context in which it is developed; hence the broader social and human factors greatly condition the efficacy and enforcement of legislation. Using this approach has highlighted the key issues and factors that contribute to the limited implementation of the existing protective human rights instruments for girls who fall pregnant and become mothers during their school years in Lesotho. The ability of socio-legal studies to embrace subjects and disciplines concerned with law as a social institution, and to ask how social, political and economic factors influence laws and policies enabled this study to unpack the implementation challenges of laws and policies.<sup>26</sup>

#### **1.10. Literature Review**

There exists a lack of realisation of sexual and reproductive health rights in the African region, with these rights continuously violated on a widespread scale.<sup>27</sup> This is despite these rights being entrenched in international human rights jurisprudence. The prevalent challenges in the region include poor maternal health and high rates of maternal morbidity, unmet need for contraceptives, high HIV incidence and prevalence, increasing gender-based violence, harmful cultural practices such as child marriage and female genital mutilation as well as the pervasive discrimination on the basis of age, disability, marital status, and sexual orientation. Even though the unmet sexual and reproductive health and rights are generally not gender-specific, girls and women are most affected by these deprivations.<sup>28</sup> This is evident in practices

---

<sup>24</sup> R Singh *et al.* 'Research Methodology: Socio-Legal Research' [http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/law/09\\_research\\_methodology/04\\_socio-legal\\_research/et/8151\\_et\\_et.pdf](http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09_research_methodology/04_socio-legal_research/et/8151_et_et.pdf) (accessed 28 April 2021).

<sup>25</sup> D O'Donovan *Socio-Legal Methodology: Conceptual Underpinnings, Justifications and Practical Pitfalls* (2016) 16.

<sup>26</sup> C Ashford 'Socio-Legal perspectives on gender, sexuality and law: Editorial' (2010) 31 *Liverpool Law Review* at 4.

<sup>27</sup> RN Oronje *et al.* 'Operationalising sexual and reproductive health and rights in sub-Saharan Africa: Constraints, dilemmas and strategies' (2011) 11 *BMC International Health and Human Rights* at S3.

<sup>28</sup> C Ngwena & E Durojaye (eds) *Strengthening the protection of sexual and reproductive health through human rights in the African region: An introduction* (2014) 1.

that punish girls for early and unintended pregnancies, especially at school, with very little consequences for the boys who impregnate these girls.

Early and unintended pregnancy, child marriage and girls' school dropouts are intertwined and need to be holistically addressed. Evidence suggests that around 90% of adolescent pregnancies in low- and middle-income countries occur as a result of higher exposure to sex and lower use of contraception among girls, with pressure to conceive early when married,<sup>29</sup> highlighting links between early marriage, pregnancy and school dropout amongst girls.

Unequal power relations and gender dynamics are some of the factors that predispose adolescent girls to early and unintended pregnancy.<sup>30</sup> In making decisions and implementing the rights of children, states need to take into consideration General Comment 20 of the Convention on the Rights of the Child (CRC). It emphasises the vulnerability of certain groups of adolescents, which may lead to their rights being violated, discrimination and social exclusion. It specifically notes that during adolescence, gender inequalities become more significant for girls. It is when the inequality, discrimination and girls' stereotyping manifestations usually deepen, resulting in intense rights violations such as unintended pregnancy, exploitation and trafficking, child and forced marriage, female genital mutilation, and other forms of abuse'.<sup>31</sup> Lesotho's commitment to the CRC should always be borne in mind, especially when social and cultural norms undermine the implementation of treaty commitments, laws and policies.

Even though the age of first sexual encounter among adolescents has greatly reduced, in 2019 it was indicated that out of 300 million women aged between 15–19 years, only 29.8 million used some form of contraception and 15.0 million women had unmet family planning needs.<sup>32</sup> Most African countries do not have clear guidelines for adolescents' right to access sexual and reproductive health services, notwithstanding some regional and international treaties and obligations they have ratified, outlining their commitments and guidance for

---

<sup>29</sup> A Yohannes, A Yalew *et al* 'Prevalence and factors associated with teenage pregnancy, Northeast Ethiopia, 2017: A cross-sectional study' (2018) *Journal of pregnancy* at 2.

<sup>30</sup> EM Yako & JM Yako 'A descriptive study of the reasons and consequences of pregnancy among single adolescent mothers in Lesotho' (2007) *Curationis* at 75.

<sup>31</sup> UN Committee on the Rights of the Child (CRC) *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence* 6 December 2016 (CRC/C/GC/20) para 26 & para 27.

<sup>32</sup> MC Wheldon *et al.* 'Contraceptive use and needs among adolescent women aged 15–19: Regional and global estimates and projections from 1990 to 2030 from a Bayesian hierarchical modelling study' (2021) 16 *PLoS ONE* at 29.

ensuring these rights.<sup>33</sup> The limited services and support are further exacerbated by challenges in accessing contraceptives and safe abortion, driving many adolescent girls to have unsafe abortions,<sup>34</sup> including in instances of the pregnancy being the result of rape and/or incest. This is further intensified by the fact that abortion is restricted in Lesotho, making it highly unlikely that the available statistics fully represent the extent of the problem.<sup>35</sup>

It is important to note that many girls are either taken out of school or leave due to pregnancy or marriage; on the other hand, it is more likely for out of school girls to marry and/or become pregnant early.<sup>36</sup> As such, completing school is of utmost importance. Various factors contribute to girls dropping out of school in Africa. They include economic pressures on families and on girls, poverty, peer influence, parental negligence, early marriage, menstruation, household size and labour, limited competent teacher counsellors, pregnancy and motherhood. To address some of these challenges, several African countries have developed some form of law, policy and/or strategy to address the right to education of pregnant and parenting girls. Six of these countries, including Lesotho, 'have laws allowing pregnant students to continue their education, four have policies or strategies around continuation, and fifteen countries have conditional policies instructing pregnant students to leave school, with specific re-entry avenues determined by certain conditions'.<sup>37</sup>

In 2013, all the African Union (AU) member states adopted Agenda 2063, with the commitment to build Africa's 'human capita' as the continent's most valued resource through sustainable educational investments, including eradicating gender disparities across all levels of education'.<sup>38</sup> African governments are also party to the Sustainable Development Goals, an agenda focusing on ensuring that 'no one is left behind', including the pledge to ensure inclusive and quality education for all. Countries adopted ambitious and aspirational sexual and reproductive goals, including on ending child marriage, addressing the high teenage

---

<sup>33</sup> S Mayor 'Pregnancy and childbirth are leading causes of death in teenage girls in developing countries' (2004) 328 *BMJ (Clinical research ed.)* 1152.

<sup>34</sup> UNFPA 'Harmonizing the Legal Environment for Adolescent Sexual and Reproductive Health and Rights: A review of 23 countries in East and Southern Africa' (2017) 14.

<sup>35</sup> UNESCO (n 15) 10.

<sup>36</sup> CB Lloyd *et al.* 'Marriage and Childbirth as factors in dropping out from school: An analysis of DHS data from Sub-Saharan Africa' (2008) 62 *Population Studies* at 2.

<sup>37</sup> Birchall (n 9) 3.

<sup>38</sup> Human Rights Watch 'Leave No Girl Behind in Africa – Discrimination in Education against Pregnant Girls and Adolescent Mothers' (2018) <https://www.polity.org.za/print-version/leave-no-girl-behind-in-africa-discrimination-in-education-against-pregnant-girls-and-adolescent-mothers-2018-06-14> (accessed 30 May 2021).

pregnancy rates, and implementing comprehensive sexuality and reproductive health education to overcome issues negatively affecting girls' education. However, many African states are not fulfilling this promise, as they continue to exclude a staggering number of girls from education due to pregnancy.<sup>39</sup>

Ministers of Education, Health, Gender, and Youth and senior government officials from the East and Southern Africa region affirmed their commitment to address early and unintended pregnancy in schools through the East and Eastern and Southern Africa (ESA) Ministerial Commitment on sexuality education and sexual and reproductive health services for adolescents and young people (ESA Commitment) in 2013.<sup>40</sup> Amongst other issues, the high rates of early and unintended pregnancy, child marriage, gender inequalities, limited comprehensive sexuality education, and other cultural norms that continue to further expose girls to harmful practices and increase their vulnerability are noted by the commitment.<sup>41</sup>

The Lesotho Education Act of 2010 commits to Education for All. The Act aligns and echoes several conventions, the global development goals, free and compulsory education as provided for in the Constitution, and the National Vision 2020.<sup>42</sup> Early and unintended pregnancy among young school-going girls has led to many school-going mothers not being able to return to school despite the protective legislation. This results in various social, emotional, and economic consequences for these adolescents as most girls' academic careers end with pregnancy.<sup>43</sup>

The strong relationship between early and unintended pregnancy and school dropout has led to some pertinent and reflective questions about the education sector's response to this issue, especially in Sub-Saharan African countries. The fact that education is a right, regardless of a student's sexuality, pregnancy or motherhood status seems to be undermined even in the presence of a protective legal and policy environment. The policy language does not translate

---

<sup>39</sup> Human Rights Watch (n 38).

<sup>40</sup> UNESCO 'Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern African (ESA)' (2013) <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/HIVAIDS/pdf/ESACCommitmentFINALAffirmedon7thDecember.pdf> (accessed 1 June 2021).

<sup>41</sup> H Birungi *et al.* *Education Sector Response to Early and Unintended Pregnancy: A Review of Country Experiences in Sub-Saharan Africa* (2015) 32.

<sup>42</sup> UNESCO 'World Data on Education: Lesotho' (2007) 5.

<sup>43</sup> Molapo (n 21) 569.

into the daily realities of many pregnant girls. Factors contributing to the low adolescents' school re-entry rates following delivery include socio-cultural practices and stigma, as well as differing policy acceptance and implementation levels.<sup>44</sup> As in the case of Lesotho, low policy implementation and conflicting policy language call for schools to take a proactive role in meeting the needs of pregnant and parenting adolescents. Adolescent pregnancy and parenthood may also present multiple problems and challenges, particularly for adolescents who are struggling at the academic, personal, and social levels. For those who struggle, dropping out of school usually has the most detrimental effects, leading to delinquency, misbehaviour, aggression, impulsiveness, and poverty.<sup>45</sup>

Premarital sexual behaviour and pregnancies are discouraged by both society and the law in Lesotho.<sup>46</sup> Ironically, the number of premarital pregnancies is increasing, especially among adolescents in Lesotho, with most of them unplanned and unwanted, and sometimes some adolescents are ignorant of the fact that they could possibly fall pregnant. In Sesotho culture, premarital sexual intercourse and pregnancy are shunned, and sexual intercourse with an unmarried girl (whether pregnancy results or not) is taboo. Existing legislation criminalises sexual intercourse with a girl under the age of 16, even though a person would not be guilty of rape under customary law. The social stigma continues even after childbirth as children who are born to unmarried women are regarded as 'illegitimate' and are at times given demeaning and derogatory names to demonstrate disapproval of this behaviour.<sup>47</sup> Despite countries such as Lesotho demonstrating their commitment to protect the rights of pregnant and parenting adolescent girls and to promote education sector responses to early and unintended pregnancy through laws, policies and guidelines, the glaring gaps and inconsistencies in the implementation of these protective instruments violate pregnant and parenting adolescent girls' rights to education and health.

### **1.11. Study Structure**

Chapter 1: An overview of the study and its motivation, research questions and the significance of the study.

Chapter 2: State's obligations, laws, policies and school re-entry in Lesotho.

Chapter 3: Linkages between human rights, national policy, and culture.

---

<sup>44</sup> Birungi (n 39) 14.

<sup>45</sup> V McGaha-Garnett 'Teenage parenting and high school dropouts: understanding students' academic, social, and personal influences' Unpublished Master's Dissertation, Texas Tech University, 2007.

<sup>46</sup> AJ Mturi & W Moerane 'Premarital childbearing among adolescents in Lesotho' (2001) 27 *Journal of Southern African Studies* at 261.

<sup>47</sup> Mturi & Moerane (n 44) 262.

Chapter 4: Implementation effects of the school re-entry guidance in Lesotho.

Chapter 5: Conclusions and recommendations that address the research question.

## CHAPTER 2: LAWS, POLICIES AND SCHOOL RE-ENTRY IN LESOTHO

### 2.1. Introduction

Human rights symbolise and protect the concept of humanity. The various and diverse international, continental and regional human rights instruments that have been signed, ratified and in some instances domesticated by states, illustrate the prioritising of human rights. The integration of sexual and reproductive health and rights (SRHR) within these instruments attests to the universality, inalienability, indivisibility, and interdependence of human rights. SRHR is a key element in adolescents' and young people's quest to have a productive life, and for them to realise their dreams and aspirations,<sup>48</sup> despite the myriad issues and challenges they face as highlighted in chapter 1.

The International Conference on Population and Development (ICPD) held in Cairo in 1994 under the auspices of the United Nations was hailed as a revolutionary agenda-setting event for sexual and reproductive health programmes of action globally, more so for young people.<sup>49</sup> The ICPD defined sexual and reproductive health as a state of physical, mental and social wellbeing and not just the absence of disease, and called for countries to meet and protect the service and educational needs of adolescents.<sup>50</sup> The emphasis was to empower young people to positively and responsibly deal with their sexuality, and for the primary health care system to provide reproductive health services to everyone, including adolescents and young people.

Even though there is no national law explicitly stating the suspension, exclusion, expulsion or re-entry of pregnant or parenting adolescents into the formal school system, the practice persists.<sup>51</sup> While the social environment for young people and key populations in Lesotho is gradually improving due to multi-level advocacy efforts (especially by civil society organisations), the customary laws, also known as *Laws of Lerotholi*, continue to contradict and undermine statutory laws. The most prevalent contradictions are among the laws

---

<sup>48</sup> R Tallarico *et al.* 'Age of consent: A case for harmonizing laws and policies to advance, promote and protect adolescents sexual and reproductive health rights' (2021) 25 *African Journal of Reproductive Health* at 95.

<sup>49</sup> MJ Roseman & L Reichenbach 'International Conference on Population and Development at 15 years: achieving sexual and reproductive health and rights for all?' *American Journal of Public Health* (2010) 3 at 404.

<sup>50</sup> C Macleod 'Adolescent sexual and reproductive health: controversies, rights and justice' in AL Cherry, L Baltag & ME Dillon (eds) *An International Handbook on Adolescent Health and Development: The Public Health Response* (2016) 4.

<sup>51</sup> Ministry of Health, Guyana *National Policy - Reintegration of Adolescent Mothers into the Formal School System* (2018) 13.



addressing gender-based violence, promoting and protecting human rights, succession, and those aiming to combat child marriage. These aspects are often not adequately comprehended by women and girls, and community leaders as they become overpowered by the socio-cultural norms, practices and beliefs.<sup>52</sup> Thus, strong religious, sociocultural, and institutional norms and practices consistently act as barriers to schooling for pregnant and parenting adolescents; further promoting the exclusion of girls from school and widening the gap between boys and girls in access to quality education.<sup>53</sup>

This chapter will highlight the legal and policy environment, the regulations that are likely to have an impact on girls' re-entry into school, and regulations in place to facilitate school re-entry following pregnancy and/or childbirth. Laws, policies and guidelines that attempt to guide SRHR issues including pregnancy and parenting in education will be discussed. Further, the implementation of these guidelines and challenges in their implementation will also be outlined. The chapter will then conclude by highlighting the linkages and relationship between laws, policies, guidelines and customary law as well as their influence on the education sector in Lesotho.

## **2.2. The Legal and Policy Environment**

As a member of the United Nations, the African Union, and the Southern Africa Development Community (SADC), Lesotho is a signatory to many international instruments. Lesotho practices dualism, which leads to parallel and different systematic considerations and treatment of international and domestic law. This requires some internal processes for international law to apply in-country, such as domesticating those international instruments through an Act of parliament. Lesotho became a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1992. Article 2 of the covenant specifies state parties' legal obligations to promote and realise economic, social and cultural rights, including the right to education.<sup>54</sup>

Adolescent girls and young women in Lesotho are deemed to be the most vulnerable, biologically and due to the prevailing unequal gender norms. This is mainly because of their limited agency to negotiate healthy relationships including condom use with their partners. Young women are often victims of gender-based violence, including forced sex and incest in

---

<sup>52</sup> Ministry of Health (n 49) 18.

<sup>53</sup> K Sieger & K Renk 'Pregnant and parenting adolescents: A study of ethnic identity, emotional and behavioral functioning, child characteristics, and social support' (2007) 36 *Journal of Youth Adolescence* at 575.

<sup>54</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) UN Doc RES 2200A/ 16 (1976).

some cases; with child marriage also common, though not well documented in Lesotho,<sup>55</sup> exacerbated by intimate partner sexual violence. Despite these challenges, risk perception among adolescent girls is low, especially regarding the transmission of HIV. Their concern is mainly about getting pregnant, which would have economic and educational consequences rather than contracting HIV, as they know treatment is available and free. The fears around pregnancy are mainly due to risks for both the infant and mother, more so the knowledge that the pregnancy will in almost all instances lead to dropping out of school.<sup>56</sup>

Despite available policies in some countries to ensure that girls continue with their education, during pregnancy, and the nursing and parenting periods, most girls do not return to school after giving birth<sup>57</sup> due to various economic, social and cultural factors. The laws, policies, and guidelines on continuation and re-entry advocate for girls to continue with their education for as long as possible, and for readmitting girls who left school due to pregnancy and childbirth. Transformative and innovative strategies to prevent the exclusion of young mothers from education are very much needed, such as initiatives that function through the integrated school health programmes.

### **2.2.1. International and regional human rights instruments**

Some policies have demonstrated commitment to decrease early and unintended pregnancy, especially in East and Southern Africa. In addition to the ESA Commitment, which had aimed to reduce early and unintended pregnancy among young people in the region by 75% by 2020, there are additional regional policy documents. These include the Minimum Standards for the Integration of HIV and Sexual & Reproductive Health in the SADC Region (2015) and the SADC Parliamentary Forum Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (2016). These are complemented and operationalised by appropriate policies for the prevention and management of early and unintended pregnancy among adolescents.

Learner pregnancy management policies with specific guidelines are at different stages within countries. Some countries like Kenya, Malawi and Zimbabwe have policies through circulars while guidance documents on re-entry are under development. Lesotho has no standalone re-

---

<sup>55</sup> PM Likoti & EK Sibanyoni 'Children as victims of forced marriages in Lesotho: A question of cultural practice or approval of child exploitation' (2020) 9 *International Journal of Criminology and Sociology* at 723.

<sup>56</sup> Ministry of Health, Government of Lesotho *Social and Behaviour Change Communication Strategy for Sexual and Reproductive Health and Rights and HIV in Lesotho 2020-21 to 2022-23* (2020) 28.

<sup>57</sup> M Norton *et al.* 'Interventions for preventing unintended, rapid repeat pregnancy among adolescents: A review of the evidence and lessons from high-quality evaluations' (2017) 5 *Global Health: Science and Practice* at 548.

entry policy, but re-entry is guided by other laws and policies, specifically Article 28 of the Constitution and the Children's Protection and Welfare Act.<sup>58</sup> As such, there is a need to develop a clear re-entry policy as well as policy and legislation regarding contraception for adolescents. However, even in countries with re-entry policies, most of them are not supported by specific enabling re-entry laws and consequences in case of contravention. In the absence of re-entry policies, affected girls have little legal recourse in instances of violations such as suspension, exclusion or expulsion. Thus, despite the right to education,<sup>59</sup> in certain circumstances, there are no mechanisms in place to realise this right.

Every pregnant schoolgirl is faced with one of the following three scenarios: expulsion from school, re-entry following delivery, and continuation.<sup>60</sup> However, the rampant expulsion practice violates the girls' human rights, is insensitive to their needs, and continues to wholly put the blame and burden of pregnancy on the girl. Expulsion also fails to consider and acknowledge the factors that lead to girls getting pregnant. Even though re-entry policies are an effective way to ensure that girls continue their education, these policies have also been deemed discriminatory as schoolboys who are fathers or fathers-to-be are not affected by the policies as they are neither suspended nor expelled from school during the period before childbirth. Continuation policies, however, protect some of the human rights of girls, even though they sometimes overlook other rights and necessities such as providing for support and/or a conducive comforting environment during pregnancy and after delivery.<sup>61</sup>

As indicated earlier, despite the absence of a standalone re-entry policy in Lesotho, the rights of adolescents are protected in various national legal and policy instruments that are aligned with national, regional, and international goals under various frameworks. These include the Education for All Goals, the Sustainable Development Goals (SDGs), and several international and regional commitments. Article 26 of the United Nations Universal Declaration of Human Rights (Universal Declaration) states that education is a human right,<sup>62</sup> and Article 28 of the

---

<sup>58</sup> Constitution of Lesotho sec 28 (a) & (d).

<sup>59</sup> UNESCO 'Strengthening Sexual and Reproductive Health and HIV Prevention amongst Children and Young People through Promoting Comprehensive Sexuality Education in Eastern and Southern Africa – Lesotho 2013 – 2015' (2016) 37.

<sup>60</sup> G Nsalamba & A Simpande 'Effect of re-entry policy implementation on readmitted girls' academic performance in Mathematics in selected secondary schools of Mufulira district in Zambia' (2019) 5 *International Journal of Data Science and Analysis* at 76.

<sup>61</sup> A Mwansa *Re-entry to School after Giving Birth: An Evaluation of the Process used to Design and Implement Policy in Zambia* (2011) 3.

<sup>62</sup> Universal Declaration of Human Rights, United Nations General Assembly (10 December 1948) UN Doc A/Res/217 A (III) (1948).

United Nations Convention on the Rights of the Child (CRC) confirms this right. In addition, the International Covenant on Economic Social and Cultural Rights (ICESCR), the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the General Comment 20 of the CRC on the implementation of the rights of the child during adolescence also affirm this right.

In addition, the African Charter on Human and Peoples' Rights (African Charter) provides for protocols to supplement the provision of the Charter as and when necessary.<sup>63</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa is critical as it is largely dedicated to the rights of African women.<sup>64</sup> One of Protocol's highlights is the focus on women's socio-economic rights, and providing for the right to education and training, for the attainment of equal access and opportunities in education and training.<sup>65</sup> It further emphasises women's economic and social welfare rights, as well as health and reproductive rights.

Article 11 of the SADC Protocol on Gender and Development provides that state parties shall ensure the development and protection of the girl child by eliminating all forms of discrimination against the girl in the family, community, institutions and at state levels by adopting relevant laws, and developing responsive policies and programmes; while also ensuring girls' equal treatment and access to education and health care, to promote a positive self-image. The protocol also urges states to ensure that girls are protected from harmful cultural attitudes and practices and enjoy the same rights as boys; while ensuring equal access to information, education, services and facilities relating to sexual and reproductive health and rights.<sup>66</sup>

Despite the protocol clearly articulating areas of inequality that have not been previously conceptualised by others, it has not achieved the breakthrough that was anticipated.<sup>67</sup> Activists, other partners and human rights defenders had hoped it would propel and subtly force state parties to progress beyond the many formal commitments to actual implementation,

---

<sup>63</sup> The African Charter on Human and Peoples' Rights

<sup>64</sup> ME Theoha 'Realising the Right to Education in Lesotho' Unpublished Master's dissertation, University of Pretoria, 2011.

<sup>65</sup> Protocol to the African Charter on Human Peoples' Rights on the Rights of Women in Africa Art XII(1)(a) &(b) and (2)(b) & (c).

<sup>66</sup> SADC Protocol on Gender and Development art 11.

<sup>67</sup> MM Munalula 'SADC Protocol on gender and development: Road map to equality?' (2011) 1 *SADC Law Journal* at 190.

progress monitoring, and legal transformation to ensure gender equality becomes a reality for all, including pregnant and parenting adolescents in Lesotho.

Lesotho has several laws and policies that attempt to respond to the needs of adolescents and youth, but like elsewhere, four political variables during and after policy development influence national policymakers. These variables are the political trends in the country; foreign donors and investors; social stratification (class, ethnic and regional loyalties); and the civil service size and quality; all reflecting the country's political culture synopsis.<sup>68</sup> Below, these principles and variables will be used in analysing the policy environment in Lesotho whilst highlighting the processes, stakeholders and overall intentions for developing law or policy.

### **2.2.2. National legislation**

Education as a human right is also acknowledged as a 'multiplier right in several international conventions, as it facilitates and enables the realisation of other human rights.<sup>69</sup> To achieve, protect and promote this right as well as the objectives of the National Strategic Development Plan 2018/19-2022/23 aimed at positively impacting the lives of adolescents and their families,<sup>70</sup> it is important to have measures in place to address adolescent pregnancy and parenting. The right to basic quality education for every Mosotho is both a constitutional requirement and a legal obligation. However, adolescent girls who fall pregnant and those who have the responsibility to parent children during their schooling are often denied an opportunity to realise this right; they are excluded from the educational process either when pregnancy is detected, during the pregnancy, or following childbirth. These decisions significantly impact their lives and the lives of their children.

Despite the progressive laws, Lesotho's implementation modalities and guidelines do not clearly outline measures that civil society organisations and other partners can use to hold the government accountable. For purposes of this study, the constitution of Lesotho, the Children's Protection and Welfare Act 7 of 2011 and the Education Act 3 of 2010 will be discussed. The latter two Acts attempted to highlight issues of girls' protection and their rights to education, health and social protection.

---

<sup>68</sup> G Walt & L Gilson 'Reforming the health sector in developing countries: the central role of policy analysis' (1994) 9 *Health Policy and Planning* at 362.

<sup>69</sup> S Kalantry 'Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR' (2010) 32 *Human Rights Quarterly* at 254.

<sup>70</sup> Government of Lesotho *National Strategic Development Plan 2018/19-2022/23* (2018) 159.

### ***The Constitution of Lesotho***

The rights and freedoms in the Constitution of Lesotho are largely, but not exclusively modelled on the 1948 Universal Declaration on Human Rights and other relevant international human rights instruments. The Constitution of Lesotho provides for the protection of fundamental human rights and freedoms, with Chapter 2 of the Constitution protecting fundamental human rights and freedoms that comprise civil and political rights as well as socio-economic rights.<sup>71</sup> It should be noted that the socio-economic rights under the Lesotho Constitution are not justiciable as they are placed under a section of the Constitution titled Principles of State Policy. This section refers to socio-economic rights as principles and maintains that the said principles shall form part of the Lesotho public policy. However, the Constitutional Court has the primary obligation to interpret the Constitution and may consequentially grant redress to an aggrieved party.<sup>72</sup>

The Principles of State Policy section states that the mentioned principles are subject to the limits of the economic capacity and development of Lesotho, and therefore shall not be enforceable by any court. They shall guide Lesotho's authorities and agencies, and other public authorities in the performance of their functions to progressively achieve the full realisation of these principles. 'The said principles include, among others, protection of health policies, education policies, an opportunity to work, economic opportunities, and protection of the environment'.<sup>73</sup> This therefore call for strategic engagement and advocacy to protect and promote socio-economic rights in Lesotho.

The Constitution, under the Freedom of Conscience section states that,

Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.<sup>74</sup>

This highlights the need for all actions by educational institutions in Lesotho to be aligned to the Constitution, and not according to the school's, the leadership's or teachers' religious inclination and beliefs. Accordingly, this closely relates to pregnant and parenting learners'

---

<sup>71</sup> Constitution of Lesotho sec 13(3).

<sup>72</sup> *Center for Health, Human Rights and Development (CEHURD) & Others v Attorney General* (2020) Constitutional Petition 2011/16 (Constitutional Court of Uganda 2020).

<sup>73</sup> Theoha (n 64) 16.

<sup>74</sup> Constitution of Lesotho (n 71) 6.

rights to not be subjected to religious activities or related beliefs that do not represent their own views. All decisions in their school, including school health, should be informed by and addressed using human rights-based approaches.

The Constitution states that 'Lesotho shall endeavour to make education available to all and shall adopt policies aimed at securing that education is directed to the full development of the human personality and sense of dignity and strengthening the respect for human rights and fundamental freedoms'. It emphasises the provision of free and compulsory primary education as well as ensuring that secondary education is made generally available and accessible to all, by all possible means.<sup>75</sup> This implies that the country committed to ensuring that all persons have access to education, and thus any barrier to education should be considered as violating the Constitution.

As the supreme law of the country, the Constitution sets the tone for all legislative and policy decisions and related programmes. Like other countries, the implementation of the Constitution should be enforced in Lesotho to ensure that all laws, policies, programmes, and guidelines are aligned with its provisions and principles. The role of other non-state actors should be welcomed and understood if the Constitution is to realistically and practically protect the rights of all people in Lesotho. Civil society organisations have limited involvement in the implementation of the Constitution, and in this case, in ensuring that pregnant and parenting adolescent girls are protected and continue to enjoy their rights. It is therefore critical even for development partners to invest in strengthening civil society organisations to protect and promote the rights of these adolescent girls through the development of relevant accountability mechanisms.

The suspending and/or expulsion of pregnant and parenting adolescents from school have been discussed in numerous contexts. Some African courts have ruled that using pregnancy as a basis for exclusion from education is discriminatory, and a breach of the right to education. For instance, in 1995, the Botswana Court of Appeal held that a regulation demanding that students inform college authorities of confirmed pregnancies was 'unfairly discriminatory and purely punitive.'<sup>76</sup> Its application led to the affected students being suspended from the college, which led to expulsion if a student became pregnant for a second time.

---

<sup>75</sup> Constitution of Lesotho secs 28 (a) & (b).

<sup>76</sup> RJ Cook 'Developments in judicial approaches to sexual and reproductive health' (2002) 21 *Medicine and Law* at 156.

Similarly, in 1999, the Supreme Court of Zimbabwe ruled that the expulsion of a female teacher training college student who became pregnant constituted gender-based discrimination and thus contradicted the public policy of intensifying the elimination of sex and gender-based discrimination. The Constitutional Court of South Africa, in 2013, also ruled for the review and policy change in two schools whose policies called for the temporary exclusion of pregnant students. The court concluded that the policies violated the rights to freedom from discrimination and to basic education and were therefore unconstitutional.<sup>77</sup> The government of Lesotho and its partners can draw some valuable lessons from these rulings.

### ***Children's Protection and Welfare Act 2011***

Lesotho's legislative, policy and programmatic context places the health and education of the Basotho people at its centre. The right to education is enshrined in the Constitution and reinforced in the 2010 Education Act that states that primary education is free and compulsory. This right is also enshrined in Section 11 of the Children's Protection and Welfare Act (CPW) of 2011, which provides for the right of all children to education, adequate diet, clothing, shelter, protection, medical attention, social services, and any other service required for the child's development without discrimination or exclusion on any basis. Specifically, Section 11(4) of the Act states that 'no child shall be expelled or denied the right to education by any educational institute on account of pregnancy, initiation or other cultural rituals' and emphasises that children have the right to age-appropriate sexual and reproductive health information and education.<sup>78</sup>

Several challenges necessitated the enactment of this law, including conflicting pieces of legislation addressing children's needs as well as child protection programmes by which are not adequately resourced by government and non-governmental partners. These challenges were further exacerbated by the incoherent coordination of child protection initiatives by formal and informal actors, which resulted in ineffective and non-contextual safety nets for vulnerable children. Consequently, the revival of the non-governmental child rights/protection coordination body (Letsema Network/Sentebale) was supported by UNICEF and partners. The support also included skills sharing, capacity development and coordination support through the Child Rights Network in Southern Africa (CRINSA) affiliation.<sup>79</sup>

---

<sup>77</sup> S Mahtani 'What do African courts say about banning pregnant girls from school?' 10 December 2019 <https://www.africaportal.org/features/what-do-african-courts-say-about-banning-pregnant-girls-school/> (accessed 20 July 2021).

<sup>78</sup> Children's Protection and Welfare Act 7 of 2011 secs 11 (1), (2), (3), (4), (5) & (6).

<sup>79</sup> UNICEF Lesotho 'Child Protection' (2017) 2.



The adoption of the Children’s Protection and Welfare Act was a result of extensive advocacy, consultations, lobbying, technical and financial support by development partners such as World Vision Lesotho, UNICEF and the UN family as well as other civil society organisations in Lesotho. It is a comprehensive decree consolidating all children’s protection and welfare policies and regulations. Amidst increasing levels of child trafficking, child molestation and sexual abuse among children in Lesotho at that time, the advocacy efforts by partners included child rights sensitisation sessions among members of parliament, community leaders, and chiefs. Paralegal teams were also trained, and children’s committees were established and empowered on child protection issues; complemented by facilitating children’s parliaments; and engaging senior government officials, political leaders and other influential partners nationally and in the region.<sup>80</sup>

The Act necessitates relevant implementation guidelines to ensure that the rights of pregnant and parenting adolescents are not continuously violated with limited or no accountability. As part of the Act’s implementation arrangements, Lesotho developed the National Multisectoral Child Protection Strategy 2014/5–2018/19, which provides the overall vision and strategy for protecting children in Lesotho and identifies 22 implementation priorities for the CPW Act.<sup>81</sup> However, its implementation does not seem to address the needs of pregnant and parenting girls. There are also no clear processes to facilitate fostering and adoptions relating to adolescent pregnancy, nor processes to address adoptions and fostering of orphaned adolescents and young girls.

### ***Education Act 2010***

The Act is the outcome of a widely consultative process that aimed to review the Education Act of 1995. While the focus was mainly on developing legislation for free and compulsory primary education, the Ministry of Education and Training was also driven by the need to improve the quality of education and to make the educational environment more responsive to the impact of HIV, poverty, and increasing orphanhood.

Enacted in 2010, Section 4 of the Education Act stipulates that the minister, principal secretary, teaching service commission, school proprietors, teachers and school boards are urged to promote the education of the people of Lesotho, and to ensure the provision of

---

<sup>80</sup> I Monamane ‘Lesotho launches Child Protection and Welfare Act’ (2012) <https://www.wvi.org/article/lesotho-launches-child-protection-and-welfare-act> (accessed 24 June 2021).

<sup>81</sup> C Barberton *et al* ‘Costing the Children’s Protection and Welfare Act, 2011 of Lesotho - Report for the Ministry of Justice and Correctional Service, Maseru, Lesotho’ (2014) 5.

opportunities and facilities that enable all learners to develop physically, mentally, morally, spiritually, and socially in a healthy, normal manner in a conducive environment integrating freedom and dignity. It asserts that all efforts should be made to ensure that all learners should access education and all educational opportunities free from any form of discrimination. Further, all decisions and actions should be in the best interests of the learner and their education at all times. It calls for decisions to be made in a democratic, transparent, and accountable manner in the management of the education system.<sup>82</sup> All these factors, therefore, should be considered when decisions impacting pregnant or parenting adolescents are made.

However, it is not clear who should ensure that the Act is implemented in the manner intended. Despite the Act indicating that no learner should be suspended or expelled from school without the approval of the School Board, most of the suspensions and expulsions are done without the knowledge of school boards. Further, civil society organisations' interaction with Lesotho's education sector is minimal, which contributes to the limited accountability of school boards and leadership. Challenges facing learners are exacerbated by cultural norms and practices such as herding animals, traditional initiation, and taking care of the family; these norms continue to disrupt and hinder the education of Basotho children.<sup>83</sup>

In instances of pregnancy and parenting, once expelled or suspended, learners are denied the knowledge and skills development that would otherwise have enabled them to alleviate their poverty and contribute to their economic development and prosperity. All these issues and challenges are mirrored by the gender disparities in learners' educational journey; at the primary school level, the percentage of boys to girls is 49.7% to 50.3%. At post-primary school, it is 68.7% to 31.3%. This indicates that girls discontinue school post-primary, which is mainly during their adolescence.<sup>84</sup> It is thus prudent to continuously ask questions about who is responsible for ensuring that the rights of learners are upheld, especially as legal and human rights instruments are continuously undermined by patriarchy and harmful cultural and gender stereotypes.

As such, despite the government's efforts to review the Act, not much progress has been made in terms of actual realisation. The Ministry of Education and Training developed the Lesotho Education Sector HIV and AIDS Policy in 2012 and like several other necessary

---

<sup>82</sup> Lesotho Education Act of 2010 sec 4.

<sup>83</sup> D Turkon 'Modernity, tradition and the demystification of cattle in Lesotho' (2002) 62 *African Studies* at 151.

<sup>84</sup> Government of Lesotho (n 70) 114.

policies, this policy has mainly been kept within the Ministry and has not been disseminated to the relevant stakeholders and consumers for which it was developed.<sup>85</sup> This leads to limited or no provision of safety within schools, especially regarding pregnancy and HIV.

The need to enhance the safety and security of learners in schools have led to several advocacy efforts for the government to review the Education Act.<sup>86</sup> These have been repeatedly made by civil society organisations and other activists, more so given the limited implementation of policies that aim at enhancing the lives and social protection of adolescents, especially girls. The government's lack of commitment to create the necessary inclusive environment through facilities, support, and capacity building programmes in the educational sector<sup>87</sup> has been the main challenge in the implementation of this Act.

### ***National Youth Council Act 2008***

Developed and enacted in 2008 by the Government of Lesotho, the National Youth Council Act (NYCA) led to the establishment of the National Youth Council through the National Youth Council Regulations (NYCR) in 2009. The mandate of the Youth Council included the coordination of youth participation in national developmental issues affecting the youth. It was also tasked with leading the implementation of the National Youth Plan, an initiative still not realised. The Council was entrusted with the coordination of programmes that would contribute to the advancement of the youth in Lesotho.<sup>88</sup> The Council was thus to be an empowered and autonomous agency leading all youth-related issues. However, as the Ministry of Gender and Youth, Sports and Recreation (MGYSR) is the leading ministry and host of the Council, the implementation of the Council's mandate was marred by political differences, including efforts to nullify the Council pending court cases regarding political membership in the Council.<sup>89</sup>

Mainly led by political parties and politically affiliated youth groups, this Act failed to address issues faced by adolescents and young people through the Youth Council. Several

---

<sup>85</sup> K Rakolobe & K Teise 'Realities regarding the (non) enactment of the Education sector HIV and AIDS Policy in rural Lesotho' (2020) 27 *Interdisciplinary Journal for the Study of the Arts and Humanities in Southern Africa* at 49.

<sup>86</sup> K Rakolobe 'Reinforce Education Act 2010' (2019) <https://www.thepost.co.ls/insight/reinforce-education-act-2010/> (accessed 24 June 2021).

<sup>87</sup> P Eriamiatoe 'Realising inclusive education for children with disabilities in Lesotho' (2013) <https://africlaw.com/2013/07/15/realising-inclusive-education-for-children-with-disabilities-in-lesotho/#more-548> (accessed 24 June 2021).

<sup>88</sup> ML Matsieli 'An overview of the challenges faced in the implementation of the national youth policy in Lesotho' Unpublished Masters dissertation, University of KwaZulu Natal, 2014.

<sup>89</sup> MN Thakaso 'Young adult understanding of citizen rights and responsibilities in the Lesotho context: Implications for civic education' PhD thesis, University of Kwazulu-Natal, 2017 at 44.

opportunities were missed to establish a body that would specifically promote and protect the rights of young people in Lesotho. Lesotho's commitment to provide for young people the right to independently consent to access contraception, HIV testing, and treatment and care from 12 years of age,<sup>90</sup> was not actualised and represents a missed opportunity to have established relevant policy and implementation mechanisms to protect pregnant and parenting adolescents' rights in Lesotho.

Even though the Act was intended to ensure the inclusion and active participation of young people in Lesotho, it neither addressed their issues nor facilitated the opportunities for their engagement in national issues. Most of the issues and challenges regarding the implementation of the Act were more political than procedural or practical. The prioritisation of issues affecting young people was informed by civic and political aspirations rather than safeguarding the health of adolescents and young people, especially girls.

### **2.2.3. Policy**

Lesotho has made some commendable efforts in developing relevant sectoral policies, building productive capacities, and developing frameworks to support the development of key sectors, including education and health. However, much more work and effort are needed in ensuring the implementation of national policies and plans. The main challenge is that key institutions mandated to support and develop these sectoral frameworks are challenged with underfunding, inadequate staffing and are highly centralised.<sup>91</sup> Some of the policies face efficacy issues and hindrances due to a lack of legislation to empower them to act decisively in matters of supervising schools and their stakeholders and taking disciplinary action when appropriate.

#### ***Lesotho School Health and Nutrition Policy***

The main health challenges facing adolescents in Lesotho are teenage pregnancy and related complications, Sexually Transmitted Infections (STIs) including HIV, substance and drug abuse, and unsafe abortions. Developed in 2017, the Lesotho School Health and Nutrition policy acknowledges that early and unintended pregnancies (EUP) lead some adolescents to undergo unsafe abortions. It notes that as early as 1997, the Ministry of Health indicated that 16.8% of hospital deaths for females above the age of 14 were due to abortion complications. Further, facility-based surveys indicated that 13% of all abortion cases were those of

---

<sup>90</sup> AIDS and Rights Alliance for Southern Africa (ARASA) 'Sexual and Reproductive Health, HIV, TB and Human Rights in Southern and East Africa 2018/19' (2020) 78.

<sup>91</sup> United Nations Conference on Trade and Development (UNCTAD) 'Services policy review- Lesotho' (2013) vi.

adolescents. Medical complications are not the only impact of EUP; early and/or forced marriage and school drop-out call for responses to go beyond prevention and medical mitigation to include policies that ensure continuation and re-integration into the school system.<sup>92</sup>

Within the school health and nutrition package of services, the policy provides for protective measures against HIV and pregnancy for adolescents and young people aged nine and above. It calls for all schools to have school health and nutrition plans which are HIV, culture and gender-sensitive, and most importantly, for all schools to develop and implement rules on re-entry after early and unintended pregnancy. A dedicated section titled the *Management of Sensitive and Controversial Issues* within the policy tasks the Ministry of Education and Training (MoET) to establish national guidelines for managing sensitive and controversial issues in line with its regulations and other relevant national legal and policy frameworks.

It asserts that sexually active learners below the 'legal age of consent' shall receive voluntary child and youth-friendly professional counselling and advice and that in instances of pregnancy or a sexual or criminal offence, parents, guardians or the Children's Court should be engaged in all the deliberations following the established guidelines. Of critical importance is the call for schools to follow the nationally established guidelines for the re-integration of girls into the education system following childbirth.<sup>93</sup> This has come down to rhetoric rather than reality as these national guidelines have not yet been developed.

### ***National Youth Policy 2017***

The Lesotho National Youth Policy of 2017, developed by the Ministry of Gender and Youth, Sports and Recreation (MGYSR), aims to empower Basotho youth

through proper coordination of youth interventions and initiatives in Lesotho; promote the dignity and self-esteem of all youth; to ensure their physical, intellectual and moral well-being; to take all measures to enhance their capabilities to contribute to the transformation of the economy and society; and accelerate their full participation in the socio-economic, cultural and political life in Lesotho and beyond.<sup>94</sup>

The policy provides a framework to enable young people to develop economic, social, cultural, and political skills to improve their quality of life and participation in all spheres of development.

---

<sup>92</sup> Ministry of Education and Training and Ministry of Health *Lesotho School Health and Nutrition Policy* (2017) 9.

<sup>93</sup> Ministry of Education and Training and Ministry of Health (n 92) 28.

<sup>94</sup> Government of the Kingdom of Lesotho *Lesotho National Youth Policy 2017-2030* (2017) 17.

The youth policy defines 'youth' as a Mosotho aged between 15 and 35 years old in accordance with the African Youth Charter.<sup>95</sup> Section 6.2 of the Policy focuses on issues of youth health, HIV & AIDS, and substance abuse. The high and disproportionate HIV prevalence among youth in Lesotho is attributed to various factors such as inadequate knowledge of HIV issues and transmission.

Disparities between levels of comprehensive HIV knowledge in different locations and levels of education are evident. To address these challenges, the policy calls for the Ministry of Education and Training to set a clear policy directive for the effective implementation of comprehensive sexuality education (CSE), strengthening of community and stakeholder engagement, and implementation of minimum standards on CSE for pre-and in-service teacher training and Continuous Professional Development.<sup>96</sup>

According to the 2012 Lesotho Youth Empowerment Survey (LYES) and as confirmed in the policy, 16.9% of youth had no basic education, either never having attended school or having only attended pre-school. Further, the survey indicates that the highest percentage of youth had primary education (38.3%), and those with secondary education followed at 21.7%. 16.3% completed their high school education whilst only 4.9% had tertiary education. Even though there were higher levels of girls' enrolment in secondary education and a high literacy rate amongst women, at the basic education levels girls' drop-out rates remained high. This was attributed to economic, social and cultural factors such as poverty, distance from school, the ramifications of HIV and AIDS, and most importantly, early and unintended pregnancies. Furthermore, child marriages continue to play a detrimental role in girls' education in Lesotho.<sup>97</sup>

These statistics underline the urgent need to ensure that young people attend, are kept in and complete their primary and secondary education at the bare minimum. The implementation of the National Youth Policy will promote and protect the human rights of all, especially pregnant and parenting adolescent girls who are usually denied their rights through unconstitutional practices within schools and communities. The policy was a result of the 2005 review, which was mainly criticised for not being relevant to the issues faced by young people at the time. Mostly led by youth groups and political groups, the policy was developed inclusively with multi-sectoral stakeholder consultations during its development, validation and launch. The

---

<sup>95</sup> As above.

<sup>96</sup> Government of the Kingdom of Lesotho (n 92) 18.

<sup>97</sup> Government of the Kingdom of Lesotho (n 92) 21.

youth involvement enhanced exchanges of ideas between generations, languages, cultural groups, and different religious groups.<sup>98</sup> Despite some glaring omissions regarding sexual and reproductive health and rights, these processes were hailed as a success in the policy's attempts to address issues faced by young people.

### ***Adolescent Health Policy 2006***

Developed in 2006, the policy provides a clear operational framework to guide the development of action programmes and services to meet adolescent health and development needs in Lesotho.<sup>99</sup> It emphasises the commitments made by the government of Lesotho, including participation in the 1985 International Year of the Youth proclaimed by the UN General Assembly; the 1990 UN Convention on the Rights of the Child; the Organisation of African Unity (OAU) African Charter on the Rights and Welfare of the Child; the UN Special Assembly on Children; the 1994 International Conference on Population and Development (ICPD); the 1995 Fourth World Conference on Women; the Adolescent Health (ADH) Strategy and Resolution adopted by the Commonwealth Ministers of Health in 2001; the 2000 and Beyond UN World Programme of Action for Youth; the Millennium Development Goals, and various other commitments to address the contemporary challenges facing adolescents.

Adolescent health problems are multifaceted and, as such, call for multisectoral interventions, which should ideally be supported by laws, policies, and guidelines. Adolescents' first sexual experience begins as early as age 12 for males and 14 for females and increases to nearly 50% by age 17. Further, young mothers cannot access appropriate and safe services and girls who fall pregnant are regularly expelled from school. Given these factors, there is an urgent need for a more focused and effective implementation of existing laws, policies, and guidelines.<sup>100</sup> The policy outlines ten key objectives:

---

<sup>98</sup> D te Lintelo 'Youth and policy processes, FAC Working Paper 25' (2011) 5.

<sup>99</sup> Government of Lesotho *National Adolescent Health Policy* (2006) 6.

<sup>100</sup> Government of Lesotho (n 97) 12.

## **Lesotho Adolescent Health Policy Objectives**

**Objective 1:** *To reduce maternal morbidity and mortality due to **pregnancy and childbirth, among adolescents.***

**Objective 2:** *To reduce mortality due to unsafe **abortions among adolescents.***

**Objective 3:** *To promote responsible behaviours among adolescents regarding contraception, safe sex and prevention of STIs, HIV and AIDS.*

**Objective 4:** *To reduce the levels of **unwanted pregnancies among adolescents.***

**Objective 5:** *To reduce sexually transmitted infections in order to reduce the transmission of HIV among adolescents.*

**Objective 6:** *To reduce domestic and sexual violence and ensure proper management of the victims.*

**Objective 7:** *To reduce accidental and violence related injuries and ensure proper management of the injury victims.*

**Objective 8:** *To increase awareness **about mental health problems and ensure management of adolescents with mental problems.***

**Objective 9:** *To increase awareness about substance abuse and ensure management of adolescents with addiction problems.*

**Objective 10:** *To increase awareness about **prevalent non-communicable diseases affecting adolescents.***

If implemented accordingly, adolescents' rights and dignity would be protected and promoted, however, as with other policies, the implementation has been marred by socio-cultural challenges and issues. This leads to limited access to reproductive health services, to basic education and to other economic opportunities for adolescents in Lesotho.

### **Gender and Development Policy 2018**

To address the challenges of the Millennium Development Goals and take steps to implement the SDGs, the Government, through a participatory process, developed a ten-year Gender and Development Policy 2018-2028. The Policy is to be implemented through multisectoral approaches with the participation of all Government ministries, local authorities, CSOs, Faith-Based Organisations, academia, the private sector, and development partners. The Policy aligns with and echoes several international and regional instruments.<sup>101</sup> Locally, the policy

---

<sup>101</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Lesotho, Human Rights Council Working Group on the Universal Periodic Review Thirty-fifth session (20–31 January 2020), A/HRC/WG.6/35/LSO/1 (2019).



corresponds to the national protocols, including the National Strategic Development Plan (NSDP II) and the Vision 2020.<sup>102</sup>

The policy notes that even though there are some substantial efforts and initiatives from the Lesotho government and partners to enhance the reproductive health of all people, several social and structural challenges persist. These include the high levels of sexually transmitted infections, unsafe abortions, maternal and neonatal deaths, and contraceptive use at low levels that result in teenage pregnancy remaining high in Lesotho.<sup>103</sup> In two of the strategic actions under Section 4.9 (Gender and Health) of the policy, the government commits to 'provide a wide affordable range of family planning methods and contraceptive options; and to strengthen advocacy on prevention of incidences of illegal termination of pregnancy'.<sup>104</sup>

It is important to note that these broad commitments do not seem to be aligned to or integrate the government's commitments, especially General Comment No. 2 on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The policy seems to have taken a careful and traditionalist view of the key issues facing young people - it does not mention the violations adolescent girls face in instances of early and unintended pregnancy and parenting and its social, economic and educational ramifications. This is a missed opportunity, hence the need for continued advocacy for national policies to be realistic, rights-based, and relevant enough to advocate for and address the key issues faced by citizens, and in this case, adolescent girls in their daily lives. This would be the most direct way in which states can make regional and international commitments a reality for their citizens.

The policy was developed following several stakeholder consultations and made clear the fact that teenage pregnancy denies girls their right to education (in Lesotho and many other countries). However, the much-anticipated policy seems to be very narrow in scope as it does not include issues of adolescent pregnancy, parenting and education.

### **2.3. Customary Law**

Lesotho's Constitution subscribes to the principle of gender equality, but society remains overwhelmingly patriarchal. This patriarchal system has both health and educational implications. Gender inequality mainly contributes to the burden of disease, with young people,

---

<sup>102</sup> Government of Lesotho *Gender and Development Policy 2018 – 2030* (2018) 20.

<sup>103</sup> Government of Lesotho (n 100) 61.

<sup>104</sup> Government of Lesotho (n 100) 64.

lower socio-economic groups, and those with low levels of education the most affected.<sup>105</sup> The high levels of violence and gender-based violence, including school-related gender-based violence as well as the unfair treatment of adolescent girls when they fall pregnant or become parents, are some of the direct effects of a patriarchal system, regardless of the legal and policy environment and commitments.

The Kingdom of Lesotho uses a dual legal system that comprises Roman Dutch Law and a customary code known as the *Laws of Lerotholi* promulgated in 1903.<sup>106</sup> In other African countries, most African customary law institutions created during colonial times have been replaced by more liberal political systems. This process results in these colonial codes being gradually eroded and replaced by progressive legislation, transformative judicial activism, and changing perceptions regarding the relevance of African customary law in multicultural societies. In Lesotho, however, the laws of *Lerotholi* have persisted.<sup>107</sup> This is evident in clashes or inconsistencies in upholding the human rights of women and girls in Lesotho, especially when dealing with issues of pregnancy, marriage, parenting, and education. The tension between African law and western law in dual and plural legal societies leads to a continuous clash of cultures within the socio-legal field.<sup>108</sup> This is because the dual legal system poses challenges in harmonising different facets of the law in African societies such as Lesotho.

Gender representation is a concern in various sectors in Lesotho as entrenched gendered perceptions still favour men over women in all socio-economic and political spheres. This is fuelled by endemic patriarchy, harmful cultural norms and customs, destructive religious practices, and the normative and structural discriminatory practices that perpetuate gender inequality and hinder women and girls' empowerment.<sup>109</sup> This is reflected in practices such as expelling and suspending girls when pregnant (despite commitments on national levels to the contrary), without any consequences for the boy or man responsible for the pregnancy. Efforts to modify some state structures and policies such as the electoral system and financing for

---

<sup>105</sup> UNESCO (n 57) 16.

<sup>106</sup> Q Letsika 'The place of Sesotho customary law marriage within the modern Lesotho legal system' (2005) 2 *Botswana Law Journal* at 74.

<sup>107</sup> L Juma 'The Laws of Lerotholi: role and status of codified rules of custom in the Kingdom of Lesotho' (2011) 23 *Pace International Law Review* at 96.

<sup>108</sup> L Juma 'From "Repugnancy" to "Bill of Rights": African customary law and human rights in Lesotho and South Africa' (2007) 1 *Speculum Juris* at 88.

<sup>109</sup> M Kali 'Women Empowerment in Lesotho: Reality And/or Myth?' (2018) 6 *International Journal of Scientific Research and Management* at 52.

gender issues in Lesotho are not resulting in much progress on the ground due to patriarchal socio-cultural beliefs and practices.

Finally, the government of Lesotho is committed to enhance school enrolment for both boys and girls and to ensure that they access free, equitable and good quality primary education. However, after more than ten years of implementing the free primary education (FPE) policy, boys' socialisation continues in ways that undermine gender equality. This is mainly influenced and informed by dominant gender discourses, resulting in boys adopting masculinities that undermine their female peers and female teachers, while simultaneously being socially pressured to perform damaging and unrealistic forms of masculinities.<sup>110</sup> These discourses hinder the implementation of the transformative and progressive laws and policies that are developed by the country.

#### **2.4. Conclusion**

Research shows that girls with primary or lower education are much more likely to be married and have their first child before the age of 15 when compared to those with secondary or higher education. In Africa, in 2015, 11% of women aged 15-24 with primary or lower education levels were married before age 15 and 5% of them had their first child before age 15 compared to the 2.5% and 1% of women with higher education. Similarly, marriage and childbearing ranged from 4% in Southern Africa to 14% in Central Africa among young women aged 15–24 with primary or no education.<sup>111</sup> These statistics highlight the importance of education, keeping girls in school and ensuring that they finish their post-primary education undeterred and uninterrupted.

Notwithstanding several policies and laws in Lesotho that call for continuous and uninterrupted education for all and non-discrimination, the protection of vulnerable learners such as adolescent girls from sexual and gender-based violence remain a critical issue that has not been adequately addressed. Girls continue to face the possibility of sexual abuse and exploitation, including on the school premises.<sup>112</sup> Despite these challenges, there is still no clear continuation or re-entry policy for pregnant and parenting female learners, leaving the discretion to schools, which in turn leads to interrupted and, in some instances, discontinued education for these girls. Despite Lesotho's commitments prescribing equal participation in

---

<sup>110</sup> P Morojele 'What does it mean to be a boy? Implications for girls' and boys' schooling experiences in Lesotho rural schools' (2011) 23 *Gender and Education* at 681.

<sup>111</sup> DY Melesse *et al.* 'Inequalities in early marriage, childbearing and sexual debut among adolescents in sub-Saharan Africa' (2021) 18 *Reproductive Health* at 10.

<sup>112</sup> Kingdom of Lesotho *Education Sector Plan 2016 – 2026* (2016) 91.

civil and political spheres and equal rights, the application of the dual legal system, which prohibits discrimination while at the same time allowing discrimination on the basis of customary law, continues to be a major hindrance to the promotion and protection of the human rights of those who are most vulnerable in Lesotho, specifically women and girls.<sup>113</sup>

To better analyse these aspects, the next chapter will provide an analysis of the linkages and relationships between human rights, policy, and culture. It will further investigate the influence of culture on international and regional human rights commitments and national legislation and will emphasise these linkages using the socio-legal approach.

---

<sup>113</sup> Lesotho Council of NGOs 'The status of women in Lesotho with respect to participation in local governance processes: Policy Brief No 2015/01' (2015) <http://www.lcn.org.ls/news/Study%20of%20women%20policy%20brief%20final.pdf> (accessed 8 June 2021).

## CHAPTER 3: LINKAGES BETWEEN HUMAN RIGHTS, POLICY, AND CULTURE

### 3.1. Introduction

The bold commitments made by countries to ensure the protection and promotion of the rights of all people highlight the critical need to safeguard all rights, including the sexual and reproductive health and rights (SRHR) of adolescents and young people. However, despite guarantees on gender equality, on average, women enjoy just 75% of the legal rights of men globally.<sup>114</sup> Women and girls often lack the power to contest these disparities due to low levels of participation in political and other decision-making platforms. This is exacerbated by economic inequalities and marginalisation that leads to financial dependence, which then weakens women's authority and agency to make autonomous decisions about sex, health care and contraception. The COVID-19 pandemic has worsened some of these existing issues, inequalities, and related challenges.<sup>115</sup>

To collectively overcome some of these challenges, the UN General Assembly on the World Programme of Action for Youth (WPAY) to the year 2000 and beyond,<sup>116</sup> recognised and adopted resolutions emphasising the importance of young people as major human resources for development and key agents for social change, economic development, and technological innovation. Member states were provided with several strategies and means to address the challenges facing young people and informed how the Programme of Action and other relevant and progressive policies would influence the status quo.<sup>117</sup> It is worth reflecting on how countries, including Lesotho, are using the guidance and relevant strategies from the WPAY.

Even though several conventions acknowledge and recognise the right of pregnant schoolgirls to quality education, there is often a disconnect between international law and national law, and between law, policy, and practice which is usually influenced by culture. As a signatory to several international agreements promoting the rights of all children to quality education without discrimination, governments, including the government of Lesotho, have a legal obligation to implement strategies to enable adolescents to continue and complete their education.

---

<sup>114</sup> International Bank for Reconstruction and Development / The World Bank 'Women, business and the law 2019' (2019) 3.

<sup>115</sup> UNFPA 'State of World Population 2021' (2021) 8.

<sup>116</sup> World Programme of Action for Youth to the Year 2000 and beyond, UN Economic and Social Council (2 November 1995), UN Doc E/RES/1995/64 (1995).

<sup>117</sup> Matsieli (n 86) 14.

Culture is the system of norms and standards that a society develops over several generations, with substantive effects on the conduct of people living in that society. It is the complete package of knowledge, beliefs, customs, art, morals, law and other modalities and habits acquired by people as members of a particular society. It constitutes the integrated biological, ethnic, and social behavioural modes of a group or a society.<sup>118</sup> The role of culture in education and in law needs to be fully understood to make informed decisions regarding the development, implementation and monitoring of laws, policies, and guidelines. This is because culture can be understood as the glue that links the various domains of human life; it is how people and communities create their experiences, harmonise contrasting ideas and actions, and make sense of the world around them.<sup>119</sup> Cultural experience is important for adjusting to the natural and social environment, and it socialises people and communities.

This chapter will discuss the relationship between the human rights instruments and national policy *and* Basotho culture in relation to the right to education. It will simultaneously analyse how these relationships affect Lesotho's implementation of its commitments and human rights instruments in the context of school re-entry for pregnant and parenting adolescents.

### **3.2. International and Regional Human Rights Commitments**

The Kingdom of Lesotho is a member of the United Nations and the African Union. With its ratification of many United Nations (UN) Human Rights Conventions, it has made binding commitments to adhere to the standards in these universal human rights documents. Whether it is because of the ratification and acceptance of the optional Protocols for UN Human Rights Conventions or the acceptance of the competence of the corresponding UN treaty bodies, and whether it involves political and civil rights, economic, social, and cultural rights, or the rights of children and people with disabilities, the inhabitants of Lesotho and their representatives can claim and exercise their human rights through these bodies.

For instance, the people of Lesotho can reach out to the UN Human Rights Committee through Procedure 1505, which is a confidential process that examines the human rights situation within a State. Issues are addressed to the Special Rapporteurs for violations of specific human rights or to the Economic and Social Council of the United Nations (ECOSOC) for women's rights violations.<sup>120</sup> As a member state of UNESCO, Lesotho's citizens may also use

---

<sup>118</sup> R Kapur *Impact of Culture on Education* (2018) 1.

<sup>119</sup> PS Berman *The enduring connections between law and culture: Reviewing Lawrence Rosen, Law as Culture, and Oscar Chase, Law, Culture, and Ritual* (2009) 103.

<sup>120</sup> National Commissions for UNESCO of France and Germany 'Claiming Human Rights in Lesotho' <http://www.claiminghumanrights.org/lesotho.html> (accessed 8 July 2021).

the UNESCO procedure for human rights violations in UNESCO's fields of mandate. The rights to education, to participate in cultural life and to share in scientific advancement, to information and freedom of opinion and expression, freedom of thought, conscience, and religion, and freedom of association all fall under UNESCO's competence, and relevant procedures can be used to submit complaints against the state should the need arise.<sup>121</sup>

Although Africa is a continent of great diversity, its people are the common thread that binds the continent. A people's culture forms the people's 'foundation of society and development, which integrates the values, customs and characteristics of a people, and promotes dialogue and interaction amongst people'.<sup>122</sup> Culture should benefit communities, hold people together and strengthen their unity in diversity, either within families, communities, public life, or organisations. Culture should neither be divisive nor be used to violate the human rights of pregnant and parenting adolescents, such as in the case of Lesotho. The universality of human rights can also be tested by their compatibility with cultural differences and should not constitute a 'fixed' approach as rights and culture should 'mutually complement each other'.<sup>123</sup>

### **3.2.1. Universal Declaration of Human Rights (UDHR)**

Article 25 (2) of the Universal Declaration of Human Rights (UDHR) clearly states that 'motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection'. Article 26 (1) and (3) declare that everyone has the right to education, calling for education to be free, at least in the elementary and fundamental stages, while elementary education shall be compulsory.<sup>124</sup> The domestication of the UDHR has been effected through several mechanisms including the Constitution of Lesotho. However, its implementation to realise the protection and promotion of human rights is not uniform and does not align with its commitments. In its Universal Periodic Review reporting since 2010, the country's three reports highlighted human rights issues related to the youth in Lesotho amongst other issues. The Civil Society report highlighted 'the need to revive distance learning in Lesotho to accommodate learners who cannot be in class during the normal learning hours such as herd boys, teenage mothers and learners who were married very young'.<sup>125</sup> This recommendation has not been implemented

---

<sup>121</sup> The Procedure of UNESCO [http://www.claiminghumanrights.org/unesco\\_procedure.html?&L=](http://www.claiminghumanrights.org/unesco_procedure.html?&L=) (accessed 20 July 2021)

<sup>122</sup> B Gawanas *The African Union: Concepts and implementation mechanisms relating to human rights* (2009) 142.

<sup>123</sup> M Lower 'Can and should Human Rights be universal?' (2013) *E-International Relations* at 2.

<sup>124</sup> Universal Declaration of Human Rights (n 60).

<sup>125</sup> United Nations Lesotho 'Human Rights Day 2019' 10 December 2019 <https://lesotho.un.org/en/27851-human-rights-day-2019> (accessed 8 July 2021).

to scale and would be very beneficial to fulfil the right to education for adolescents and young people in Lesotho.

Although the Universal Declaration of Human Rights (UDHR) is widely accepted by most States and despite forming an integral part of international law, the global scene has evolved since the Declaration's adoption in 1948. There are now other political actors beyond states, and states are now tasked with dealing with and engaging supranational, transnational, and local actors who generate, reconstruct or challenge existing normative assumptions. These intricacies have and continue to make the implementation and domestication of the UDHR challenging, especially the process of claiming and implementing cultural rights, as they are deemed to be rooted in Western legal culture.<sup>126</sup> The stark difference between this system and African systems is that the latter is influenced by community leadership and engagement. Cultural diversity, community norms, and the influence of non-state actors need to be taken seriously for the philosophy of the UDHR to be transmitted to local communities and be effective in their contexts and culture. This should also be realised in line with other non-legal structures and instruments such as customary, religious, social, and cultural norms, which are usually invoked to uphold fundamental human rights.<sup>127</sup> This is the case with the dual legal system of Roman Dutch Law and customary law in Lesotho.

Despite the principles of equality and human dignity, and nondiscrimination clauses forming the basis for international human rights instruments', the notions of equality and equal treatment of individuals are resisted by some states, as they assign separate notions of dignity to different sexes and persons. Even though this form of resistance is most commonly associated with some Muslim clergy and state officials who reject the equality of sexes, and formulate alternative instruments, which usually undermine the equality among women and men,<sup>128</sup> states such as Lesotho also face this kind of resistance. This resistance is more pronounced when viewed from a religious perspective and is in a way subtly endorsed by the state in its emphasis on labelling Lesotho as a Christian country. This connotation is transmitted to institutions such as schools, especially schools owned by the church, which have very specific policies on the suspension and expulsion of pregnant and parenting adolescents.

---

<sup>126</sup> L Veer & A Dezentje 'Human rights and cultural perspectives' (2018) 4 *The UNESCO Courier* at 36.

<sup>127</sup> M Mutua 'Standard setting in human rights: Critique and prognosis' (2007) 29 *Human Rights Quarterly* at 550.

<sup>128</sup> Z Arat 'Forging a global culture of human rights: Origins and prospects of the International bill of rights' (2006) 28 *Human Rights Quarterly* at 432.



### **3.2.2. Convention on the Rights of Persons with Disabilities (CRPD)**

Lesotho ratified the Convention on the Rights of Persons with Disabilities (CRPD) in December 2008. Article 24 (a) of the convention indicates that 'states parties shall ensure an inclusive education system at all levels and lifelong learning directed to among others, the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity'.<sup>129</sup> This emphasises the need for inclusive education regardless of the circumstances that learners may find themselves in, including circumstances such as pregnancy and parenting.

The inclusion philosophy articulated by the CRPD provides a progressive human rights model as it accentuates the principle of reasonable accommodation for constructing an education system that caters for all learners.<sup>130</sup> The suspension and expulsion of learners due to pregnancy or parenting, or the creation of an environment that does not encourage them to continue with their learning, go against the principles of this convention. This is articulated in Article 2 (c) as it asserts that states shall ensure that 'reasonable accommodation of the individual's requirements is provided and that effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion'.<sup>131</sup> Lesotho has demonstrated its commitment to this convention by enacting the Persons with Disability Equity Act 24 of 2021 on 12 March 2021, to domesticate the treaty, 12 years after its ratification.<sup>132</sup> The implementation of these commitments should therefore be evident in the lives of Basotho.

### **3.2.3. The United Nations Convention on the Rights of the Child (CRC) and the General Comment No. 20**

This Convention emphasises the child's right to an education and freedom from discrimination.<sup>133</sup> The committee of the CRC which monitors the Convention has tasked governments to provide support and guidance to adolescent mothers and fathers for their well-being and that of their children. It calls on states to 'foster positive and supportive attitudes towards adolescent parenthood' and 'develop policies that will allow adolescent mothers to

---

<sup>129</sup> Convention on the Rights of Persons with Disabilities, (13 December 2006), UN Doc A/RES/61/106 (2006).

<sup>130</sup> CG Ngwena 'Human right to inclusive education: Exploring a double discourse of inclusive education using South Africa as a case study' (2013) 31 *Netherlands Quarterly of Human Rights* at 503.

<sup>131</sup> Convention on the Rights of Persons with Disabilities Art 2 (e).

<sup>132</sup> Lesotho National Federation of Organisations of the Disabled (LNFOD) 'The Long-Awaited domestication of the United Nations Convention on the rights of People with disabilities in Lesotho' [http://www.infod.org.ls/uploads/1/2/2/5/12251792/media\\_brief\\_on\\_passing\\_of\\_disability\\_law.pdf](http://www.infod.org.ls/uploads/1/2/2/5/12251792/media_brief_on_passing_of_disability_law.pdf) (accessed 10 August 2021).

<sup>133</sup> RS Mama 'Needs, rights, and the human family: The practicality of the Convention on the Rights of the Child' (2010) 89 *Child Welfare* at 177.

continue their education'.<sup>134</sup> Governments are urged to ensure appropriate pre-natal and post-natal health care for mothers and introduce comprehensive and appropriate affirmative action strategies to eliminate conditions that result in direct or indirect discrimination against any group of adolescents, on any grounds. One of the main objectives of Comment No. 20 is to guide states on relevant legislation, policies and services to promote comprehensive adolescent development, consistent with the realisation of their rights;<sup>135</sup> hence it is imperative to link this commitment to the status quo in Lesotho.

Lesotho has not yet developed a clear policy to allow and enable adolescent girls to continue with their education during pregnancy and motherhood. This is despite the guidance provided by Comment No. 20 on the relevant and appropriate legislation, policy and services that can enhance the health and wellbeing of adolescents. The country's reporting on this should be interrogated as teenage pregnancy is mentioned in various reports as a key challenge. However, reports do not stipulate concrete steps on how this challenge will be overcome. This is again despite existing commitments, laws and policies that address these issues.

#### **3.2.4. International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The need for inclusive education for all learners has been increasingly recognised as a right in international law, with the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishing education as a human right.<sup>136</sup> In addition, the Covenant emphasises the government's responsibility to guarantee the safety and well-being of children and to facilitate the completion of the adolescent mother's education cycle.<sup>137</sup> Economically, it highlights the right to work, to just and favourable conditions, the right to strike, and protection of property; while in the social sphere, it focuses on the right to social security, rights of families, mothers (before and after childbirth) and children to special protection and assistance, the right to an adequate standard of living, and the right to health. In the cultural sphere, it deals with the right to education and the right to take part in cultural life.<sup>138</sup> The

---

<sup>134</sup> Convention on the Rights of the Child (2003) Committee on the Rights of the Child General comment No. 4 on adolescent health and development in the context of the Convention on the Rights of the Child (1 July 2003), UN Doc CRC/GC/2003/41 (2003).

<sup>135</sup> Convention on the Rights of the Child (2016) Committee on the Rights of the Child General comment No. 20 on the implementation of the rights of the child during adolescence (6 December 2016), UN Doc CRC/C/GC/20 (2016).

<sup>136</sup> L Waddington & C Toepke 'Maastricht Faculty of Law Working Paper 2014/7' (2014) 8.

<sup>137</sup> Ministry of Education Guyana *National Policy: Reintegration of Adolescent Mothers into the Formal School System* (2018) 20.

<sup>138</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976.

ICESCR obligates states parties to implement appropriate measures optimising available resources to realise economic, social and cultural human rights by all appropriate means.<sup>139</sup>

The link between adolescent pregnancy and poverty has been made,<sup>140</sup> affirming the contribution of various childhood hardships to the risk of early and unintended pregnancy, abortion, and rapid repeat pregnancy among adolescents. Furthermore, the likelihood to father children born to adolescent mothers among males with adverse childhood experiences is also high.<sup>141</sup> Culture, financial security, and lack of education and meaningful relationships are deemed to be some of the causes of adolescent pregnancy, and in some way or another, they can all be connected to poverty. Beyond poverty, adolescent pregnancy can also illuminate elements of powerlessness, peer pressures and stress or negative influence from partners, families, and communities.<sup>142</sup> These factors necessitate the implementation of this Covenant through national policies and guidelines towards the attainment of the right to education and to dismantle intergenerational cycles of poverty, adolescent pregnancy, and parenthood.

While there is an increasing need for human rights norms to constructively engage with cultural identity, it is important to note that the effective implementation thereof and of other commitments is usually limited by the right of exit. This right seemingly provides an avenue for legislative authorities and states to avoid or delay the necessary normative evaluation, review and possible eradication of harmful social and cultural traditions and practices.<sup>143</sup> This seems to be the avenue that the leaders and stakeholders in the education sector in Lesotho are taking, with the practice of exclusion, suspension and expulsion continuing unabated despite the available and well-known human rights instruments.

### **3.2.5. The United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)**

Article 5 of the Convention calls on 'States Parties to take all appropriate measures to modify the social and cultural patterns of men and women's conduct, to eradicate customary and

---

<sup>139</sup> Federal Department of Foreign Affairs 'International Covenant on Economic, Social and Cultural Rights' <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/un-human-rights-treaties/international-covenant-economic-social-cultural-rights.html> (accessed 22 July 2021).

<sup>140</sup> J Svanemyr 'Adolescent pregnancy and social norms in Zambia' (2020) 22 *Culture, Health & Sexuality* at 619.

<sup>141</sup> S Garwood *et al.* 'More than poverty: The effect of child abuse and neglect on teen pregnancy risk' (2015) 57 *Journal of Adolescent Health* at 165.

<sup>142</sup> MN Lambani 'Poverty: The cause of teenage pregnancy in Thulamela municipality' (2015) 6 *Journal of Sociology and Social Anthropology* at 172.

<sup>143</sup> A Fagan 'Cultural harm and engaging the limits of a right to cultural identity' (2017) 39 *Human Rights Quarterly* at 320.

other prejudices and practices based on either inferiority or superiority of either of the sexes or on stereotyped roles for men and women'.<sup>144</sup> As a signatory to CEDAW, Lesotho must go beyond preambles indicating legislative alignment with CEDAW and other commitments to actual implementation. This Convention acknowledges that 'realising the right to education is imperative to the provision of tools necessary to help girls overcome entrenched discrimination and inequalities'.<sup>145</sup> The country has to be deliberate in its efforts to develop and implement laws and policies that will enable the implementation of this convention without the social, cultural and religious hindrances to the full attainment of the right to education among pregnant and parenting adolescents.

Cultural traditions and beliefs are usually stronger than laws when it comes to people's behaviour and habits of mind.<sup>146</sup> This is also the case when seeking protection for women and girls situated within patriarchal systems and environments. Thus, it becomes paramount to engage at a cultural level if we are to clearly understand and protect the human rights of all, especially pregnant and parenting adolescents. Even though violence against women, discrimination, and harmful practices such as female genital mutilation and child marriage are illegal in many countries, they continue to be practised, due to their deep cultural roots. Human rights violations happen within families, schools, and communities while justice systems are usually at the national level, far and detached from these violations. Therefore, local value system mechanisms are instrumental in recognising such violations. While laws are needed, they should be supported by community-led outreach efforts to be effective, as well as by deeper engagements to promote human rights for all at the community level.<sup>147</sup> This can be achieved through promoting community dialogues, with the inclusion of adolescents.

### **3.2.6. African Charter on Human and Peoples' Rights**

African states have reaffirmed their commitment to promote and safeguard human rights on the continent through the African Charter, the African Charter on the Rights and Welfare of the Child (African Children's Charter), and the African Women's Protocol. Articles 60 and 61 of the African Charter recognise regional and international human rights instruments and African practices compatible with international norms regarding human and peoples' rights.<sup>148</sup>

---

<sup>144</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979

<sup>145</sup> As above.

<sup>146</sup> D Cohen 'Culture, social organization, and patterns of violence' (1998) 75 *Journal of Personality and Social Psychology* at 417.

<sup>147</sup> UNFPA 'Promoting Human Rights Across Cultures' 4 October 2010 <https://www.unfpa.org/press/promoting-human-rights-across-cultures> (accessed 25 July 2021).

<sup>148</sup> The African Charter on Human and Peoples' Rights Art 60 & art 61.

In its realisation and acknowledgement that culture is an integral part of African lives, the African Charter accommodates positive African cultural values, morals, heritage, practices and customs that are not prejudicial to the health, life, and dignity of African peoples; this is also articulated in article 11(1)(c) of the African Children's Charter.<sup>149</sup>

Thus, the practice of suspending and/or expelling pregnant and parenting adolescents from school is against the African Charter and other international human rights norms recognised by the Charter, and should, therefore, neither be accepted nor tolerated. As anecdotal evidence suggests, this limited adherence to these stipulations by the state continues to open a plethora of similar discriminatory practices and harmful practices that are prejudicial to the dignity, health, freedom, and education of adolescent girls.

### **3.2.7. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**

Adopted in 2003, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) has been termed the African Bill of Women's Human Rights by some organisations.<sup>150</sup> This is because of its unique detailing of wide-ranging and substantive human rights for women and its coverage of the entire spectrum of civil and political, economic, social, and cultural as well as environmental rights. This has differentiated the protocol from all other women's human rights instruments. Article 2 of the protocol commits states parties to combat all forms of discrimination against women.<sup>151</sup> This is also strengthened by article 5 which calls for the prohibition and condemnation of all harmful practices negatively affecting women's human rights. It articulates the need to protect women at risk of being subjected to harmful practices or other forms of violence, abuse, and intolerance. This protocol suggests and prescribes the measures Lesotho should take to ensure that pregnant and parenting adolescents' rights are protected and promoted.<sup>152</sup> The influence of social and cultural practices that punish a girl for falling pregnant and not reprimanding the boy should be overruled by the country's commitment to this and other protocols.

---

<sup>149</sup> J Asomah 'Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society' (2015) 15 *African Human Rights Law Journal* at 145.

<sup>150</sup> African Union Commission 'Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa Submitted by the Women, Gender and Development Directorate (WGDD) of the African Union Commission' (2016) 4.

<sup>151</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Art 2.

<sup>152</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Art 5 (d).

The Maputo protocol aims to invalidate perceptions of international instruments as culturally insensitive as it contextualises the global standards to local African reality, using internal dialogue and reform. This protocol is seen to have 'remedied the shortcomings of both the CEDAW and the African Charter, by aligning African women's universal rights with cultural sensitivities within their community'. Even though it draws inspiration from global human rights norms, it also integrates African context into global norms, therefore strategically averting the universalism and relativism dichotomy in the women's rights issues.<sup>153</sup> Most importantly, Article 17 of the protocol provides that 'women shall have the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies'.<sup>154</sup> This provision facilitates an avenue for African women and girls to participate in internal and other dialogue as active participants in reforming discriminatory and harmful social and cultural beliefs, traditions and practices which are deep-rooted in the social structure. It is apparent that the Maputo Protocol strongly asserts women and girls' rights within the African socio-cultural environment, while also noting and acknowledging international human rights instruments. Finally, the protocol's provision for both socio-economic and civil-political rights further affirms the indivisibility and interdependence of rights,<sup>155</sup> facilitating the means to effectively use it within African countries.

### **3.3. Culture and National legislation**

Power, cultural imbalances and power struggles over economic resources are some of the most pressing issues affecting the rights of women and girls,<sup>156</sup> especially in developing countries such as Lesotho. Like in other African countries with dominant patriarchal cultural contexts, universal human rights are usually labelled as an initiative of 'Western imperialism'. While culture can be used to assert and promote human rights, it can also be used to justify rights violations of others.<sup>157</sup> The conflict between cultural values and human rights continues to be unresolved among various scholarly realms and within global political relationships. Some rights theorists disagree on the appropriate approaches to human rights, others emphasise the universality of human rights standards, while some argue that no one has the

---

<sup>153</sup> T Gashaw 'The interplay between gender and culture: How the African human rights system sought to accommodate universality and cultural relativity of women's rights' <https://blogs.lse.ac.uk/gender/2020/08/31/the-interplay-between-gender-and-culture-how-the-african-human-rights-system-sought-to-accommodate-universality-and-cultural-relativity-of-womens-rights/> (accessed 15 August 2021).

<sup>154</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Art 17.

<sup>155</sup> F Viljoen 'An introduction to the protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* at 20.

<sup>156</sup> L Michau *et al.* 'Prevention of violence against women and girls: lessons from practice' (2015) 385 *The Lancet* at 1673.

<sup>157</sup> Asomah (n 147) 130.

right to dictate the operationalisation and application of human rights to another culture; suggesting the right and autonomy of each culture to devise its own human rights standards.<sup>158</sup>

For them to be effective, international, and regional human rights instruments and standards must be domesticated, accepted and implemented by states; hence the aspect of self-regulation that is characteristic of international human rights law at the domestic level.<sup>159</sup> The relationship between universal human rights and culture is sometimes controversial and continues to escalate issues and questions around the legitimacy and consistency of a universal conception of humanity. Despite the internationalisation of human rights and the broad acceptance of the notion of human rights as inherent to every human being, instruments do not guarantee immediate embracing of these norms by all communities. This is evident when considering the gap between the theoretical implementation of human rights instruments by states and their practical regulation on the ground.

International human rights instruments are embedded in conceptions of human dignity and justice, which differ according to cultural and social perceptions. The controversy between human rights and cultural practices also entails the well-known universalism versus relativism debate. Even though the international human rights movement is based upon universally agreed standards, it has been 'criticised as an attempt to the homogenization of different traditions according to Western values that are insensitive to the multiplicity of cultures'.<sup>160</sup> It is therefore through the domestication process that international and regional human rights instruments are sometimes diluted to accommodate the social and cultural beliefs and practices of those in power.

Despite the availability of many legal mechanisms to safeguard the right to education and the adoption of the international and/or regional treaties, not many states have integrated or domesticated the corresponding provisions into their domestic law. In the instance of domestication, few states have provided the legislative and administrative measures to ensure that these rights are realised in practice. This has been attributed to the poverty of the state. In other cases, the restrictions to exercise the right to education is applied to specific vulnerable groups such as national minorities, people with disability, and girls, among

---

<sup>158</sup> A Katiuzhinsky & D Okech 'Human rights, cultural practices, and state policies: Implications for global social work practice and policy' (2014) 23 *International Journal of Social Welfare* at 80.

<sup>159</sup> A Ayala & BM Meier 'A human rights approach to the health implications of food and nutrition insecurity' (2017) 38 *Public Health Review* at 2.

<sup>160</sup> FS Kroetz 'Between global consensus and local deviation: a critical approach on the universality of human rights, regional human rights systems and cultural diversity' (2016) 3 *Revista de Investigações Constitucionais* at 44.

others.<sup>161</sup> This is the case in Lesotho as pregnant and parenting adolescent girls are often denied this right due to the limited implementation of the state's commitments, and that is mainly the consequence of dominant cultural and religious influence over the legal instruments.

### **3.4. Conclusion**

The Universal Declaration of Human Rights (UDHR) is one of the most translated documents globally.<sup>162</sup> Through its promotion of freedom, justice, and peace, it provides a set of standards for UN member states. However, the implementation of this doctrine of international values is usually resisted by states and local leaders when it threatens to constrain traditional norms deeply embedded in their cultural identity.<sup>163</sup> Human rights are about power, which is distributed and maintained by cultural traditions within societies and communities. Those who are in positions of power or privilege usually resist the implementation of human rights treaties that benefit their sometimes alienated and marginalised citizens; often using the noble notions of cultural autonomy and national sovereignty as convenient tools of manipulation.<sup>164</sup> This is facilitated by these leaders approaching international relations from their own cultural perspectives, which are in this case heavily influenced by patriarchy and strong socio-cultural beliefs which are not always pro-rights.

These inconsistencies are evident in the manner that issues of school re-entry are handled by the government of Lesotho, the Ministry of Education and Training, and key stakeholders, especially the church and civil society organisations. The influence of culture and social norms on the implementation of these commitments is important, hence the need to recognise the critical role played by communities and community leaders in ensuring that the socio-cultural norms and practices do not hinder or undermine the implementation of these commitments. This should be integrated into the domestication and implementation of the commitments made by the country, either at the international, regional, national, or local level.

Finally, the relationship between education, culture, and socio-legal studies allows us to critically explore, in an interdisciplinary manner, the local, national, regional and global

---

<sup>161</sup> B Pranevičienė & A Pūraitė 'Right to education in international legal documents' (2010) 3 *Jurisprudencija/Jurisprudence* at 134.

<sup>162</sup> G Brown (ed) *The universal declaration of human rights in the 21st Century: A living document in a changing world - A report by the Global Citizenship Commission* (2016) 13.

<sup>163</sup> B Kühn 'Universal Human Rights vs. Traditional Rights' (2009) *Topical Review Digest: Human Rights in Sub-Saharan Africa* at 59.

<sup>164</sup> Arat (n 126) 437.



complexities of the multiple relations between interlegality, power, identity, meaning, consciousness, conformity and contestation in our everyday lives. It is therefore important to understand the legal phenomena or national laws, policies and guidance documents as cultural-political processes that are acknowledged and disseminated through culturally specific methodologies and avenues.<sup>165</sup> The explanation of education as a socially negotiated contract between society and the individual, influenced by various contextual factors, clarifies the conundrum between laws, policies, and culture in the lives of pregnant and parenting adolescent girls.<sup>166</sup>

The next chapter will discuss the effects of implementing school re-entry guidance on pregnant and parenting adolescents in Lesotho. It will further explore the role of social change and social justice in overcoming the bottlenecks and challenges to the implementation of international, regional, and national commitments and laws in their quest to protect the human rights of pregnant and parenting adolescents in Lesotho.

---

<sup>165</sup> P Branco & VN Izzo 'Intersections in Law, Culture and the Humanities' (2017) 112 *Revista Crítica de Ciências Sociais* at 54.

<sup>166</sup> A Morotti 'Integrating Culture into Education: Self-Concept Formation in Alaska Native Youth' (2006) 1 *Forum on Public Policy* at 4.

## CHAPTER 4: IMPLEMENTATION EFFECTS OF THE SCHOOL RE-ENTRY GUIDANCE IN LESOTHO

### 4.1. Introduction

Various issues and factors shape people's lives and a community's institutions, laws and policies, with the most critical being socio-cultural in nature. In most instances, especially in Africa, hegemonic masculinities perpetually express men's power and dominance over women; accordingly, women are raised to be obedient and submissive to men.<sup>167</sup> The family remains the most important primary institution of authority, guidance, and socialisation. As such, the knowledge, attitudes and practices within the family are critical to decisions concerning the education of both boys and girls. This is then transferred to community and institutional levels where decisions about educational opportunities between girls and boys are decided based on these cultural influences. Girls are usually discriminated against from the earliest stages of their childhood and into adulthood. This inferior treatment and their socialisation, heavily influenced by customary law and practices, greatly undermine their self-esteem.<sup>168</sup> The gender-discriminatory social norms facilitate control over and decision making about women and girls' bodies by others, from intimate partners to legislatures.<sup>169</sup>

The multiple and diverse links between culture, gender equality, and human rights continue to deny women and girls their right to education; highlighted by the fact that women constitute two thirds of the world's non-literate adults.<sup>170</sup> This points to gender discrimination. Education is an enabling and transformative right; it is classified as an economic right, a social right, and a cultural right by the Committee on Economic, Social and Cultural Rights (CESCR).<sup>171</sup> The right to education, therefore, epitomises the indivisibility and interdependence of all human rights.<sup>172</sup>

---

<sup>167</sup> Y Sikweyiya *et al.* 'Patriarchy and gender-inequitable attitudes as drivers of intimate partner violence against women in the central region of Ghana' (2020) 20 *BMC Public Health* at 3.

<sup>168</sup> A Mwansa *Re-entry to School after Giving Birth: An Evaluation of the Process used to Design and Implement Policy in Zambia* (2011) 6.

<sup>169</sup> E Setty 'A rights-based approach to youth sexting: challenging risk, shame, and the denial of rights to bodily and sexual expression within youth digital sexual culture' (2019) 1 *International Journal of Bullying Prevention* at 302.

<sup>170</sup> S Tawiah & F Ngmenkpiewo 'Adult Basic Education and Training in South Africa: The perspectives of rural women in Khotso' (2018) 9 *Mediterranean Journal of Social Sciences* at 57.

<sup>171</sup> C Chürr 'Realisation of a child's right to a basic education in the South African school system: Some lessons from Germany' (2015) 18 *Potchefstroom Electronic Law Journal* at 2414.

<sup>172</sup> Global Campaign for Education 'Gender discrimination in Education: The violation of rights of women and girls' (2012) 3.

Even though schools are expected to be places of safety where a welcoming and learning conducive environment is promoted, they may also become spaces of abuse, discrimination, and stigmatisation. This is affirmed by evidence noting the non-neutral nature of schools as they are 'value-laden replicas of community, church and family in terms of imbalanced power relations.'<sup>173</sup> This chapter will begin by describing the effects of the implementation of the available school re-entry guidance on pregnant and parenting adolescents in Lesotho. It will highlight the educational, economic, legal, psychological, and social effects on these adolescents. The role of social change and social justice in the promotion and protection of human rights will conclude the chapter.

#### **4.2. Effects of school re-entry guidance on pregnant and parenting adolescents in Lesotho**

HIV and early and unintended pregnancy (EUP) constitute the main global adolescent health challenges.<sup>174</sup> Lesotho is a patriarchal country, and the dual legal system sometimes results in customary law negatively affecting gender and social equality and the livelihoods and economic opportunities for women and girls. Lesotho is ranked 98th out of 156 countries in terms of economic participation and opportunity<sup>175</sup> and 57th out of 144 countries in terms of gender inequality. Christianity is the dominant religion. Lesotho has been defined as 'a country that operates under a patriarchal framework, characterised by beliefs in men's power, privileges and superiority. This subordinate and inferior status of women seems to be accepted and supported by their status as minors in traditional law'.<sup>176</sup> This leads to high levels of discrimination against women and girls despite Lesotho's ratification of CEDAW and other international and regional human rights instruments.

Notwithstanding the Convention on the Rights of the Child (CRC) calling upon states to 'take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse',<sup>177</sup> in reality, neither the providers of education and health services nor the systems in which they operate satisfy the needs and fulfil the rights of adolescents. The limited rights-based and lack of responsive and contextual legislative provisions negatively impacts adolescents' SRHR by way of policy gaps and

---

<sup>173</sup> KM Mohlakoana-Mokobocho 'Pregnant at the wrong time. Experiences of being a pregnant young woman while schooling - selected Lesotho cases' PhD dissertation, University of KwaZulu-Natal, 2005 at 49.

<sup>174</sup> L Widman *et al.* 'Technology-based interventions to reduce sexually transmitted infections and unintended pregnancy among youth' (2018) 62 *Journal of Adolescent Health* at 654.

<sup>175</sup> World Economic Forum 'Global gender gap report 2021: Insight report March 2021' (2021) 18.

<sup>176</sup> Mohlakoana-Mokobocho (n 171) 25.

<sup>177</sup> Convention on the Rights of the Child (UNCRC) UN Doc RES 44/25 (1990).

through shifting the responsibility of the protection of adolescents' SRHR to service providers' and teachers' discretion; individuals who are likely to impose their own socio-cultural beliefs on adolescents and young people.<sup>178</sup>

In the Eastern and Southern Africa (ESA) region, the age of first sexual experience is between 15 to 20 years. However, children are capable of exploring their sexuality in various ways from the age of 12. Current laws and policies place consent to sexual activity from 16 to 18 years and therefore criminalises sexual activity even when consensual.<sup>179</sup> This means that children that are younger than the age of consent will not have access to or information regarding SRHR. Transformative and realistic laws on the age of consent to SRHR services as well as the implementation of available laws, policies and guidance on school re-entry will greatly enhance access to sexual and reproductive health and rights for adolescents and young people in the region and in Lesotho.

Adolescent girls are responsible for 19.3% of pregnancies in Sub Saharan Africa. In Lesotho, about 19.1% of young women aged 15-19 have given birth or are pregnant with their first child, while unintended pregnancy among young women aged 15-19 years is estimated at 56%.<sup>180</sup> The main reasons for early and unintended pregnancies in Lesotho include lack of knowledge about pregnancy and contraceptives, control over women and girls by intimate partners who are in most instances much older than them, misinformation from friends, and spontaneous and unplanned sex.<sup>181</sup> Furthermore, moral and faith-related beliefs that discourage the use of contraceptives, failure to deal seriously with the consequences of sexual activity, failed contraceptives and the unpleasant side effects associated with contraceptives are additional reasons for unplanned pregnancy.<sup>182</sup> Most of these pregnancies negatively affect the lives of adolescents and their infants as adolescent mothers face serious challenges in their parenting roles.<sup>183</sup>

Even though HIV was declared a national disaster in Lesotho in 2003 by His Majesty King Letsie III and has long been the primary sexual and reproductive health issue on the national

---

<sup>178</sup> GD Kangaude & A Skelton '(De)Criminalizing Adolescent Sex: A rights-based assessment of age of consent laws in Eastern and Southern Africa' (2018) *Reproductive Health in Sub-Saharan Africa-Original Research* at 2.

<sup>179</sup> Tallarico (n 46) 99.

<sup>180</sup> Ministry of Health & ICF (n 17) 83.

<sup>181</sup> T Makatjane 'Pre-Marital Sex and Childbearing in Lesotho' (2002) 17 *African Population Studies* at 104.

<sup>182</sup> Francis (n 14) 57.

<sup>183</sup> Yako & Yako (n 28) 77.

agenda for Lesotho, new HIV infections are still high.<sup>184</sup> 12.19% of females aged 15–24 years are HIV infected, compared to 5.21% of males in the same age group.<sup>185</sup>

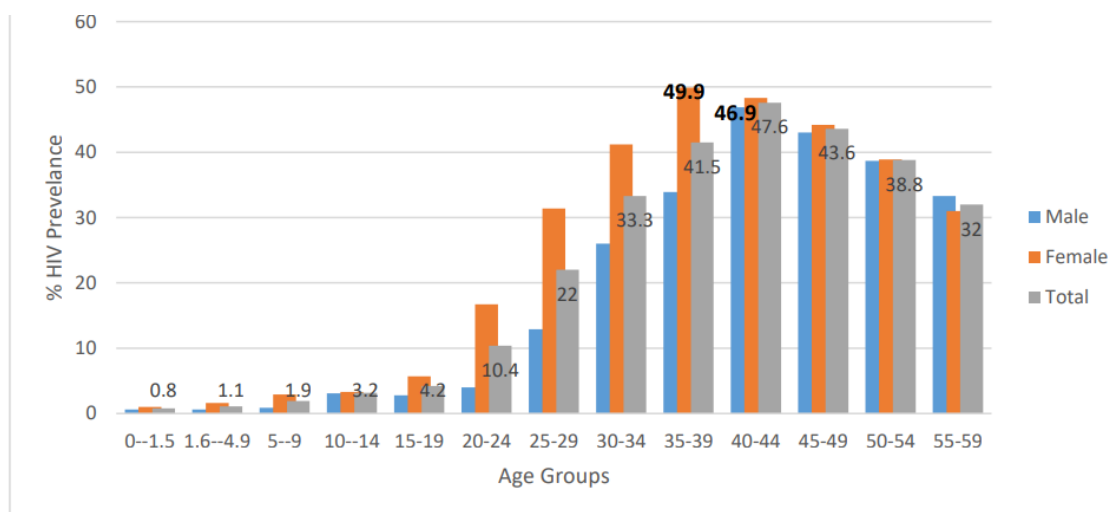


Figure 1: Lesotho HIV Prevalence by sex and age<sup>186</sup>

Lesotho has the second-highest HIV prevalence in the world. The image above demonstrates a high HIV incidence of 1.1 among the 15-59 years population groups, which is higher in females (1.2) compared to males (1.0). HIV incidence among adolescents and young people is at 0.8 and is highest among adolescent women and young girls at 1.5.<sup>187</sup> Adolescent pregnancy is a substantial contributor to gender inequality in education as it often leads to interruption or termination of girls’ schooling, which is a major impediment to the social and economic development of adolescent girls. 19% of women in Lesotho are pregnant by the time they are 19 years old. As abortion is restricted in Lesotho, unsafe terminations account for up to 50% of inpatient deaths among females aged 13 years and older in some Lesotho hospitals.<sup>188</sup>

These high pregnancy and HIV rates among African adolescents suggest deeply rooted cultural and socio-economic factors that foster high-risk sexual behaviours. This is evident

<sup>184</sup> JA Belle *et al.* ‘Attitude of Lesotho health care workers towards HIV/AIDS and impact of HIV/AIDS on the population structure’ (2013) 4 *African Health Sciences* at 1118.

<sup>185</sup> National AIDS Commission *Lesotho 2019 HIV and AIDS progress report submitted to Southern African Development Community secretariat of social and human development* (2020) 7.

<sup>186</sup> National AIDS Commission (n 183) 15.

<sup>187</sup> Government of Lesotho (n 100) 2.

<sup>188</sup> A Aventin *et al.* Adaptation of a gender-transformative sexual and reproductive health intervention for adolescent boys in South Africa and Lesotho using intervention mapping (2021) 14 *Global Health Action* at 1.

given the fact that after 30 years of focused legal, faith and social attention, transmission rates remain extremely high. Gender inequality, restrictive masculinities, and other practices that predispose adolescents to the risk of HIV infection and unintended pregnancy are the key determinants in these global health challenges.<sup>189</sup> With no specific re-entry policy, Lesotho uses the Constitution and other laws and policies such as the Lesotho Education Act (2010), Children's Protection and Welfare Act (2011) and the Lesotho School Health and Nutrition policy to guide school continuation and re-entry following pregnancy.

Despite these guidance documents that are entrusted to national institutions like the Ministry of Education and Training (MoET), civil society organisations, human rights defenders, and other continental and international bodies, they are not well implemented to ensure that pregnant and parenting adolescents' rights to education and health are promoted and protected. The limited implementation of the available laws and guidance leaves critical decisions about the future and well-being of adolescent girls at the discretion of teachers, principals, and, in some instances, school boards and churches. The church, specifically, is one of the major school proprietors in Lesotho, which promotes practices that result in drastic life-changing effects on adolescents.

#### **4.2.1. Cultural**

Human rights are also moral, legal, and political tools for protecting the dignity, well-being, and survival of human beings;<sup>190</sup> hence they are directed against oppressive powers aiming to undermine and attack these basic human values. Human rights should therefore be comprehended as urgent calls to action in the face of specific threats, and not mere principles.<sup>191</sup> In applying human rights, cultural issues arise and, as such, there is a need to acknowledge the linkages between human rights and culture.

In some countries like Lesotho, early pregnancy may represent a rational life choice for certain adolescent girls and young women. Consequently, most girls engage in pre-marital sexual activities to avoid being called 'mafetoa' (unmarried women). This is due to the social and cultural shaming in Sesotho culture, which labels girls who are not married by the age of 20

---

<sup>189</sup> As above. JK Levy *et al.* 'Characteristics of successful programmes targeting gender inequality and restrictive gender norms for the health and wellbeing of children, adolescents, and young adults: a systematic review' (2019) 8 *Lancet Global Health* at 226. E Ruane-McAteer *et al.* 'Gender transformative programming with men and boys to improve sexual and reproductive health and rights: a systematic review of intervention studies' (2020) 5 *BMJ Global Health* at 3. B Cislighi & H Shakya 'Social norms and adolescents sexual health: an introduction for practitioners working in low and mid-income African countries' (2018) 22 *African Journal of Reproductive Health* at 39.

<sup>190</sup> Katiuzhinsky & Okech (n 156) 82.

<sup>191</sup> LJ Kirmayer 'Culture and context in human rights' in M Dudley *et al.* (eds) *Mental Health and Human Rights: Vision, praxis and courage* (2012) at 96.

years 'mafetoa' - a derogatory and demeaning term.<sup>192</sup> While it is regarded as a disgrace for girls to fall pregnant or become mothers before marriage, child marriage as a norm in some cultures contributes to the increase of early pregnancy. For instance, some girls engage in early sex and fall pregnant in the hope that the fathers of their children will marry them thereby avoiding being ridiculed for not being married.<sup>193</sup> This then leads to adolescent pregnancy and early parenting, which in turn leads to dropping out of school.

There is a need for a paradigm shift and to hold states accountable for the commitments they have made regarding school continuation and re-entry. The Lesotho Education Act 10 of 1995 stated that pregnant girls should be temporarily expelled from school, the Lesotho Education Act 3 of 2000 states that no learner shall be suspended or expelled from school without the consent of the school board.<sup>194</sup> However, school-going pregnant and parenting adolescents continue to be suspended and expelled from school and face various challenges including being rejected by their teachers who believe that Basotho culture does not condone having children out of wedlock. This rejection by teachers in Lesotho is mainly on the basis that schools are not for 'mothers' and that insistence that they are not trained in maternal health.<sup>195</sup> This indicates the overpowering influence of culture on the rights of pregnant and parenting adolescents, which then undermines the legal and policy gains made to ensure that girls remain in school and complete their education.

#### **4.2.2. Educational**

Most girls' academic aspirations and schooling stop with their pregnancies.<sup>196</sup> Other pregnant and parenting adolescents who may be fortunate enough to continue with school are faced with a range of challenges that make the school environment unwelcoming and not conducive to learning. The double responsibility of being a mother and learner decreases adolescent's chances of educational success due to the increased responsibility.<sup>197</sup> Within the school setting, pregnant and parenting adolescents are sometimes humiliated by other learners and teachers; they do not receive any focused attention and face hostility, rejection, condemnation,

---

<sup>192</sup> MS Tshehla 'Wisdom amidst the monkey-talk? Discipline and gender in masculinist discourse' (2006) 12 *Journal of Constructive Theology* at 20.

<sup>193</sup> Molapo (n 21) 1270.

<sup>194</sup> Education Act 3 of 2010 sec 3(a).

<sup>195</sup> Molapo (n 21) 1270.

<sup>196</sup> S Kasen et al. 'Adolescent school experiences and dropout, adolescent pregnancy, and young adult deviant behavior' (1998) 13 *Journal of Adolescent Research* at 51.

<sup>197</sup> B Shirao et al. 'Implementation of Life Skills Education towards curbing teenage pregnancy in public secondary schools in Makadara Sub County, Nairobi, Kenya' (2020) 4 *Journal of Popular Education in Africa* at 96.

threats of suspension or expulsion, less encouragement, insensitivity and overall lack of support.<sup>198</sup>

In most Lesotho schools, early and unintended pregnancy often leads to suspension and/or expulsion from school. The shame and stigma that girls face if they return to school usually discourages them from continuing and completing school. Adolescent mothers are often considered and labelled a bad influence on their peers, and teachers are often not skilled or willing to respond to the needs of an adolescent mother who may require extra educational support due to the added pressure of either pregnancy or parenting.<sup>199</sup> Irregular school attendance and poor school performance during and after pregnancy often lead to the girls dropping out of school, which inevitably lowers their chances for future work opportunities and careers, thereby massively contributing to youth unemployment.<sup>200</sup> Upon suspension and expulsion, these adolescents miss out on critical school milestones and there are no remedial measures in place to ensure that they are not left behind academically.

#### **4.2.3. Economic**

Adolescents who bear children before the age of 20 are likely to obtain less education, have fewer job possibilities and lower income, are more prone to divorce or separation, and are likely to live in poverty.<sup>201</sup> Adolescent pregnancy and parenting reduce adolescents' potential to earn a living and feed into a cycle of poverty, suggesting that their children are also less likely to attend school and achieve financial stability in subsequent years.<sup>202</sup> There is a high correlation between adolescent pregnancy and parenting and poverty as adolescents living in poverty are more likely to get pregnant than those who do not. These adolescents' parents often fall within the lower wealth quintiles, which is associated with a range of social problems and societal marginalisation. The evidence also suggests that the poverty rates are highest among adolescents with single-parent families, with lower levels of education, and those with fewer opportunities in the workplace.<sup>203</sup> This creates a never-ending cycle of poverty.

---

<sup>198</sup> Molapo (n 21) at 1269.

<sup>199</sup> UNESCO 'Situational analysis on early and unintended pregnancy in Eastern and Southern Africa' (2018) 6.

<sup>200</sup> Nkosi & Pretorius (n 18) 116.

<sup>201</sup> Mturi & Moerane (n 44) 260.

<sup>202</sup> Inter Press Service News Agency 'To Prevent Teenage Pregnancies in Sub Saharan Africa, It Takes a Whole Village to Raise a Child' [http://www.ipsnews.net/2021/07/prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child&mc\\_cid=a299a30263&mc\\_eid=1620fbbda](http://www.ipsnews.net/2021/07/prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child/?utm_source=rss&utm_medium=rss&utm_campaign=prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child&mc_cid=a299a30263&mc_eid=1620fbbda) (accessed 4 August 2021).

<sup>203</sup> L Gselamu *et al.* 'Psychosocial effects of teenage pregnancy: Systematic analysis' (2019) 8 *Psychology and Behavioral Sciences* at 116.



Adolescent girls, therefore, need to be protected and their rights promoted to enhance their economic status and those of their children and families.

#### **4.2.4. Psychological**

The notion of labelling children born to unmarried women in Lesotho as illegitimate means children are given names to demonstrate disapproval of their mothers' behaviour of having children born out-of-wedlock. For instance, the son of an unmarried mother may be called *Moramang*, implying that the father is not known. Similar names are given to girls, such as *lithonako* or *matlakala* (meaning 'somebody taken from unknown place') or *makhokolotso* (meaning 'refuse'). Culturally, children born to unmarried adolescents and women are deemed to belong to the adolescent's or women's father. This puts additional strain on both the parenting adolescent and the child where the natural father may later decide to either marry the mother or to claim the child by entering into a special agreement acknowledging the 'legitimacy' of the child.<sup>204</sup> The derogatory names given to children born out of wedlock are meant to punish parenting adolescent girls and stigmatise the children. This can lead to psychological strain which sometimes results in either the adolescent mother or their offspring or both abusing illegal substances and narcotics.

Early and unintended pregnancy and parenting have a significant emotional impact on adolescents, especially when the girl has been rejected by her partner, family, school, and community. These adolescents are at greater risk for depression and substance abuse and for not completing school or poor academic performance; and with the trauma of poverty, they are plunged further into the intergenerational poverty cycle and mental health issues later in life.<sup>205</sup> Customary law is seen to condone some of these punishments as they are justified as deterrents to adolescents. These practices do not acknowledge the psychological impact and harm that such issues create, while they also violate the legal and human rights commitments made by the country to treat everyone equally.

#### **4.2.5. Sociocultural**

Adolescent pregnancy and parenting are a social virus at the level of basic education. Pregnancy and parenting are usually attributed to adolescent's risky behaviours to prematurely engage in sexual activities.<sup>206</sup> Some of the predisposing factors include the discomfort by most parents in Lesotho to discuss issues of sex and sexuality with their

---

<sup>204</sup> Mturi & Moerane (n 44) 267.

<sup>205</sup> UNESCO (n 197) xiii.

<sup>206</sup> Molapo (n 21) 1269.

children, which discomfort is mainly due to their own sociocultural upbringing and religion. Culturally, anything that deals with sex is taboo and is never discussed with children. Thus, there is limited credible information shared by parents or other household members. Culture also places the female in a lower status than a male and even though adolescent girls may understand the dangers of unprotected sex, they may engage in unprotected sex because of their partner's refusal to use protection. Religion also emphasises morality and condemnation when it comes to pre-marital sex and consequently, most Basotho parents perceive discussions about sex and sexuality as encouraging adolescents to prematurely engage in sex.<sup>207</sup> This then leads to misinformation from peers, the media, and their older sexual partners, who may also be misinformed.

#### **4.3. The role of social change and social justice in the promotion and protection of human rights.**

Socio-legal studies examine the nature of law as ideas while simultaneously focusing on human behaviour in legal settings and contexts. The sociological interpretation of the law and legal ideas is very important. The socio-legal approach utilised in this study has emphasised the importance and need of social theory in informing legal inquiries as well as acknowledging the social theories of law.<sup>208</sup> As outlined in Chapter 1, the socio-legal approach has enabled this study to understand and unpack the law as an instrument of social control, which stems from, and functions within a society and for society. The approach highlights not just the need for new laws but most importantly the need to review existing laws and strategies to protect and promote the rights of pregnant and parenting adolescents in Lesotho. It further led to the identification of key challenges in implementing existing laws, policies and guidelines which continue to undermine and violate the rights of adolescent girls in Lesotho and other countries.

As 'an underlying principle for peaceful and prosperous coexistence within and among nations', social justice principles are upheld when gender equality or the rights of all people regardless of social status are promoted. Social justice is only attained when the barriers that people face because of gender, age, race, ethnicity, religion, culture, or disability are removed.<sup>209</sup> Beyond being a legal issue, human rights are a social construct and one of the key challenges of our time is making these rights a reality for everyone. In many contexts, the universality, indivisibility, interdependence, and interrelatedness of rights are challenged. The

---

<sup>207</sup> Yako & Yako (n 28) 80.

<sup>208</sup> R Cotterrell 'Socio-legal studies, Law schools, and legal and social theory' (2018) 2 *Journal of the Oxford Centre for Socio-Legal Studies* at 19.

<sup>209</sup> United Nations Department of Economic and Social Affairs 'Social Inclusion: World Day of Social Justice 2017' <https://www.un.org/development/desa/dspd/international-days/world-day-of-social-justice/world-day-of-social-justice-2017.html> (accessed 6 August 2021).

understanding that the violation of any one right impacts the others should be a constant reminder to all people, states, institutions, schools, and communities<sup>210</sup> when attempting to promote and protect the rights of pregnant and parenting adolescents. This is because these violations negatively impact pregnant and parenting adolescents' lives and their quality of life.

Despite these complex dynamics, the value of social justice becomes apparent when different social actors acknowledge and realise human rights as a tool for social, political, and cultural change – a change that can and should be realised for pregnant and parenting adolescents. Lessons and advances made by various social movements such as the women's movement, the indigenous peoples' movement, the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) movement, and the children's rights movement have led to some progress in the design and implementation of public policies that emphasise human rights.<sup>211</sup> These should be used to encourage human rights defenders and like-minded institutions to form movements for the protection and promotion of the rights of pregnant and parenting adolescents.

On the other hand, social change means any change in the nature, the social institutions, social behaviour or the social relations of a society or community of people.<sup>212</sup> Education, human rights and social change are equally important for the growth and development of a society. Denying children and adolescents their right to education hinders their participation to constructively contribute to social change and transformation. Legislation is one of the stimulating forces responsible for bringing about changes in society as the law is dynamic and influences behaviour, beliefs, and values.<sup>213</sup> The inability to use the existing commitments, laws, policies and guidelines to ensure that pregnant and parenting adolescents remain in, and complete school, is a critical hindrance to social change; they are denied the opportunity and ability to effectively participate in the activities of society, the school, community and country to make positive developmental contributions.

It is therefore critical to continuously reflect on how the goals of social justice in the form of more empathy, more justice, and more equality are being used or can be more effectively

---

<sup>210</sup> EA Icaza 'Human rights as an effective way to produce social change' (2014) 11 *International Journal on Human Rights* at 77.

<sup>211</sup> Icaza (n 208) 79.

<sup>212</sup> GH Elder 'The life course paradigm: Social change and individual development' in P Moen, GH Elder & K Lüscher (eds) *Examining lives in context: Perspectives on the ecology of human development* (1995) at 102.

<sup>213</sup> S Chakraborty *et al.* 'Education as an instrument of social change and enhancing teaching-learning process with the help of technological development' [https://www.researchgate.net/publication/325143953\\_Education\\_as\\_an\\_instrument\\_of\\_social\\_change\\_and\\_enhancing\\_teachinglearning\\_process\\_with\\_the\\_help\\_of\\_technologica\\_l\\_development](https://www.researchgate.net/publication/325143953_Education_as_an_instrument_of_social_change_and_enhancing_teachinglearning_process_with_the_help_of_technologica_l_development) (accessed 6 August 2021).

utilised to ensure that pregnant and parenting adolescents' rights are promoted and protected through the existing social change pillars, especially existing legislation, policies and guidelines. Finally, to end the cycle of poverty, inequality, hunger and other social ills as envisioned in the sustainable development goals, requires quality education. It is crucial and provides the opportunity for people to fulfil their dreams and succeed.

#### **4.4. Conclusion**

As indicated above, Lesotho does not have a formal school re-entry or school continuity policy in cases of adolescent pregnancy. The country's constitution is complemented by some laws and policies that have a bearing on keeping learners in school and improving their health. However, these policies mainly lack legislative reinforcement. Expelling pregnant and parenting adolescents from school is a waste of human and financial resources, impeding the country's socio-economic and political development. This calls for an urgent need to develop and implement a clear school re-entry policy with elaborate guidelines to minimise the number and levels of learners who drop out of school at different levels of basic education.<sup>214</sup> The government of Lesotho acknowledges the urgent need to protect vulnerable learners, especially adolescent girls from sexual and gender-based violence, sexual abuse and exploitation. The absence of a clear re-entry policy for female learners has been formally discussed several times<sup>215</sup> but lack of guidance and policy continues to undermine the protection of adolescent girls.

Given the limited implementation of the available laws, policies and guidelines in Lesotho, its impact, and the non-adherence to the various human rights commitments, Lesotho should consider several other programmes such as parenting programmes for both adults and parenting adolescents, the reintegration and strengthening of adolescents and youth corners in health services, peer education programmes, integrated school health programmes, nationwide rollout of comprehensive sexuality education as well as the development of a practical school re-entry and continuation policy for pregnant or parenting learners. These initiatives can contribute to the promotion of a safe environment in which progressive social and cultural inputs can lead to the protection and promotion of all, especially pregnant and parenting adolescents.

Measures to ensure that girls and boys are admitted and retained in the education system in line with national, regional, and international goals under various frameworks should be

---

<sup>214</sup> Ministry of Education, Republic of Kenya *National guidelines for school re-entry in early learning and basic education* (2020) 10.

<sup>215</sup> Kingdom of Lesotho (n 110) 91.

strengthened.<sup>216</sup> The critical questions about how the education sector addresses and responds to the protection and promotion of the rights of pregnant and parenting adolescents in Lesotho and elsewhere should be continuously asked and discussed. The right to education is not lessened or erased by a learner's pregnancy or motherhood status. As such, governments, communities, schools and families should ensure that the school environment meets the needs of pregnant and parenting adolescents. Other non-state actors also have the duty to monitor the implementation of the commitments made by the country as well as these commitments' domestication and implementation, to ensure that the principles of social change and social justice are adhered to. These processes should be implemented in collaboration with and through the community and faith leaders. The next chapter will focus on the conclusions and recommendations that address the research question.

---

<sup>216</sup> QGSN Simelane *et al.* 'An assessment of the implementation of the re-entry policy for girls in Swaziland: School practices and implications for policy development' (2013) 56 *Problems of Education in the 21<sup>st</sup> Century* at 124.

## CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

### 5.1. Introduction

The provision of quality education to every citizen in any nation creates a strong foundation for socioeconomic and political development in any country. This is because education provides avenues and opportunities for communities, countries, and regions to enhance the success and national dignity towards economic growth and the attainment of the sustainable development goals and other national milestones. This highlights the negative correlation between women and girls' marginalisation and educational development.<sup>217</sup>

This study aimed to explore the challenges in the implementation of school re-entry policies and guidelines, with a specific focus on Lesotho. It specifically intended to highlight the implementation challenges of school re-entry guidance and related policies in Lesotho; to highlight the human rights violations experienced by pregnant and parenting adolescent girls within the school setting; to critically analyse the influence of culture and social practices on the implementation of the school re-entry guidance and policy; to discuss the linkages between human rights, policy and culture in relation to the education sector's legislative and policy oversight role; and to highlight how early and unintended pregnancy (EUP) and the limited implementation of guidance and policy documents affect the educational access, participation, and outcomes of pregnant and parenting girls of school-going age.

The study emphasised the linkages and relationship between policy, its implementation, the country's human rights commitments as well as the implications of the limited implementation of the school re-entry guidance and related policy documents for adolescent girls in Lesotho. It attempted to contribute to new and innovative ways to harmonise human rights commitments, national legislation, sociocultural dynamics and the health and economic outcomes for pregnant and parenting adolescents. The second chapter highlighted the human rights obligations made by the Kingdom of Lesotho, and the relevant laws, policies, and guidance on school re-entry in the country. The study went on to iterate the linkages between human rights, national policy, and culture and concluded with the implementation effects of the school re-entry guidance in Lesotho. This chapter will therefore conclude and make some recommendations that address the main research question. The relevance of national, regional, and global commitments will be summarised, and specific recommendations made to non-state actors as well as to the government of Lesotho. All these recommendations are

---

<sup>217</sup> R Uchem 'Subordination of women in 21st century Africa: Cultural sustainability or a new slavery? Implications for educational development (2014) 4 *Developing Country Studies* at 147.

anchored in the socio-legal approach. The study provided an interdisciplinary approach to analyse the law, legal phenomenon, and relationships between these and wider society. Specifically, the role of culture in the implementation or non-implementation of human rights commitments, laws and policies has been highlighted, and this emphasises the strong linkages and relationships between the social and legal spheres and the need to integrate social aspects in legal and other human rights interventions.

## **5.2. Relevance of National, Regional and Global commitments**

Improving adolescents' SRHR is fundamental to the advancement and guarantee of a healthy, prosperous, economically strong, and productive adolescence and adulthood. Situations and instances which lead to the denial or compromising of such rights to any sub-group of adolescents due to the absence of laws, policies and relevant guidance or inconsistencies in their implementation become a serious legal, social and public health concern that should be urgently addressed.<sup>218</sup> It is, therefore, critical to align national laws, policies and guidance with regional and global commitments as they provide the blueprint for most issues and present them for adaptation and domestication if they are to make a difference in the lives of pregnant and parenting adolescents. The importance to fully realise the right to education goes beyond just access but notes the need for a rights-based approach to education for all, regardless of sexuality or any other physical or social status. Like all human rights, the right to education is universal and inalienable, encapsulated in several conventions that have been enshrined in international law, thereby placing binding commitments to states such as Lesotho.

Through ratifying international human rights instruments, states commit themselves, through the government, to comply and adhere to the rights enshrined in those instruments. The three levels of obligations that states have in ensuring the right to education for all children are to realise the right to education, to respect the right to education, and to protect the right to education. Thus, the state should take all the necessary measures to remove the barriers to education, from those posed by individuals to those posed by communities and institutions, including sociocultural barriers that hinder access to quality education.<sup>219</sup>

---

<sup>218</sup> BO Ahinkorah *et al.* 'The missing link between legal age of sexual consent and age of marriage in sub-Saharan Africa: implications for sexual and reproductive health and rights' (2021) 18 *Reproductive Health* at 1.

<sup>219</sup> UNESCO (n 197) 39.

### **5.3 Recommendations**

Following the 2013 ESA Commitment in which states affirmed their commitment to address early and unintended pregnancy in schools, the limited exposure to comprehensive sexuality education, issues of child marriage, gender inequalities and other cultural norms that expose girls to risky behaviours, practices and vulnerabilities, the ESA region is reviewing the Commitment - this is an opportune time for Lesotho to review its implementation and strengthen the implementation modalities of the Commitment.

Despite national laws, policies, and guidelines to promote multisectoral responses to early and unintended pregnancy demonstrating the countries' commitment to respond to this challenge, the glaring gaps and inconsistencies in their implementation certainly constitute a violation of pregnant and parenting adolescents' rights to education. States, therefore, need to integrate accountability mechanisms in their national development plans and processes to uphold the human rights of their citizens.

#### **5.3.1. Recommendations to non-state actors**

Given the strong and varied influences that familial, societal, cultural, and religious beliefs and practices have on laws, policies and strategies when it comes to education and sexual and reproductive health rights, it is important to explore and implement some specific and targeted interventions that will focus on continuous awareness creation, transformative gender responses, social and attitudinal change as well as imparting life skills to help address the specific needs of adolescents in Lesotho. These initiatives will also empower communities, other institutions, and civil society organisations to hold the government accountable for its commitments, at all levels. These initiatives can even be decentralised to the local authorities as part of their mandate to implement and monitor national development plans, thereby contributing to the sustainable development goals. The provision of adolescent-friendly education, health, and other services devoid of pre-judgmental and stereotypical practices and behaviours against adolescents is an essential and non-negotiable practice that is anchored in various human rights instruments.

Non-state actors can, therefore:

- Strengthen accountability mechanisms and strategies to ensure that the government does not violate the rights of pregnant and parenting adolescents.
- Institutionalise the provision of accurate, timely, contextual, gender transformative and non-judgmental SRHR information and comprehensive sexuality education to all adolescents irrespective of religious, social, or cultural beliefs and practices of the providers – within the health, education, or other social sectors.
- Empower and support youth-led initiatives and organisations to empower adolescents and young people to claim their human rights.



### 5.3.2. Recommendations to the government of Lesotho

There is an evident and urgent need to prioritise inclusive, comprehensive, and quality education for all young people in Lesotho through the implementation of all international, regional, and national commitments made by the country.

Specifically, the government should explore the following:

- a) Strengthen and specify key recommendations and implementation modalities on school continuation and re-entry for pregnant and parenting adolescents in the review of the Lesotho Education Act 3 of 2010 to ensure commitments of ensuring Education for All; those made through the Convention on the Rights of a Child, the sustainable development goals, and the Constitutional commitment to provide free and compulsory education for all.
- b) The upcoming review of the National Vision 2020 is another opportunity to re-commit to the global and regional commitments to protect and promote the rights of all.
- c) The Child Protection and Welfare Act of 2011 is about to be reviewed, and the opportunity to develop implementation guidelines on school continuation and re-entry should be exploited. This should include relevant legislation clauses and policy decisions for adolescents to consent to access to contraception.
- d) The National Strategic Development Plan (NSDP) 2018/19 - 2022/23 aims to positively impact the lives of adolescents and their families in Lesotho as one of its priorities. This is the blueprint that should guide the work of development partners and civil society organisations supporting the education sector. The implementation of the NSDP should have clear indicators and milestones for the protection of the rights of adolescents.
- e) There is a need for a specific law or clause in existing and soon to be reviewed laws to make specific provisions for the continuation of education and re-entry into the school systems for pregnant and parenting adolescents, with clear guidelines.
- f) Develop a clear roadmap for the ESA Commitment with key guidance for implementing comprehensive sexuality education using *the Gender and Culture Transformative Implementation (GCTI) Framework* for sexuality education to position sexuality education and school health and HIV programmes within the sociocultural sphere and environment.<sup>220</sup>

---

<sup>220</sup> PR Letsie 'Sociodemographic factors and their influence on school health and HIV programmes: The case of Lesotho' PhD thesis, University of the Free State, 2020 at 155.

- g) Strengthen multisectoral cooperation with all stakeholders including communities, community leaders and faith leaders to eradicate toxic and harmful socio-cultural beliefs and practices that hinder the implementation of laws, policies, and guidelines.

#### **5.4. Conclusion**

As a member state of the United Nations, the African Union, the Southern African Development Community and other international and regional bodies, the Kingdom of Lesotho has ratified many United Nations (UN) Human Rights Conventions and has thus made binding international commitments to adhere to the standards laid down in these universal human rights documents. The ratification and acceptance of the optional Protocols for UN Human Rights Conventions by the country grant Basotho (people of Lesotho) and their representatives the right to claim and exercise their human rights through the various bodies. However, several social, cultural, and religious beliefs and socialisation hinder access to these opportunities. There is a need to intensify transformative mechanisms to ensure that laws, policies, and other national guidance documents are implemented as planned, to uphold the rights of adolescents.

Lesotho needs to make concrete decisions regarding pregnant and parenting adolescents in line with its commitments. The current practice of undocumented expulsion and suspension policies implemented by schools need to be discontinued and schools should be held accountable by the Ministry of Education and Training and stakeholders. A clear policy on school re-entry and continuation needs to be developed and implemented. To realise the state's legal duties to respect, protect and fulfil the citizen's rights, the added responsibility of the state to establish mechanisms and processes to demonstrate and justify how it has satisfied its obligations regarding citizens' rights, is of critical importance.

Finally, it is apparent from this study that the legislative provisions that allow pregnant and parenting adolescents in Lesotho to continue and return to school have not been accompanied by policies and supportive instruments that enable schools and teachers to support school-going pregnant and parenting adolescents. There is, therefore, a need for more research to fully understand community perspectives to overcome the challenges in policy implementation in the current socio-cultural context of Lesotho, especially given the limited and dwindling economic resources, diverse viewpoints and expectations as well as politically motivated national commitments and policies, which are mainly motivated by sociocultural and populist agendas.

## Bibliography

Ahinkorah, BO; Okyere, J; Hagan, JE; Seidu, A; Aboagye, RG; Yaya, S 'The missing link between legal age of sexual consent and age of marriage in sub-Saharan Africa: Implications for sexual and reproductive health and rights' (2021) 18 *Reproductive Health* 1 – 7.

African Union Commission 'Maputo Protocol on Women's Rights: A Living Document for Women's Human Rights in Africa submitted by the Women, Gender and Development Directorate (WGDD) of the African Union Commission' (2016).

AIDS and Rights Alliance for Southern Africa (ARASA) 'Sexual and Reproductive Health, HIV, TB and Human Rights in Southern and East Africa 2018/19' (2020).

Akella, D & Jordan, M 'Impact of social and cultural factors on teenage pregnancy' (2014) 8 *Journal of Health Disparities Research and Practice* 41 – 61.

Arat, Z 'Forging a Global Culture of Human Rights: Origins and Prospects of the International Bill of Rights' (2006) 28 *Human Rights Quarterly* 416 – 437.

Ashford, C 'Socio-Legal Perspectives on Gender, Sexuality and Law: Editorial' (2010) 31 *Liverpool Law Review* 1- 12.

Asomah, J 'Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society' (2015) 15 *African Human Rights Law Journal* 129 – 149.

Aventin, A; Rabie, S; Skeen, S; Tomlinson, M; Makhetha, M; Siqabatiso, Z; Lohan, M; Clarke, M; Lohfeld, L; Thurston, A & Stewart, J 'Adaptation of a gender-transformative sexual and reproductive health intervention for adolescent boys in South Africa and Lesotho using intervention mapping' (2021) 14 *Global Health Action* 1 – 18.

Ayala, A & Meier, BM 'A human rights approach to the health implications of food and nutrition insecurity' (2017) 38 *Public Health Review* 1 – 22.

Barberton, C; Carter, J & Abdoll, C 'Costing the Children's Protection and Welfare Act, 2011 of Lesotho' (2014) Report for the Ministry of Justice and Correctional Service, Maseru, Lesotho.

Belle, JA; Ferriera, SB & Jordaan, A 'Attitude of Lesotho health care workers towards HIV/AIDS and impact of HIV/AIDS on the population structure' (2013) 4 *African Health Sciences* 1117 – 1125.

Berman, PS (2009) *The enduring connections between law and culture: Reviewing Lawrence Rosen, Law as Culture, and Oscar Chase, Law, Culture, and Ritual* George Washington University Law School.

Birchall, J 'Early marriage, pregnancy and girl child school dropout' (K4D Helpdesk Report: Brighton 2018).

Birungi, H; Undie, C; MacKenzie, I; Katahoire, A; Obare, F & Machawira, P (2015) 'Education Sector Response to Early and Unintended Pregnancy: A Review of Country Experiences in Sub-Saharan Africa' Nairobi: Population Council.

Branco, P & Izzo, VN 'Intersections in Law, Culture and the Humanities' (2017) 112 *Revista Crítica de Ciências Sociais* 45 – 72.

Brown, G (ed) (2016) *The universal declaration of human rights in the 21st Century: A living document in a changing world - A report by the Global Citizenship Commission* Cambridge: Open Book Publishers.

*Center for Health, Human Rights and Development (CEHURD) & Others v Attorney General* 2020 Constitutional Petition 2011/16 Constitutional Court of Uganda.

Chakraborty, S; Chakraborty, B; Dahiya, VS & Timajo, L 'Education as an instrument of social change and enhancing teaching-learning process with the help of technological development' (2018) [https://www.researchgate.net/publication/325143953\\_Education\\_as\\_an\\_instrument\\_of\\_social\\_change\\_and\\_enhancing\\_teaching-learning\\_process\\_with\\_the\\_help\\_of\\_technological\\_development](https://www.researchgate.net/publication/325143953_Education_as_an_instrument_of_social_change_and_enhancing_teaching-learning_process_with_the_help_of_technological_development) (accessed 6 August 2021).

Children's Protection and Welfare Act 7 of 2011.

Chürr, C 'Realisation of a child's right to a basic education in the South African school system: Some lessons from Germany' (2015) 18 *Potchefstroom Electronic Law Journal* 2405 – 2453.

Cislaghi, B & Shakya, H 'Social norms and adolescents sexual health: an introduction for practitioners working in low and mid-income African countries' (2018) 22 *African Journal of Reproductive Health* 38 – 46.

Cohen, D 'Culture, social organization, and patterns of violence' (1998) 75 *Journal of Personality and Social Psychology* 408 – 419.

Cook, RJ 'Developments in Judicial Approaches to Sexual and Reproductive Health' (2002) 21 *Medicine and Law* 155 – 164.

Constitution of Lesotho 2001.

Convention on the Elimination of All Forms of Discrimination against Women (1979).

Convention on the Rights of Persons with Disabilities (2006).

Convention on the Rights of the Child (1990)

Convention on the Rights of the Child (2016) Committee on the Rights of the Child General comment No. 20) on the implementation of the rights of the child during adolescence (2016).

Cotterrell, R 'Socio-legal studies, Law schools, and legal and social theory' (2018) 2 *Journal of the Oxford Centre for Socio-Legal Studies* 19 – 30.

Csikszentmihalyi, M 'Adolescence' (2021) *Encyclopedia Britannica*.

Elder, GH 'The life course paradigm: Social change and individual development' in Moen, P; Elder, GH & Lüscher, K (eds) (2005) *Examining lives in context: Perspectives on the ecology of human development* Washington: American Psychological Association.

Eriamiatoe, P 'Realising inclusive education for children with disabilities in Lesotho' (2013) <https://africlaw.com/2013/07/15/realising-inclusive-education-for-children-with-disabilities-in-lesotho/#more-548> (accessed 24 June 2021).

Fagan, A 'Cultural harm and engaging the limits of a right to cultural identity' (2017) 39 *Human Rights Quarterly* 319 – 340.

Federal Department of Foreign Affairs 'International Covenant on Economic, Social and Cultural Rights' <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/un-human-rights-treaties/international-covenant-economic-social-cultural-rights.html> (accessed 22 July 2021).

Francis, IG 'The effect of household characteristics on adolescent childbearing in Lesotho' (2008) *Master's Theses and Doctoral Dissertations*.

Garwood, SK; Gerassi, L; Jonson-Reid, M; Plax, K & Drake, B 'More than poverty: The effect of child abuse and neglect on teen pregnancy risk' (2015) 57 *Journal of Adolescent Health* 165 – 168.

Gashaw, T 'The interplay between gender and culture: How the African human rights system sought to accommodate universality and cultural relativity of women's rights' <https://blogs.lse.ac.uk/gender/2020/08/31/the-interplay-between-gender-and-culture-how-the-african-human-rights-system-sought-to-accommodate-universality-and-cultural-relativity-of-womens-rights/> (accessed 15 August 2021).

Gawanas, B 'The African Union: Concepts and implementation mechanisms relating to human rights' (2009).

Global Campaign for Education 'Gender discrimination in Education: The violation of rights of women and girls' (2012).

Government of the Kingdom of Lesotho 'Lesotho National Youth Policy 2017-2030' (2017).

Government of Lesotho 'National Adolescent Health Policy' (2006).

Government of Lesotho 'Gender and Development Policy 2018 – 2030' (2018).

Government of Lesotho 'National Strategic Development Plan 2018/19-2022/23' (2018).

Grant, M & Hallman, K 'Pregnancy-Related School Dropout and Prior School Performance in KwaZulu-Natal, South Africa' (2008) 39 *Studies in Family Planning* 369 – 382.

Gselamu, L; Dagne, Y; Gebreyohannes, M & Kelebe, A 'Psychosocial effects of teenage pregnancy: Systematic analysis' (2019) 8 *Psychology and Behavioral Sciences* 115 – 118.

Human Rights Watch 'Leave No Girl Behind in Africa – Discrimination in Education against Pregnant Girls and Adolescent Mothers' (2018) <https://www.polity.org.za/print-version/leave-no-girl-behind-in-africa-discrimination-in-education-against-pregnant-girls-and-adolescent-mothers-2018-06-14> (accessed 30 May 2021)

Icaza, EA 'Human rights as an effective way to produce social change' (2014) 11 *International Journal on Human Rights* 77 – 79.

International Bank for Reconstruction and Development / The World Bank 'Women, business and the law 2019' (2019).

International Covenant on Economic, Social and Cultural Rights (1976).

Inter Press Service News Agency 'To prevent teenage pregnancies in Sub Saharan Africa, It takes a whole village to raise a child' [http://www.ipsnews.net/2021/07/prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child/?utm\\_source=rss&utm](http://www.ipsnews.net/2021/07/prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child/?utm_source=rss&utm)

medium=rss&utm\_campaign=prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child&mc\_cid=a299a30263&mc\_eid=1620fbbdda (accessed 4 August 2021).

Juma, L 'From "Repugnancy" to "Bill of Rights": African customary law and human rights in Lesotho and South Africa' (2007) 1 *Speculum Juris* 88 – 112.

Juma, L 'The Laws of Lerotoli: role and status of codified rules of custom in the Kingdom of Lesotho' (2011) 23 *Pace International Law Review* 1- 54.

Kalantry, S; Getgen, JE & Koh, SA 'Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR' (2010) 32 *Human Rights Quarterly* 253 – 310.

Kali, M 'Women Empowerment in Lesotho: Reality And/or Myth?' (2018) 6 *International Journal of Scientific Research and Management* 52 – 59.

Kangaude, GD & Skelton, A '(De)Criminalizing Adolescent Sex: A rights-based assessment of age of consent laws in Eastern and Southern Africa' (2018) *Reproductive Health in Sub-Saharan Africa-Original Research* 1 – 12.

Kantorová, V; Wheldon, MC; Dasgupta, ANZ; Ueffing, P & Castanheira, HC 'Contraceptive use and needs among adolescent women aged 15–19: Regional and global estimates and projections from 1990 to 2030 from a Bayesian hierarchical modelling study' (2021) 16 *PLoS One* 1 – 28.

Kapur, R (2018) *Impact of Culture on Education*: University of Delhi.

Kasen, S; Cohen, P & Brook, JS 'Adolescent school experiences and dropout, adolescent pregnancy, and young adult deviant behavior' (1998) 13 *Journal of Adolescent Research* 49 – 72.

Kassa, GM; Arowojolu, AO; Odukogbe, AA & Yalew, AW. 'Prevalence and determinants of adolescent pregnancy in Africa: A systematic review and Meta-analysis' (2018) 15 *Reproductive Health* 1 – 17.

Katiuzhinsky, A & Okech, D 'Human rights, cultural practices, and state policies: Implications for global social work practice and policy' (2014) 23 *International Journal of Social Welfare* 80 – 88.

Kingdom of Lesotho 'Education Sector Plan 2016 – 2026' (2016).

Kirmayer, LJ 'Culture and context in human rights' in Dudley, M; Silove, D & Gale, F (eds) (2012) *Mental Health and Human Rights: Vision, praxis and courage*: Oxford University Press.

Kroetz, FS 'Between global consensus and local deviation: a critical approach on the universality of human rights, regional human rights systems and cultural diversity' (2016) 3 *Revista de Investigações Constitucionais* 44 – 58.

Kühn, B 'Universal Human Rights vs. Traditional Rights' (2009) *Topical Review Digest: Human Rights in Sub-Saharan Africa* 59 – 73.

Lambani, MN 'Poverty: The cause of teenage pregnancy in Thulamela municipality' (2015) 6 *Journal of Sociology and Social Anthropology* 171 – 176.

Lehana, TV & van Rhyn, L. 'A Phenomenological investigation of experiences of pregnancy by unmarried adolescents in Maseru' (2003) 8 *Health SA Gesondheid* 26 – 38.

Lesotho Education Act of 2010.

Lesotho Council of NGOs 'The status of women in Lesotho with respect to participation in local governance processes: Policy Brief No 2015/01' (2015) <http://www.lcn.org.ls/news/Study%20of%20women%20policy%20brief%20final.pdf> (accessed 8 June 2021).

Lesotho National Federation of Organisations of the Disabled (LNFOD) 'The Long-Awaited domestication of the United Nations Convention on the rights of people with disabilities in Lesotho' [http://www.infod.org.ls/uploads/1/2/2/5/12251792/media\\_brief\\_on\\_passing\\_of\\_disability\\_law.pdf](http://www.infod.org.ls/uploads/1/2/2/5/12251792/media_brief_on_passing_of_disability_law.pdf) (accessed 10 August 2021).

Lesotho Ministry of Health 'Lesotho Population-Based HIV Impact Assessment (LePHIA)' (2017).

Letsie, PR 'Sociodemographic factors and their influence on school health and HIV programmes: The case of Lesotho' (2020) *Master's Theses and Doctoral Dissertations*.

Letsika, Q 'The place of Sesotho customary law marriage within the modern Lesotho legal system' (2005) 2 *Botswana Law Journal* 73 – 100.

Levy JK; Darmstadt, GL; Ashby, C; Quandt, M; Halsey, E; Nagar, A & Greene, ME 'Characteristics of successful programmes targeting gender inequality and restrictive gender norms for the health and wellbeing of children, adolescents, and young adults: a systematic review' (2019) 8 *Lancet Global Health* 225 – 236.

Likoti, PM & Sibanyoni, EK 'Children as victims of forced marriages in Lesotho: A question of cultural practice or approval of child exploitation' (2020) 9 *International Journal of Criminology and Sociology* 723 – 734.

Lloyd, CB & Mensch, BS 'Marriage and Childbirth as factors in dropping out from school: An analysis of DHS data from Sub-Saharan Africa' (2008) 62 *Population Studies* 1 – 13

Lower, M 'Can and Should Human Rights Be Universal?' (2013) *E-International Relations* 2.

McGaha-Garnett, V 'Teenage parenting and high school dropouts: understanding students' academic, social, and personal influences' (2007) *Master's Theses and Doctoral Dissertations*.

Macleod, C 'Adolescent sexual and reproductive health: controversies, rights and justice' in Cherry, AL; Baltag, L & Dillon, ME (eds) *An International Handbook on Adolescent Health and Development: The Public Health Response* (2016) Springer

Madiba, S & Putsoane, M 'Testing Positive and Disclosing in Pregnancy: A Phenomenological Study of the Experiences of Adolescents and Young Women in Maseru, Lesotho' (2020) 2020 *AIDS Research and Treatment* 1 – 8.

Makatjane, T 'Pre-Marital Sex and Childbearing in Lesotho' (2002) 17 *African Population Studies* 99 – 102.

Mama, RS 'Needs, rights, and the human family: the practicality of the Convention on the Rights of the Child' (2010) 89 *Child Welfare* 177 – 189.

Matsieli, ML 'An overview of the challenges faced in the implementation of the national youth policy in Lesotho' (2014) *Master's Theses and Doctoral Dissertations*.

Mayor, S 'Pregnancy and childbirth are leading causes of death in teenage girls in developing countries' (2004) 328 *BMJ Clinical Research Edition* 1152 – 1154.

Meekers, D & Ghyasuddin, A 'Pregnancy-Related School Dropouts in Botswana' (1999) 53 *Population Studies* 195 – 209.

Melesse, DY; Cane, RM; Mangombe, A; Ijadunola, MY; Manu, A; Bamgboye, E; Mohiddin, A; Kananura, RM; Akwara, E; du Plessis, E; Wado, YD; Mutua, MK; Mekonnen, W; Faye, CM; Neal, S & Boerma, T 'Inequalities in early marriage, childbearing and sexual debut among adolescents in sub-Saharan Africa' (2021) 18 *Reproductive Health* 1- 15.

Michau, L; Horn, J; Bank, A; Dutt, M & Zimmerman, C 'Prevention of violence against women and girls: lessons from practice' (2015) 385 *The Lancet* 1672 – 1684.

Ministry of Education and Training and Ministry of Health Lesotho 'School Health and Nutrition Policy' (2017).

Ministry of Education Guyana 'National Policy: Reintegration of adolescent mothers into the formal school system' (2018).

Ministry of Education 'Republic of Kenya National guidelines for school re-entry in early learning and basic education' (2020).

Ministry of Health 'Government of Lesotho social and behaviour change communication strategy for Sexual and Reproductive Health and Rights and HIV in Lesotho 2020-21 to 2022-23' (2020).

Ministry of Health [Lesotho] & ICF International 'Lesotho Demographic and Health Survey 2014' (2016).

Mohlakoana-Mokobocho, KM 'Pregnant at the wrong time. Experiences of being a pregnant young woman while schooling - selected Lesotho cases' (2005) *Master's Theses and Doctoral Dissertations*.

Molapo, CM; Adams, D; Zulu, PS & Mabusela, MS 'Schooling-going mothers' experiences in relation to teachers: A case of High schools in Leribe district, Lesotho' (2014) 5 *Mediterranean Journal of Social Sciences* 1269 – 1276.

Monamane, I 'Lesotho launches Child Protection and Welfare Act' (2012) <https://www.wvi.org/article/lesotho-launches-child-protection-and-welfare-act> (accessed 24 June 2021).

Morojele, P 'What does it mean to be a boy? Implications for girls' and boys' schooling experiences in Lesotho rural schools' (2011) 23 *Gender and Education* 677 – 693.

Morotti, A 'Integrating Culture into Education: Self-Concept Formation in Alaska Native Youth' (2006) 1 *Forum on Public Policy* 1 – 24.

Mturi, AJ & Moerane, W 'Premarital Childbearing among Adolescents in Lesotho' (2001) 27 *Journal of Southern African Studies* 259 – 275.

Munalula, MM 'SADC Protocol on Gender and Development: Road map to equality?' (2011) 1 *SADC Law Journal* 189 – 196.



Mutua, M 'Standard setting in human rights: Critique and prognosis' (2007) 29 *Human Rights Quarterly* at 547 – 630.

Mwansa, A (2011) *Re-entry to School after Giving Birth: An Evaluation of the Process used to Design and Implement Policy in Zambia*: Consortium for Research on Educational Access, Transitions and Equity.

National AIDS Commission Lesotho (2020) 2019 HIV and AIDS progress report submitted to Southern African Development Community secretariat of social and human development National Commissions for UNESCO of France and Germany 'Claiming Human Rights in Lesotho' <http://www.claiminghumanrights.org/lesotho.html> (accessed 8 July 2021).

National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Lesotho, Human Rights Council Working Group on the Universal Periodic Review Thirty-fifth session (20–31 January 2020), A/HRC/WG.6/35/LSO/1 (2019).

Ngwena, CG 'Human right to inclusive education: Exploring a double discourse of inclusive education using South Africa as a case study' (2013) 31 *Netherlands Quarterly of Human Rights* 473 – 504.

Ngwena, C & Durojaye, E (eds) (2014) *Strengthening the protection of sexual and reproductive health through human rights in the African region: An introduction* Pretoria University Law Press.

Nkosi, NN & Pretorius, E 'The influence of teenage pregnancy on education: perceptions of educators at a secondary school in Tembisa, Gauteng' (2019) 55 *Social Work* 108 – 116.

Norton, M; Chandra-Mouli, V & Lane C 'Interventions for preventing unintended, rapid repeat pregnancy among adolescents: A review of the evidence and lessons from high-quality evaluations' (2017) 5 *Global Health: Science and Practice* 547 – 570.

Nsalamba, G & Simpande, A 'Effect of re-entry policy implementation on readmitted girls' academic performance in Mathematics in selected secondary schools of Mufulira district in Zambia' (2019) 5 *International Journal of Data Science and Analysis* 73 – 85.

Odimegwu, CO & Chadoka-Mutanda, N 'Covariates of high-risk sexual behaviour of men aged 50 years and above in sub-Saharan Africa' (2017) 14 *SAHARA Journal of Social Aspects of HIV/AIDS Research Alliance* 162 – 170.

O'Donovan, D 'Socio-Legal methodology: conceptual underpinnings, justifications and practical pitfalls' in Cahillane, L & Schweppe, J (eds) (2016) *Legal Research Methods: Principles and Practicalities* Dublin: Clarus Press.

Oronje, RN; Crichton, J; Theobald, S; Lithur, NO & Ibisomi, L 'Operationalising sexual and reproductive health and rights in sub-Saharan Africa: constraints, dilemmas and strategies' (2011) 11 *BMC International Health and Human Rights* 1 – 11.

Phafoli, SH & Van Aswegen, EJ 'Variables influencing delay in antenatal clinic attendance among teenagers in Lesotho' (2007) 49 *South African Family Practice* 1 – 9.

Pranevičienė, B & Pūraitė, A 'Right to education in international legal documents' (2010) 3 *Jurisprudencija/Jurisprudence* 133 – 156.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).

Rakolobe, K 'Reinforce Education Act 2010' (2019) <https://www.thepost.co.ls/insight/reinforce-education-act-2010/> (accessed 24 June 2021).

Rakolobe, K & Teise, K 'Realities regarding the (non) enactment of the Education sector HIV and AIDS Policy in rural Lesotho' (2020) 27 *Interdisciplinary Journal for the Study of the Arts and Humanities in Southern Africa* 35 – 54.

Roseman, MJ & Reichenbach, L 'International Conference on Population and Development at 15 years: achieving sexual and reproductive health and rights for all?' (2010) 3 *American Journal of Public Health* 403 – 406.

Ruane-McAteer, E; Gillespie, K; Amin, A; Aventin, Á; Robinson, M; Hanratty, J; Khosla, R & Lohan, M 'Gender transformative programming with men and boys to improve sexual and reproductive health and rights: a systematic review of intervention studies' (2020) 5 *BMJ Global Health* 1 – 17.

Ruzibiza, Y 'They are a shame to the community ...' stigma, school attendance, solitude and resilience among pregnant teenagers and teenage mothers in Mahama refugee camp, Rwanda' (2021) 16 *Global Public Health* 763 – 774.

SADC 'Protocol on Gender and Development' (2008).

Sekhoetsane, KR 'The Stress of Teenage Motherhood: The need for multi-faceted intervention programs' (2012) Master's Theses and Doctoral Dissertations.

Setty, E 'A rights-based approach to youth sexting: challenging risk, shame, and the denial of rights to bodily and sexual expression within youth digital sexual culture' (2019) 1 *International Journal of Bullying Prevention* 298 – 311.

Shirao, B; Momanyi, M & Anyona, J 'Implementation of Life Skills Education towards curbing teenage pregnancy in public secondary schools in Makadara Sub County, Nairobi, Kenya' (2020) 4 *Journal of Popular Education in Africa* 92 – 111.

Sieger, K & Renk, K 'Pregnant and parenting adolescents: A study of ethnic identity, emotional and behavioral functioning, child characteristics, and social support' (2007) 36 *Journal of Youth Adolescence* at 567 – 581.

Sikweyiya, Y; Addo-Lartey, AA; Alangea, DO; Dako-Gyeke, P; Chirwa, ED; Coker-Appiah, D; Adanu, RMK & Jewkes, R 'Patriarchy and gender-inequitable attitudes as drivers of intimate partner violence against women in the central region of Ghana' (2020) 20 *BMC Public Health* 1 – 11.

Simelane, QGSN; Thwala, SK & Mamba, T 'An assessment of the implementation of the re-entry policy for girls in Swaziland: School practices and implications for policy development' (2013) 56 *Problems of Education in the 21st Century* 115 – 127.

Singh, R; Bajpai, GS; Singh, RML & Bajpaet, GS 'Research Methodology: Socio-Legal Research' [http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp\\_content/law/09\\_research\\_methology/04\\_socio-legal\\_research/et/8151\\_et\\_et.pdf](http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/law/09_research_methology/04_socio-legal_research/et/8151_et_et.pdf) (accessed 28 April 2021).

Svanemyr, J 'Adolescent pregnancy and social norms in Zambia' (2020) 22 *Culture, Health & Sexuality* 615 – 629.

Tallarico, R; Ozah, K & Orievulu, KS 'Age of consent: A case for harmonizing laws and policies to advance, promote and protect adolescents sexual and reproductive health rights' (2021) 25 *African Journal of Reproductive Health* 94 – 102.

Tawiah, S & Ngmenkpieo, F 'Adult Basic Education and Training in South Africa: The perspectives of rural women in Khotso' (2018) 9 *Mediterranean Journal of Social Sciences* 57 – 64.

te Lintelo, D (2011) 'Youth and policy processes, FAC Working Paper 25'.

Thakaso, MN 'Young adult understanding of citizen rights and responsibilities in the Lesotho context: implications for civic education' (2017) *Master's Theses and Doctoral Dissertations*.

The African Charter on Human and Peoples' Rights (1986).

Theoha, ME 'Realising the Right to Education in Lesotho' Unpublished Master's dissertation (2011) *Master's Theses and Doctoral Dissertations*.

The Procedure of UNESCO [http://www.claiminghumanrights.org/unesco\\_procedure.html?&L=](http://www.claiminghumanrights.org/unesco_procedure.html?&L=) (accessed 20 July 2021)

Tshehla, MS 'Wisdom amidst the monkey-talk? Discipline and gender in masculinist discourse' (2006) 12 *Journal of Constructive Theology* 13 – 23.

Turkon, D 'Modernity, tradition and the demystification of cattle in Lesotho' (2002) 62 *African Studies* 147 – 169.

Tuwor, T & Sossou, M 'Gender discrimination and education in West Africa: strategies for maintaining girls in school' (2008) 12 *International Journal of Inclusive Education* 363 – 379.

Uchem, R 'Subordination of women in 21st century Africa: Cultural sustainability or a new slavery? Implications for educational development (2014) 4 *Developing Country Studies* 143 – 150.

UNAIDS (2019) 'Women and HIV: A spotlight on Adolescent Girls and Young Women' UN Committee on the Rights of the Child (CRC) General comment No. 20 on the implementation of the rights of the child during adolescence (2016).

UNESCO 'Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern African (ESA)' (2013) <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/HIV-AIDS/pdf/ESACommitmentFINALAffirmedon7thDecember.pdf> (accessed 1 June 2021).

UNESCO (2018) 'Situational analysis on early and unintended pregnancy in Eastern and Southern Africa' (2018).

UNESCO (2016) 'Strengthening Sexual and Reproductive Health and HIV Prevention amongst Children and Young People through Promoting Comprehensive Sexuality Education in Eastern and Southern Africa – Lesotho 2013 – 2015'.

UNESCO (2007) 'World Data on Education: Lesotho'.

UNFPA (2017) 'Harmonizing the Legal Environment for Adolescent Sexual and Reproductive Health and Rights: A review of 23 countries in East and Southern Africa'.

UNFPA 'Promoting Human Rights Across Cultures' 4 October 2010 <https://www.unfpa.org/press/promoting-human-rights-across-cultures> (accessed 25 July 2021).

UNFPA (2021) 'State of World Population 2021'.

UNICEF (2020) 'Addressing the needs of adolescent and young mothers affected by HIV in Eastern and Southern Africa'.

UNICEF (2021) 'Case study on delaying adolescent pregnancy and child marriage in the Kingdom of Lesotho'.

UNICEF Lesotho (2017) 'Child Protection'.

United Nations Conference on Trade and Development (UNCTAD) (2013) 'Services Policy Review- Lesotho'.

United Nations Department of Economic and Social Affairs 'Social Inclusion: World Day of Social Justice 2017' <https://www.un.org/development/desa/dspd/international-days/world-day-of-social-justice/world-day-of-social-justice-2017.html> (accessed 6 August 2021).

United Nations Lesotho (2019) 'Human Rights Day 2019' <https://lesotho.un.org/en/27851-human-rights-day-2019> (accessed 8 July 2021).

Universal Declaration of Human Rights, United Nations General Assembly (10 December 1948) UN Doc A/Res/217 A (III) (1948).

Viljoen, F 'An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 Washington and Lee Journal of Civil Rights and Social Justice 11 – 45.

Walt, G & Gilson, L 'Reforming the health sector in developing countries: the central role of policy analysis' (1994) 9 *Health Policy and Planning* 353 – 370.

Widman, L; Nesi, J; Kamke, K; Choukas-Bradley, S & Stewart JL 'Technology-based interventions to reduce sexually transmitted infections and unintended pregnancy among youth' (2018) 62 *Journal of Adolescent Health* 651 – 660.

Veer, L & Dezentje, A 'Human rights and cultural perspectives' (2018) 4 *The UNESCO Courier* 36 – 37.

Waddington, L & Toepke, C (2014) 'Maastricht Faculty of Law Working Paper 2014/7'.

World Economic Forum (2021) 'Global gender gap report 2021: Insight report March 2021'.

World Programme of Action for Youth to the Year 2000 and beyond, UN Economic and Social Council (2 November 1995), UN Doc E/RES/1995/64 (1995).

Yako, EM & Yako, JM 'A descriptive study of the reasons and consequences of pregnancy among single adolescent mothers in Lesotho' (2007) 30 *Curationis* 74 – 81.

Yakubu, I & Salisu, WJ 'Determinants of adolescent pregnancy in sub-Saharan Africa: a systematic review' (2018) 15 *Journal of Reproductive Health* 1 – 11.

Yohannes, AH; Yalew, A & Bisetegn, TA 'Prevalence and factors associated with teenage pregnancy, Northeast Ethiopia, 2017: A cross-sectional study' (2018) *Journal of pregnancy* 1 – 7.