

**EDUCATIONAL OPPORTUNITIES FOR THE GIRL CHILD IN
AFRICA: A NECESSARY REVISIT OF THE DISCRIMINATION
FACTOR WITH REFERENCE TO EGYPT, SOUTH AFRICA AND
CAMEROON**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF
PRETORIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE
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DEDICATION

This dissertation is dedicated to my parents, Mr and Mrs Chofofor Ndimofor. You have been my inspiration for all these years. Thank you for being there for me. Your moral and financial support has brought me to where I am at present. I owe my success to both of you.

DECLARATION

I, **Christian-Aimé Chofofor Che**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged in this dissertation.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights (African Charter)
ACRWC	African Charter on the Rights and Welfare of the Child (African Children's Charter)
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CC	Constitutional Court
CPC	Cameroonian Penal Code
CRC	Convention on the Rights of the Child
CYFD	Child, Youth and Family Development research programme
ECHPR	European Convention on Human and Peoples' Rights
EFA	Education for All (World Conference on Education for All
EU	European Union
GETT	Gender Equity Task Team of the Republic of South Africa
HARP	Health of Adolescent Refugees Project
HRW	Human Rights Watch
HSRC	Human Sciences Research Council
IACHR	Inter-American Commission on Human Rights
IAS	International Aid Sweden
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHR	International Council on Human Rights
ICPD	UN International Conference on Population and Development
NCA	Norwegian Church Aid
NCHRF	National Commission on Human Rights and Freedoms
NGO	Non Governmental Organisation
NHRC	National Human Rights Commission
OAS Charter	Charter of the Organisation of American States
OSCE	Organisation for Security and Co-operation in Europe
SAGEN	Strategy for Acceleration of Girls Education in Nigeria
SAHRC	South African Human Rights Commission
SCF	Save the Children Fund
SEDA	Sudan Education Association
SUPRAID	Sudan Production Aid

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGEI	UN Girls' Education Initiative
UNICEF	United Nations Children Fund
UNCHR	United Nations Commission on Human Rights
UNHCR	United Nations High Commission for Refugees
US	United States of America

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INTERNATIONAL AND REGIONAL INSTRUMENTS

African Charter on Human and Peoples' Rights, 1981

African Charter on the Rights and Welfare of the Child, 1990

American Convention on Human Rights, 1978

American Declaration of the Rights and Duties of Man, 1948

Charter of the Organisation of American States, 1948

Convention on the Elimination of All forms of Discrimination Against Women, 1981

Convention on the Elimination of All Forms of Racial Discrimination, 1965

Convention against Discrimination in Education, 1960

Convention on the Rights of the Child, 1989

European Convention on Human and Peoples' Rights, 1950

International Covenant on Civil and Political Rights, 1966

International Covenant on Economic, Social and Cultural Rights, 1966

Refugee Convention, 1951

Universal Declaration on Human Rights, 1948

CHAPTER 1: INTRODUCTION

1.1 Background of the research

Joint efforts put into place by member countries within the United Nations; especially with respect to the United Nations Charter as to better opportunities for all, seem to be growing stronger as years go by. Since the adoption of the *Universal Declaration of Human Rights* (UDHR)¹ in 1948, the General Assembly of the United Nations has adopted numerous treaties, declarations and conventions concentrated on human rights including the right to education. The General Assembly refers most items relating to human rights to its Third Committee, which deals with social, humanitarian and cultural matters. The human rights of children are fully articulated in one treaty: the United Nations Convention on the Rights of the Child (CRC) offering the highest standard of protection and assistance for children under any international instrument.² The approach of the Convention is holistic, which means that the rights are indivisible and interrelated, and that all articles are equally important. The CRC is the most universally accepted human rights instrument.³ It provides the most comprehensive framework for the responsibilities of States parties to all children within their borders: by ratifying the Convention, national governments have committed themselves to protecting and ensuring the rights of all children without discrimination, including the rights of refugee and displaced children and adolescents. The CRC defines a “child” as everyone less than 18 years of age “unless under the law applicable to the child, majority is attained earlier.” The scheme of the CRC suggests that this exception should be interpreted as an empowering one, in other words that under 18s can claim the benefits of adulthood if granted by national law while still able to claim the protection of the CRC.

In international instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), this right is guaranteed in article 13. According to the CRC, the right to education must be achieved on the basis of equal opportunity, reflecting the fact that there should be no discrimination in access to education. Education has to reach out to those who have been traditionally unreached, including girls, working children, children affected by armed conflicts, children affected by HIV/AIDS, children with disabilities, and rural children. Article 28 of the CRC states that the minimum provision will include free, compulsory primary education for all, and different forms of secondary and vocational education “available and accessible” to all. But the right to education is one that transcends access alone and includes quality. Article

¹ Article 26 of the Universal Declaration for Human Rights focuses on the right to education.
² EM Patel & C Watters *Human Rights Fundamental Instruments and Documents* (1994) 305.
³ Every country in the world except two countries, the United States and Somalia, has ratified the CRC.

29 of the CRC reflects an international consensus about the fundamental purposes of education.⁴

One of the criticisms of the CRC is that it is too Euro-centric and that it does not give enough regard to children living in non-European environments. The African Charter on the Rights and Welfare of the Child (the African Children's Charter) thus gives a better reflection of particular African concerns. This Charter entered into force on 20 November 1999, just before the 10th anniversary of the CRC.⁵ The African Children's Charter builds on the best interest of the child and the preservation of African unity and solidarity. More emphasis is given in this Charter to a collective approach rather than an individual approach as in the case with the CRC. In this context the Charter recognises rights as well as responsibilities of children. Though most of the rights and freedoms contained in the Charter apply to "every child", the Charter does not provide any further content to the concept of African values. Insofar as responsibility of the state and education is concerned the Charter provides as follows:

- 11(3) States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realisation of this right and shall in particular:
- (a) provide free and compulsory basic education;
 - (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
 - (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
 - (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;
 - (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

Article 17 of the African Charter on Human And Peoples' Rights (The African Charter), alongside conventions such as the Convention Against Discrimination in Education amongst many others give and provide good grounds for African countries not to discriminate against the social and cultural rights of the child especially the girl child.⁶

⁴ Patel & Watters (n 2 above) 315.

⁵ For status of African countries, which have signed and ratified the African Charter on the Rights and Welfare of the Child see <http://www.up.ac.za/chr/ahrdb/statorat_14.html>(accessed on 27 May 2003).

⁶ Article 1 of the 1960 UNESCO Convention Against Discrimination in Education.

1.2 Statement of research problem

This problem of discrimination in girl child education cuts through norms of domestic and international law such as gender, culture, custom, religion, marriage and the respect of family life.⁷ Though much still has to be done, the Republic of South Africa has gone a long way to address this issue of girl child discrimination in education.⁸ With countries such as Egypt and Cameroon, there still seems to be a problem.⁹

In 1978, the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW),¹⁰ declared that “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.” Most African governments, though aware of such conventions, seem to ignore the importance of such conventions.

The Beijing Declaration and Platform for Action¹¹ agreed upon during the Fourth World Conference on Women, held in Beijing in 1995 is instrumental in this respect. Within the Platform for Action, Strategic objective L.4 defined action that could be used to support initiatives to ensure equality of access to education for the girl child, to eradicate illiteracy, to improve access to vocational and technical education.

This paper is therefore inspired to look at education with respect to girl children in Africa. This paper by drawing inspiration from other settings, is also motivated by the need to find solutions on how best the rights of the girl child can be protected in conjunction with the educational policy of African countries.

1.3 Objectives of the study

- To examine to what extent discrimination is an issue to girl child education in Africa;
- Identify and explore obstacles, which have been hindering the protection of the educational rights of the girl child in the African region;

⁷ For the countries with the greatest gap in discrimination in girl child education in the world see <<http://www.un.org/esa/coordination/ecosoc/docs/UNGEI.pdf>> (accessed 28 May 2003).

⁸ Section 28 of the Bill of Rights of the South African Constitution of 1996 guarantees the protection of every child in South Africa. South Africa has also signed and ratified the African Charter on the Rights and Welfare of the Child amongst other international and regional instruments. (See n 5 above for ratification status).

⁹ Egypt signed the African Charter on the Rights and Welfare of the Child on the 30 June 1999 but has not ratified this Charter. On the other hand Cameroon has signed and ratified this Charter (For ratification status see n 5 above). Also for statistics by UNICEF as to 24 countries with the largest gender gap in secondary school education see page 5 at <<http://www.un.org/esa/coordination/ecosoc/docs/UNGEI.pdf>> (accessed 28 May 2003).

¹⁰ Article 10 of CEDAW.

¹¹ For information on the Beijing Declaration and Platform for Action see <<http://www1.umn.edu/humanrts/instrree/bejingmnu.htm>> (accessed 14 March 2003).

- Identify the shortcomings in international, regional and domestic responses to the discrimination factor as to girl child education;
- Evaluate and propose political, administrative and legislative measures, which need to be put in place with respect to educational policy in Africa.

1.4 Hypotheses/Research questions

From the above objectives the following hypotheses can be derived:

- (a) Discrimination is found throughout all stages of girl child education most especially at the primary and secondary school levels.
- (b) Obstacles, that are hindering the protection of girl child education in the African region, are early marriages, poverty, HIV/AIDS, cultural factors, traditional beliefs, gender, religion and customs.
- (c) Although international, regional and domestic instruments exist, there is need to implement these instruments and the *modus operandi* of concerned institutions.

Questions to be therefore dealt with in this paper are the following:

- (a) What is the reality of discrimination in education Africa? How is this discrimination identified or where does it appear?
- (b) What are the obstacles, which have been hindering the protection of the educational rights of the girl child in the African region?
- (c) Are the international, regional and domestic instruments simply inadequate to afford protection for girl child education? Is it that these instruments are not appropriately or effectively applied by various actors? What protection does the African Charter and other related African instruments provide for girl child education? What work has the African Commission on Human and Peoples' Rights (the African Commission) and the Special Rapporteur for women to the African Commission done in this respect?

1.5 Importance of the research

From the hypotheses sketched above it should be clear that the aim of this research is to recommend an alternative approach for ensuring lasting and effective protection of educational rights for the girl child, for they form the core of "a better and efficient tomorrow."¹² More to the point, this contribution proposes the political setting that needs to be present in order to deal with the root causes of discrimination in this respect. Therein lies the importance of this

¹²

The Girl child as the core of an efficient and better tomorrow <<http://www.nepalnews.com.np/contents/englishdaily/trn/2003/>>(accessed 14 March 2003).

research: at refocusing debates and discussions about the best ways of ensuring girl educational rights protection, in Africa.

1.6 Research methodology

Initially, an intensive library research was undertaken in order to critically review existing work on the discrimination in girl child education. The Internet, magazines and newspapers were also utilised. In order to monitor developments regarding discrimination as to educational rights of the girl child, certain past and recent situations were viewed with respect to regional annual state reports. There was also need to talk to certain people and organisations such as the United Nations High Commission for Refugees (UNHCR) in Cairo, Egypt.

1.7 Limitation of study

This study is focused on the discrimination factor found in most legislative and international instruments, with girls right to education being the centre of focus. Though the African continent is the setting for this study, reference is made to South Africa, Cameroon and Egypt. This work is therefore limited to the African continent though inspiration can be derived from the African setting to provide recommendations to similar situations in other parts of the world.

1.8 Literature review

The literature available in relation to this study can be classified into several categories. First of all there are books, articles and websites dealing with the right to education and issues focusing on girl education. Katarina Tomaševski, the first ever Special Rapporteur on the Right to Education of the United Nations Commission on Human Rights, has published extensively on education.¹³ In one of her publications, she does some regional studies of girl child education and comes out with statistics of countries, which have made commitments as to the right to education, with respect to international instruments. What she does is identify on a general perspective, factors that account for discrimination generally and then with respect to the girl child. She also treats legislation with respect to what some constitutions provide with respect to girl child education. A limited study of the African scenario is done and the reasons why this problem persists at certain domestic levels.¹⁴

Various journals and articles also deal in issues such as the discrimination of women, and the girl child in particular. However, a very limited number deal with this debate from an African perspective. A prominent article, which discusses discrimination in girl child education from an African perspective, especially with respect for the need for the domestication of international

¹³ See K Tomaševski's publications at < <http://www.right-to-education.org/>> (accessed 2 May2003).
¹⁴ K Tomaševski, *Free and compulsory education for all children: the gap between promise and performance 2001*) SIDA Right to Education in Primer 2<http://www.right-to-education.org/context/primers/rte_02.pdf>(accessed on 24 May 2003) 1-80.

human rights standards, is an article by GW Mugwanya.¹⁵ Another important article sourced from the internet is that by DJ Fox who advocates that International human rights norms should indeed become part of the legal culture of any given society, when it comes to gender and opportunities.¹⁶

Merelyn Devine is another author who brings out the discrimination factor in education.¹⁷ Though not from an African perspective, she first of all explains what discrimination in education is. She then goes further to differentiate between what amounts to direct and indirect discrimination with respect to Australian cases such as *Haines v Leves*¹⁸ and *I v O'Rourke and Corinda State High School and Minister for Education for Queensland*.¹⁹

Another category of literature on girl child education, comes from proposed amendments to the African Platform for Action during a conference in Dakar Senegal, where it was noted that at the primary, secondary and tertiary levels, from 1980 to 1991, there was a drop in enrolment of girls.²⁰

1.9 Summary of chapters

The study is divided into six chapters. Chapter one provides the context in which the study is set, the objectives of the study and its importance. Chapter two examines the importance of the right to education and in education and takes note of the issue of discrimination with respect to girl child education in Africa. In Chapter three various international treaties that concern provisions on education and the discrimination factor as to gender are identified. Also in the international milieu, the role of international bodies in the effective and efficient insurance of girl child education is included. Chapter four examines on a regional level, the extent to which the African Commission has effectively monitored the provisions of the African Charter. The African Children's Charter and The draft protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (the draft Women's Protocol) in Africa are also discussed in relation to provisions in the African Charter and work done on girl child education by the African Commission. In this chapter, a comparative study is also done of instruments and the implementation mechanisms offered by the Inter-American and European systems to the African Human Rights system in terms of the girl child education. This is so because in terms of

¹⁵ GW Mugwanya 'Equality in Uganda: A case for the Domestication of International Human Rights Standards' (2000) 12 *African Journal of International Law and Comparative Law* 791.

¹⁶ DJ Fox 'Women's human rights in Africa: Beyond the debate over the universality or relativity of human rights' <<http://web.africa.ufl.edu/asq/legal.htm>> (accessed 3 September 2003).

¹⁷ M Devine 'Discrimination in Education: An Overview of Legislation and Cases Relevant to the Education System' <http://www.icponline.org/feature_articles/f19_02.htm> (accessed 4 September 2003).

¹⁸ (1987) 8 NSWLR 46722

¹⁹ [2001] QADT 1

²⁰ For proposed amendments by certain NGOs see relevant literature on human rights in Africa <<http://www.law.emory.edu/WAL?Literature/Documents/africa/NGO/06.htm>> (accessed 25 April 2003).

experience, jurisprudence and institutions, these systems are considered to be more advanced than the African Human Rights system.

Finally Chapter five discusses girl child education on a national level in Africa. This chapter focuses on the experiences of South Africa, Egypt and Cameroon. Educational policy and other national legislative instruments such as the constitutions of these countries are included. In the conclusion, the paper puts forward recommendations to assist new and old African democracies in advancing an administrative and political approach to the issue of discrimination with respect to girl child education.

CHAPTER 2: THE RIGHT TO EDUCATION

2.1 Introduction

The right to education is one of the most important rights proclaimed by the UDHR, because education is considered by the Declaration to be not only a right in itself but also a means of promoting peace and respect for human rights and fundamental freedoms generally.²¹ This chapter will therefore analyse the relationship between the right to education and rights in education. Arguments of gender, discrimination and education will also be raised especially with respect to the African context.

2.2 The right to education and rights in education

The right to education is one of the most widely accepted, though not one of the most protected rights internationally, regionally or on a constitutional level. Kartarina Tomaševski believes that discussing human rights in education is thus not a luxury but a necessity. She further contends that without a clear vision of the inter-relationship between the right to education and the right in education, promoting human rights through education remains impossible.²²

The right to education can well be explained with respect to availability and accessibility to educational resources. Rights in education can well be understood with respect to adaptability to children especially girls and acceptability by the community and mostly by their parents. In relation to the right to education, availability includes issues such as fiscal allocations, matching human rights obligations, types of schools and teachers. Accessibility then embraces the elimination of legal and administrative barriers, elimination of financial obstacles, identification and elimination of discriminatory denials of access and elimination of obstacles to compulsory schooling. Rights in education include acceptability in relation to parental choice of education for their children. It also addresses enforcement of minimal standards such as quality, safety and environmental health. Issues such as language of instruction, freedom from censorship and recognition of children as subjects of rights are also important, insofar as acceptability is concerned. Adaptability then focuses on issues such as minority children, indigenous children, gender amongst others factors.²³

²¹ For information on the right to education see 'The right to education: towards education for all throughout life' <<http://www.unesco.org/education/information/wer/>> (accessed on 23 August 2003).

²² Tomaševski *Human Rights in Education as Prerequisite for Human Rights Education* (2001) SIDA Right to Education in Primer 4 <http://www.right-to-education.org/context/primers/rte_04.pdf> (accessed on 24 May 2003) 8.

²³ Tomaševski *Human Rights Obligations: making education available, accessible, acceptable and adaptable* (2001) SIDA Right to Education in Primer 3 <http://www.right-to-education.org/context/primers/rte_03.pdf> (accessed on 24 May 2003) 12.

Economic, social and cultural rights have long suffered from neglect if not marginalisation.²⁴ The right to education happens to be one of the categories of economic, social and cultural rights to suffer from such a set back. Moreover, little research has been carried out in the field of gender equity in education.²⁵

Education is widely albeit wrongly perceived as inherently good. Getting all children to school is then equated with their right to education. Questions about what and how children are taught are asked rarely, usually when abuses of and in education are detected. The case of *Ienaga v. Japan* by the Supreme Court of Japan is illustrative to this respect.²⁶ The *ratio decidendi* of this case is that the content of education is required to be accurate, neutral and fair, and to have a certain national standard regardless the child's physical and mental development, and also their region and school.²⁷ Children can be exposed to advocacy of racism or incitement to genocide. This is worsened by the fact that we learn too little and too late about abuses of and in education and they are rarely identified as human rights violations, therefore leaving few safeguards of human rights in place, least of all where they are needed the most as in Africa.

The right to education is a right, which needs to be guaranteed to all, regardless of age, race and origin. The usual approach is to review the contents and process of learning from the viewpoint of the child as a future adult. It is therefore important to identify the content of discrimination in education, especially gender-based discrimination in education.

2.3 Discrimination in education

2.3.1 What is discrimination in education?

The Minnesota Department of Human Rights includes among a category of violations, discrimination against sex, race and religion as examples and types of discrimination in education.²⁸ The Convention against Discrimination in Education adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 14 December 1960 also stipulates in article 1 as follows:

²⁴ Tomaševski 'Women' in A Eide, C Krause & A Rosas (eds) *Economic, Social and Cultural Rights* (1995) 237. Also see M Scheinin 'Economic and Social Rights as Legal Rights' in Eide, Krause & Rosas (1995) 243-245.

²⁵ K Hanson & SJ Smith 'Gender Equality in Education' in H Rousso & ML Wehmeyer (ed), *Double Jeopardy: Addressing Gender Equality in Special Education* Albany (2001) 60.

²⁶ In 1965 Professor Ienaga initiated a court case in Tokyo by suing the Japanese Government which through "textbook screening" i.e. amendment and censorship of school textbooks, had been controlling the content of history taught in secondary schools. Books censored had included some of Professor Ienaga's works. Professor Ienaga then initiated his second and third lawsuits against the government. See <<http://www.vcn.bc.ca/alpha/ienaga/letter.htm>> (accessed 21 August 2003).

²⁷ Same as above. Also see Hanson & Smith (n 25 above) 61.

²⁸ The Minnesota Department of Human Rights' online letter <http://www.humanrights.state.mn.us/rsonline/edu_types.html> (accessed 6 September 2003).

- 1(1) For the purpose of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
- (a) Of depriving any person or group of persons of access to education of any type or at any level;
 - (b) Of limiting any person or group of persons to education of an inferior standard;
 - (c) Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or
 - (d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.
- (2). For the purposes of this Convention, the term "education" refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

Article 2 of the Convention adds that when permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of article 1 of this Convention:

- 2 (a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study;
- (b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
- (c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

On a conceptual, level the idea of equality as equality of opportunity lies somewhat in between the concepts of formal and substantive equality.²⁹ It gives judges and policy makers a certain freedom of interpretation. The more formal interpretation will consider equality of

²⁹

C Barnard 'Gender Equality in the EU: A Balance Sheet' in Ph Alston (ed) *The EU and Human Rights* mentioned in B Vrancken '*Reviewing affirmative action: A comparative study of the conditions applied by the European Court of Justice and other legal systems*' (2001) Thesis in partial fulfilment of a European Master's Degree in Human Rights and Democratisation, sec 1.1.3.

opportunity as synonymous with non-discrimination. On the other hand this principle allows the option to take into account the effects of existing social and material inequalities on people. Equal opportunity can be compared with what Rawls calls “the principle of fair equality of opportunity.”³⁰ The thought here is that positions are not only to be open in a formal sense, but that all should have a fair chance to attain them. This approach is most favourable in overcoming sex-based discrimination and takes a big step towards a gendered perspective. Women are not only seen as differing biologically from men, but their different social roles also become an issue. In the strict non-discrimination view of equality, only discrimination on the basis of the biological characteristic of sex is dealt with.³¹

The Constitution of the United States of America (US) is the basis of anti-discrimination legislation within the US. The Fourteenth Amendment of the US Constitution has the Due Process Clause as the “source of protection for individual rights, without regard to group trait or identification”, whereas the Equal Protection Clause of the Fourteenth Amendment is the “source of protection against discrimination on account of group trait or class.”³² Merelyn Devine outlines that discrimination in education and “discriminatory treatment by public authorities, including public school personnel”, is deemed to violate equal protection but in order to prove the discriminatory treatment the claimant must show that the alleged discrimination arose from an intent to discriminate.³³

The case of *Haines v Leves*³⁴ is a leading authority on discrimination issues arising in the context of the provision of differential curricula in single sex schools. In this Australian appellate court decision, which has particular weight in the interpretation of sex discrimination in education provisions, Street JP ruled that merely identifying the differences was insufficient grounds, but that the difference must have an “identifiable detrimental consequence to the complainant.” It was found that indeed a detrimental consequence resulted and the complainant won the case.³⁵

However discrimination can be qualified as indirect discrimination. This type of discrimination can occur in a number of avenues in education, which must be differentiated from direct discrimination. In *I v O'Rourke and Corinda State High School and Minister for Education for Queensland*,³⁶ the student “I” was indirectly discriminated against when the decision was made by the school to exclude “I” from participating in a school excursion. She had suffered multiple disabilities since birth and was diagnosed with spastic quadriplegia and severe

³⁰ J Rawls *A Theory of Justice*, Oxford in Vrancken (n 29 above) sec 1.1.3.

³¹ Vrancken (n 29 above) sec 1.1.3.

³² Devine (n 17 above).

³³ Same as above.

³⁴ (1987) 8 NSWLR 46722.

³⁵ Devine (n 17 above).

³⁶ [2001] QADT 1.

intellectual disability. She used a motorised wheelchair and required assistance for all personal care and daily tasks and transfers to and from the wheelchair. Though the school later compensated for this discrimination by organising another excursion for her, she claimed that this was inadequate with respect to the satisfaction she would have derived from being in a group, on the other excursion with her mates and this amounted to Indirect discrimination. In a situation where the accused cannot justify indirect discrimination, this amounts to direct discrimination.³⁷

This therefore proves how equality can be a difficult and deeply controversial social ideal.³⁸ In actual fact it is not the basic and abstract idea of equality that is so difficult and controversial. Instead, it is two issues ancillary to the idea of similar treatment for similar people that prove so taxing.³⁹ The first is the issue of what counts as relevant when it comes to determining the similarity of peoples' situations and the second is what constitutes similar treatment of people who are similarly situated.⁴⁰

Our society is not only male supremacist; it is also racist, class biased and oppressively heterosexist.⁴¹ The concept of "colour-blindness" projected by American jurisprudence is of primordial import insofar as equality is concerned. The concept of colour-blindness was initially introduced to defend blacks and other minorities in the US. This concept is used when interpreting the right to equality and it provides that a person's colour should not be the basis for allocating benefits or putting restrictions on that person. Justice Harlan first articulated this concept in *Plessy v Ferguson*⁴² in 1896. In *Plessy*, the majority of the Supreme Court decided that the "separate but equal" principle is not unconstitutional. In his dissenting judgement, Harlan J held that, this principle is unconstitutional because "our country is colour-blind." Over fifty years later, in the famous case of *Brown v Board of Education*,⁴³ the US Supreme Court decision of 1954 relied on the minority interpretation of Harlan J, to hold that the "separate but equal" principle violated the constitution as it discriminates on the basis of colour.

In the *Traeger Park Primary School* case⁴⁴ 30 complaints of racial discrimination arose during the closure of a school offering alternative curricula for Aboriginal pupils. In assessing whether the complaints had been substantiated, the Human Rights and Equal Opportunities Commission in Australia advised of the desirability of educational authorities dealing

³⁷ See *I v O'Rourke and Corinda State High School and Minister for Education for Queensland* in Devine (n 17 above). Also, see the issue of indirect and direct discrimination in *Pembroke School Incorporated v Human Rights and Equal Opportunity Commission* [2002] FCA 1020.

³⁸ J De Waal, I Currie & G Erasmus *Bill of Rights Handbook* (2001) 198.

³⁹ The substance of equality is discussed in detail in Mugwanya (n 15 above) 757.

⁴⁰ De Waal, Currie & Erasmus (n 38 above) 198.

⁴¹ A Diller [et al JJ] *Freeing the Children: The Abolition of Gender' The Gender Question in Education: Theory, Pedagogy and Politics* Boulder (1996) 43.

⁴² (1896) 163 U.S 537.

⁴³ (1954) 346 U.S 483.

⁴⁴ *Aboriginal Students' Support and Parents' Awareness Committee, Traeger Park Primary School v Minister for Education, Northern Territory* (1992) EOC 92-415.

sensitively with the alternative educational curricula, particularly where the evidence clearly revealed that disadvantaged groups protected by anti-discrimination legislation did experience considerable difficulty in gaining effective access to education. Further to this, the Human Rights and Equal Opportunities Commission found that the question of discrimination in access to education under the Racial Discrimination Act was restricted by the terms of the Act. It held that the fact that certain Aboriginal children may not respond as well as others to changing schools does not provide a sound basis for a finding of unlawfulness.⁴⁵

This concept of colour blindness though may be pivoted on cases of racism and minority groups has a bearing on equality, a lacunae which is visible and prominent in the right to education, when it comes to girl children in Africa and the world at large. The transposition of the equality discourse and racism therefore, fits in well when girl child education is concerned.⁴⁶ Our next section will then look at the discrimination factor present in girl child education.

2.3.2 Discrimination and girl child education

A distinction must be drawn between formal and substantive equality before a detail analysis of the equality clause in girl child education is sorted out. Formal equality means sameness of treatment.⁴⁷ The law must treat individuals in the same manner regardless of their circumstances. Formal equality rests comfortably upon the liberal principles of market freedom, formal justice and individualism.⁴⁸ Though this approach may be appropriate when affording protection for girl child education, substantive equality is more conducive for it takes these circumstances into account and requires the law to ensure equality of outcome.⁴⁹ This argument therefore accounts for the necessity for affirmative action, which must therefore be seen as essential and integral to the goal of equality and not as limitations of or exceptions to the right to equality.

Endowing the institutions and processes of education with the capacity to achieve desired rather than unwanted outcomes necessitates reviewing education in its entirety by human rights criteria. This has not been done at the international and domestic level. Discrimination

⁴⁵ Devine (n 17 above).

⁴⁶ See A Phonix ' Racialization and gendering in the (re) production of educational inequalities' in B Francis & C Skelton (ed) *Investigating Gender: Contemporary Perspectives in education* (2001) 126 - 138.

⁴⁷ De Waal, Currie & Erasmus (n 38 above) 200.

⁴⁸ H Fenwick ' From Formal to Substantive Equality: the Place for Affirmative Action in European Union Sex Equality law' (1998) 4*European public Law*, 507.

⁴⁹ Formal equality is achieved if all children are educated according to the same school curriculum. Substantive equality on the other hand would require equality of outcome. If children deaf children for example undergo the same school program as other children they may very well end up receiving an education that is inadequate for their special needs .To realise the right to equality of such children it may therefore be necessary to treat them differently to everyone else in T Loenen ' The Equality Clause in the South African Constitution: Some Remarks from a Comparative Perspective' (1997) 13 *SAJHR*410, 405.

thus remains unrecorded in international education statistics, which creates a viscous circle: discrimination is invisible and one can pretend that it does not exist because it is officially unrecorded.⁵⁰ All the same Alison Kelly confirms in her studies on discrimination that girls receive less attention than boys do.⁵¹

In France, courts have been busy with adjudicating a series of cases revolving around headscarves. They have alternatively quashed and upheld the expulsion of girls from educational institutions due to headscarves, demonstrating how complex the balance between secularism and religion is to reach in practice. The Conseil d'Etat, French functional equivalent of a constitutional court, has thus drawn the line between tolerating the display of religious symbols and provocation or proselytising⁵²:

In educational institutions displaying symbols whereby learners manifest that they pertain to a particular religion is not by itself incompatible with secularism as long as it is confined to exercising and manifesting their religious beliefs; such freedom does not, however, permit the learners to display religious symbols which due to their very nature, or to the particular circumstances in which they are displayed, individually or collectively, or to their ostentatious or demonstrative character, constitute an exercise of pressure, provocation, proselytising or propaganda.⁵³

In Albania women are more successful than men. According to statistical data on education, every academic year female pupils and students numbered more than men. Boys and girls enrolled in primary and secondary schools are almost equally represented. More girls than boys complete the education cycle and girls comprised 60% to 65% of students who completed general secondary from 1990 to 1997. The discrimination issue, which presents itself, is that certain fields are considered reserved for men and not for women. For instance in Albania, the number of females in technical education has fallen. In agricultural, construction and mechanical schools, girls' attendance varies from 10% to 25%, because of concepts related to the nature of such kind of work.⁵⁴ Albania also has 13 Islamic schools that

⁵⁰ Tomaševski (n 22 above) 26.

⁵¹ Alison Kelly is mentioned in J Darling & A Glendinning, *Gender Matters in Schools: Pupils and Teachers* (1996) 76.

⁵² See Tomaševski (n 22 above) 38.

⁵³ The Conseil d'Etat has said; 'dans les établissements scolaires, le port par les élèves des signes par lesquels ils antendent manifester leur appartenance à une région n'est pas par lui-même incompatible avec le principe de laïcité, dans la mesure où il constitue l'exercice de la liberté d'expression et de croyances religieuses, mais cette liberté ne saurait permettre aux élèves d'arborer des digne d'appartenance religieuse qui par leur nature, pas les conditions dans lesquelles ils seraient portés individuellement ou collectivement, ou par leur caractère ostentatoire ou revendicatif, constitueraient un acte de pression, de provocation, de prosélytisme ou de propagande...' Case Kherouaa, Kachour, Balo & Kizic, decision of 2 November 1992. In Tomaševski, K (n 22 above) 38.

⁵⁴ Women's Center. "Annual Report". Tirana 1998.5 quoted in E Balla 'Women's Rights in Albania during the post -communist transition' (2000) Thesis in partial fulfilment for a Master's Degree in Democratisation and Human Rights in South East Europe, 25.

do not allow girls to enrol.⁵⁵ Other countries in the world with a poor record in girl child education are Yemen, Nepal, India, and Turkey amongst many others.⁵⁶

Girls face a lot of problems in their educational lives apart from the situations exposed above.⁵⁷ Some girls have to do domestic chores in the homes of their teachers if they cannot make cash payments for their educational needs.⁵⁸ The following section will expose in detail the issue of discrimination in girl child education and try to balance this reality on the African continent.

2.4 Seeking a favourable environment for girl child education in Africa

The way gender issues unfold in schools in Africa is complex as it is deeply embedded in personal, organisational, community and societal norms and values. It is often clouded by other issues of discrimination like race and poverty, or by a sense that what is happening is normal.⁵⁹

Challenging at the level of the school, without intervening at other levels of the society has little or no effect. The Gender Equity Task Team (GETT) of the Republic of South Africa, states:

“... [It] needs to be recognised that gender equity involves disrupting the status quo and developing alternative ways of being in families and in schools. Unless transformation programmes are situated within this broader context, they are unlikely to be effective. When the broader community acknowledges that gender inequity is a problem, and change strategies in schools supported by parents and social institutions, the prognosis for these strategies succeeding is strengthened.”⁶⁰

This argument goes to illustrate the fact that unless the African society and most especially parents agree that there is discrimination in girl child education, this position will remain cloudy in the African scenario. It will therefore be difficult to eradicate such an ill, which is eating into the core of the foundations of a continent with hope and a better tomorrow.

It is therefore evident that in Africa, girls still have a steep climb to reach full equality and full development of their potential.⁶¹ Certain NGOs identified this lacuna and proposed amendments to better the situation in women’s lives, especially girls, to the African Platform

⁵⁵ UNDP Albanian National Women Report 1999.Tirana p35 quoted by Balla (n 54 above) footnote 71.

⁵⁶ See ‘A New Global Partnership Meets an old Challenge’p4 <www.ifuw.org/circulars/ungei-brochure.pdf> (accessed 14 July 2003).

⁵⁷ 24 countries with the largest gender gap in secondary school ‘A New Global Partnership Meets an old Challenge’ (n 56 above) 4.

⁵⁸ C Carlsson ‘Invisible burdens’ *Guardian Weekly*, 8-14 June 2000 4.

⁵⁹ PK Kagwa *Gender Equity in schools: Challenging ideologies*<http://education.pwv.gov.za/Conf_Wshops_Events/Values/Philippa_Kabali_Kagwa.htm> (accessed 14 September 2003).

⁶⁰ A Wolpe, O Quinlan & L Martinez, ‘Gender Equity in Education’: A Report by the Gender Equity Task team (Pretoria, 1997) 77 in Kagwa (n 59 above).

⁶¹ African Countries with the greatest gap in discrimination in girl child education (n 56 above).

for Action during a conference in Dakar, Senegal.⁶² At this Conference, it was noted that the condition of African women had worsened and the gains made in the 1970s and 1980s had eroded, particularly in the fields of education, health, employment and economics. For example, the gross enrolment ratio at the primary level fell from 80.9 per cent in 1980 to 70.6 per cent in 1991. At secondary and tertiary levels, it fell from 41.2 to 38.3 per cent in the same period.

2.5 Conclusion

It is clear that the discrimination factor in education and most especially girl child education remains a disturbing factor in Africa. The ideals of equal opportunity, formal and substantive equality are concepts that still have to be well understood especially in Africa. In this respect there is need for Africa to work towards achieving visible and not illusory goals in girl child education.

⁶²

See relevant literature on human rights in Africa <<http://www.law.emory.edu/WAL?Literature/Documents/africa/NGO/06.htm>>(accessed 25 April 2003).

CHAPTER 3: INTERNATIONAL LEGAL PROTECTION OF THE RIGHT TO EDUCATION FOR THE GIRL CHILD

3.1 Introduction

Most African Countries have made international commitments with regard to the respect of rights, especially the right to education. It is therefore necessary to include the international legal protection of the right to education for the girl child within our debate about girl child education in Africa.

Equality of rights for women is a basic norm of the United Nations (UN) and regional human rights systems. From its inception, the UN has recognised freedom from discrimination as a human right. The right to be free from discrimination is explicitly stated as one of the seven references to human rights embodied in the UN Charter.⁶³ This chapter will first identify international instruments, which cover the right to girl child education then consequently work done by the UN and other organisations in the fight against discrimination in girl child education.

3.2 Girl child education addressed under international instruments

The UN provides a framework for many international instruments and legislation, which confirm the right of children to education. This right has been repeatedly affirmed, for example in the UDHR (1948), in the CRC (in 1989) and in the 1990s by the World Summit for Children, as well as by a number of UN Global Conferences. Many of these international instruments make specific reference to the girl child, and the particular needs to protect the rights of the girl child.

In the preamble to the UN Charter, the member states of the UN express their determination to reaffirm faith in fundamental human rights, in dignity and worth of the human person, in the equal rights of men and women and of nations large and small.⁶⁴ Under article 13, the General Assembly “shall initiate studies and make recommendations for the purpose of...promoting international cooperation in...economic, social, cultural, educational and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

⁶³ D Sheldon ‘Address given at the Fourth Annual International Law Symposium: Improving the status of Women Through International Law’ (1987) 9 *Whittier Law Review* 413.

⁶⁴ The Preamble to the UN Charter.

The UN Charter did not address the content of human rights especially girl child educational rights but left it for further elaboration. What finally emerged was the pace-setting International Bill of Rights⁶⁵ referring collectively to the UDHR,⁶⁶ the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the ICESCR of 1966.⁶⁷ In addition the UN continues to adopt standard setting instruments on various aspects of human rights especially for girl child education such as CEDAW.⁶⁸

The UDHR re-affirms the UN's faith in human rights, the dignity and worth of the human person, and inalienable rights of men and women.⁶⁹ Article 2 guarantees the right of every person not to be discriminated against on any basis, including that of sex (gender).⁷⁰ The same guarantee is reiterated both in the ICCPR⁷¹ and the ICESCR,⁷² a guarantee the Human Rights Committee of the UN has in a number of communications had occasion to construe to include women's entitlement to equality and freedom from discrimination.⁷³

Despite all these instruments condemning it, inequality of the sexes continues to form part of the legacy and ongoing practices of many who see nothing in them that is abhorrent or persecutory.⁷⁴ As a result, earlier instruments were deemed insufficient, necessitating the adoption of supplementary means for the guarantee and protection of women and girl's rights especially girl child education.⁷⁵

⁶⁵ See *The International Bill of Rights: the Covenant on Civil and Political Rights*, Preface (Henkin, L ed., 1981) discussing the development of the idea and term 'international bill of rights' in Mugwanya (n 15 above) 60.

⁶⁶ Universal Declaration of Human Rights, adopted 10 Dec. 1948, GA Res.217A (III), UN GAOR, 3d Sess., Supp.No. 16, at 71, UN Doc. A/810(1948) [herein after UDHR].

⁶⁷ Also see for example, Article 5(e) of the Convention on the Elimination of All Forms of Racial Discrimination, Articles 11 to 14 of CEDAW, Articles 24 to 27 and 32 of the CRC and Articles 15, 17 to 19, 21 and 24 of the Refugee Convention. In addition many ILO conventions deal with the protection of economic and social rights especially the right to education.

⁶⁸ CEDAW 'The UN Division for the Advancement of Women' <<http://www.un.org/womenwatch/daw/cedaw/>>(accessed 20 July 2003).

⁶⁹ The Preambles to both the ICCPR and ICESCR reiterate the UN principles of the inherent dignity and the equal and inalienable rights of all members of the human family. In a number of articles, both conventions embody the right to gender equality and freedom from discrimination. See articles 3,4,23 and 26 of the ICCPR and articles 2(2) and 7 of the ICESCR.

⁷⁰ UDHR at Art 2.

⁷¹ ICCPR at Art.2, para.1.

⁷² ICESCR at Art.2, para. 2.

⁷³ *S.W.M Broeks v. The Netherlands*, UN GAOR Hum. Rts. Comm., 42ed Sess., Supp.No.40, UN Doc. A/42/40(1987); *The Netherlands*, Communication No (182/1984), 42 UN Doc. GAOR Supp. (No.40) at 160, UN Doc. A/42/40(1987).

⁷⁴ This state of affairs was recognised by the Commission on the Status of Women (whose work initiated in 1972 culminated in the CEDAW). See 54 UN ESCOR Supp. (No. 5) at para. 16; UN Doc.E/CN.6/573(1973). [Herein Commission on the Status of Women Doc.1973]. See R Cook 'Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women', (1990) 30 *VA.J.Int'l.L.* 643, 663-5.

⁷⁵ The UN has noted, "Additional means of protecting the human rights of women were seen as necessary because the mere fact of their "humanity" has not been sufficient to guarantee women the protection of their rights." UN, *Discrimination Against Women*.

3.3 The actual and potential work carried out by international actors in the realisation of girl child education

3.3.1 The United Nations

The United Nations Commission on Human Rights (UNCHR)⁷⁶ was prompted to appoint a Special Rapporteur on the rights to education in August 1998. Amongst duties bestowed on the Special Rapporteur was the need to focus on gender, in particular the situation and needs of the girl child and to promote the elimination of all forms of discrimination in education.⁷⁷

In April 1990, the World Conference on Education for All (EFA) in Jomtien identified improving access to quality education for girls and women as “the most urgent priority.” At the Dakar World Education Forum, in April 2000, participants from 164 countries re-affirmed this commitment, ensuring that by 2015 all children, with special emphasis on girls have access to and complete a primary education of good quality.⁷⁸ EFA broadcast a message to the world that the centuries of attitudes and practices keeping girls and women from their full development would no longer be tolerated. Apart from identifying education for girls and women as very important, country guidelines on the preparation of national EFA plans of action were also set in place.⁷⁹ These guidelines were intended to provide an orientation to countries about how to create their own guidelines and how to set their own countries towards their own goals, taking into consideration that they should not provide a perfect recipe that should be applied mechanically in every country, with a guarantee of total success. Thus despite the language of recommendations and advice, the message of these guidelines is quite clear: each country has the responsibility for fulfilling the version of EFA it chooses for itself. The guidelines also require that each country’s guidelines should reflect this sense of responsibility and become one means through which national ownership and direction of EFA efforts are pursued.⁸⁰ UNESCO reports that this step has provided an opportunity in a number of countries to develop productive intra-governmental working relationships that bridges ministerial and departmental boundaries and forges links with partners outside government such as NGOs. UNESCO adds that the EFA-focused coordination between government and civil society has furnished extremely useful experience of how country-based partnerships can be mobilised around EFA. This

⁷⁶ Herein referred to as the Commission on Human Rights

⁷⁷ Tomaševski (n 22 above) 6.

⁷⁸ ‘A New Global Partnership Meets an old Challenge’ (n 56 above) 2.

⁷⁹ See country guidelines on the preparation of national EFA plans of action <http://www.unesco.org/education/efa/country_info/country_guidelines.shtml> (accessed 14 October 2003).

⁸⁰ Same as above.

experience is in fact, invaluable and the lessons it can offer both positively and negatively, should provide the starting-point for follow up at the country level.⁸¹

At the Dakar World Education Forum in 2000, the UN Secretary General, Kofi Annan, launched the UN Girls' Education Initiative (UNGEI). He stated:

“The world needs a coordinated strategy on the scale of the challenge. We need all those with the power to change things to come together in an alliance for girls' education: education, voluntary progressive groups and above all, local communities, schools and families.”⁸²

In a huge and unprecedented step 13 UN entities, led by UNICEF, agreed to work together on this 10-year initiative to help governments meet their commitments to ensure a quality education for all girls everywhere.⁸³ In appropriate response Executive Director, Ms Carol Bellamy of UNICEF launched the Strategy for Acceleration of Girls Education in Nigeria (SAGEN) during her fourth visit to Nigeria. The project, a collaboration between the Federal Government of Nigeria and UNICEF is a critical plan of action to ensure that as many girls as boys are in school by 2005.⁸⁴ Since this project was launched on July 24, 2003 it is important to remain optimistic about it succeeding. The government of Nigeria will have to effectively cooperate with UNICEF to ensure that set objectives of this project are realised by 2005.

3.3.2 International Non-Governmental Organisations

Several organisations deal with girl child related issues especially education. In the many regions around the world especially, Bahr El Ghazal Region in Sudan, Save the Children Fund (SCF) UK is doing a great job in enhancing girl child education.⁸⁵ SCF carries out these educational programs for girls by providing financial aid in the form of grants and assisting in building schools.⁸⁶ Another influential NGO, CARE International, launched its Education Program in 1994 with pilot projects in Peru, Guatemala, India and Togo, and in two years expanded to 15 projects in 10 countries, benefiting 50,000 people. This Program was aimed

⁸¹ Same as above.

⁸² See n 56 above2.

⁸³ See information on the Meeting on Partnering the UN Girls' Education Initiative to Intensify Progress towards Gender Equality in Education, 21-23 January 2002 <http://www.hri.ca/children/education/girl_22jan_02.htm> (accessed 25 August 2003).

⁸⁴ Nigeria: Challenges of the Girl-Child < <http://allafrica.com/stories/200308190595.html>> (accessed 23 July 2003). Also see 8 countries in Africa where this initiative was launched <http://www.afrol.com/Categories/Women/index_news.htm> (accessed 1 October 2003).

⁸⁵ Work done by International organisations in girl child education <<http://home.africaonline.co.ke/fawe/Contents/newslet73c.html>> (accessed 24 July 2003).

⁸⁶ Save the Children initiated a pilot education program with 20 locally constructed schools in Nakasongola District, about 150 kilometers north of Kampala, called Child-centered Alternatives for Non-formal, Community-based Education (CHANCE), the Village School program was envisioned as a high-quality, inexpensive, and sustainable basic education program with significant community participation and gender parity< <http://www.savethechildren.org/countries/africa/uganda.asp>> (accessed 15 October 2003).

at improving education for all children, with an emphasis on keeping girls in school. So far, groups have been created so that parents and teachers can discuss traditional educational barriers, such as housework or baby-sitting, that keep girls from attending school. CARE also provides economic incentives to help parents cover the cost of keeping their daughters in school.⁸⁷

International Aid Sweden (IAS) is supporting education in Maridi. IAS also has education programmes in Yei and Kajokeji, while Norwegian Church Aid (NCA) supports education for girls in Torit and Kapoeta in Eastern Equatoria. NCA assists the Diocese of Torit's St. Bhakita Primary School for girls, which is at Narus, near the border with Kenya. These NGOs provide both financial and material assistance to ensure that, as many girls as possible get educated in these areas.⁸⁸

World Vision is also an international Christian relief and development organisation working to promote the well being of all people - especially children. In 2002, World Vision offered material, emotional, social and spiritual support to 85 million people in 96 countries.⁸⁹ On December 11, 2002, World Vision Foundation of Thailand's youth representatives submitted petitions to the Thai Royal Government on "Stop Abuse and Exploitation of the Girl Child. Mr. Anurak Chureemas, Minister of Social Development and Human Security, received the petitions in a ceremony at the Ministry of Social Development and Human Security.⁹⁰ These are some of the ways World Vision seeks to help the girl child world wide especially in the domain of education.

3.4 Conclusion

It is necessary not only to have these international instruments in place but also to strive to realise certain set objects. There is a lack of effective coordination between international, national and local actors. As can be deduced from the above sections, NGOs especially Christian organisations seem to be more involved in helping the girl children benefit from education. At a seminar that was held from May 21 to 22 May 2001, H.E Mr. Harri Holkeri reiterated the fact that international instruments exist which protect girl child education. He further on went to admit that what was lacking was full implementation of these instruments.⁹¹ There is therefore need for the international community to respect the human rights values

⁸⁷ Educational programmes by CARE International < <http://www.pitt.edu/~ehawg/NGOlist.html>> (accessed 25 July 2003).

⁸⁸ n 85 above.

⁸⁹ World Vision and girl child education see<<http://www.wvi.org/home.shtml>> (accessed 14 April 2003).

⁹⁰ For work done by World Vision to help girls in Thailand see<http://www.worldvision.or.th/newsletter/Activities_news_ythSubmit.htm>(accessed 15 October 2003).

⁹¹ Statement at the 55th session of the UN General Assembly <<http://www.un.org/ga/president/55/speech/girls.htm>> (accessed 22 July 2003).

enshrined in international instruments such as CEDAW and also the need for cooperation with NGOS in the promotion of girl child education.

CHAPTER 4: REGIONAL LEGAL PROTECTION OF GIRL CHILD EDUCATION

4.1 Introduction

The concerns of girl child education remain a big issue on the African continent. This chapter thus seeks to analyse work done in the domain of girl child education by regional actors especially on the African continent. Included here is work done by actors involved with the African Human Rights system, most especially the African Commission and the Special Rapporteur on the Rights of Women in Africa. The situation in Africa will be compared to the positions in the Inter-American and European systems, for reasons of experience in legislation, jurisprudence and institutions these two systems offer.

4.2 The African Charter on Human and Peoples' Rights (ACHPR) and other regional instruments related to girl child education in Africa

The African Charter⁹² is the regional mechanism for the promotion and protection of human rights on the African continent and is in many ways unique.⁹³ Yet there is very little scholarship available analysing the Charter as an operational system in practice, especially in the domain of girl child education.

Like the ICCPR, the African Charter consequently represents an advance on the European Convention on Human and Peoples' Rights (ECHR), which only prohibits discrimination in the enjoyment of the rights and freedoms, set out in the Convention.⁹⁴ However, because reference to the rights of children in the African Charter is brief,⁹⁵ there is need for additional measures of protection especially measures having an African perspective.⁹⁶ The African Children's Charter (ACRWC)⁹⁷ is therefore a panacea, which could be said to complement the CRC and the African Charter.⁹⁸ For instance, the African Children's Charter upholds the best interest of the child as *the* primary consideration.⁹⁹ This is an improvement on Article 3(1) of

⁹² Herein referred to as the African Charter.

⁹³ Therein also lies special protection to rights such as Article 2(the right against discrimination), and article 3(the right to equality). Article 18(3) also provides that the state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

⁹⁴ Article 3 of the ACHPR provides a general equality requirement. Also see C Heyns 'Civil and political rights in the African Charter' in M Evans & R Murray(ed) *The African Charter on Human and Peoples' Rights The System in Practice, 1986-2000*147.

⁹⁵ Article 18(3).

⁹⁶ B Thompson 'Africa's Charter on Children's Rights: Normative Break with Cultural Traditionalism' (1992) *41International Comparative Law* 432.

⁹⁷ The African Children's Charter was adopted by the 26th ordinary session of the Assembly of Heads of State and Government of the Organisation of African Unity (OAU Assembly) on 11 July 1990 in Addis Ababa, Ethiopia. CAB/LEG/153/Rev 2, reprinted in Heyns (eds) *Human rights law in Africa* 1997 38.

⁹⁸ A Lloyd 'A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child' (2002) *2 AHRLJ*11.

⁹⁹ Article 4 of the African Charter on the Rights and Welfare of the Child.

the CRC where the interest of the child is simply a primary consideration and not *the* primary consideration.¹⁰⁰ There is therefore need for the African Charter to operate with the African Children's Charter whenever issues pertaining to their rights arise.

The draft protocol to the African Charter on Human and Peoples' Rights concerning the Rights of Women in Africa (draft Women's Protocol),¹⁰¹ is clear in article 12 as follows:

- (12) State parties shall take all appropriate measures to:
 - (i) eliminate all forms of discrimination against women and girls in the sphere of education and training;
 - (ii) eliminate all references in textbooks and syllabuses[sic!] to the stereotypes, which perpetuate such discrimination;
 - (iii) increase literacy among women;
 - (iv) promote education and training for women and girls at all levels and in all disciplines; promote the retention of girls in schools and other training institutions.

The draft Women's Protocol also provides for the education and training of the girl child in Article 11¹⁰² and is therefore also an important complement to the African Charter for it protects economic and social welfare rights in Africa.¹⁰³

The African Children's Charter also makes provision for an implementation mechanism, the African Committee of Experts on the Rights and Welfare of the Child, which while it must meet once a year, can be convened whenever necessary.¹⁰⁴ A prominent writer on the African Human Rights System, Gino J. Naldi contends that the African Children's Charter must be viewed as a positive development on the whole. He further contends that the African Children's Charter has just entered into force and it is too early to say what its impact will be.¹⁰⁵ This is a position we should all be optimistic about, especially the work to be done by the African Committee of Experts on the Rights and Welfare of the Child on girl child education in Africa.

¹⁰⁰ GJ Naldi 'Future Trends in Human Rights in Africa: The increased Role of the OAU? In Evans & Murray, (n 94 above) 15.

¹⁰¹ Referred to as the draft Women's Protocol in MS Nsibirwa 'A brief analysis of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (2001) 1 *AHRLJ*48.

¹⁰² Article 11 of the draft Women's Protocol.

¹⁰³ Article 13 of the draft Women's Protocol.

¹⁰⁴ Same as above.

¹⁰⁵ Evans & Murray (n 94 above) 17.

4.2.1 The African Commission and the Special Rapporteur on the Rights of Women in Africa

The African Commission ruled on the importance of education on quite a few occasions. In 1996, a two year long closure of universities and secondary schools in the Democratic Republic of Congo (Zaire as it was at the time) was found by the African Commission to constitute a violation of Article 17 of the African Charter, which guarantees the right to education.¹⁰⁶ This has been one of the steps taken by the African Commission to guarantee the right to education, especially for children.

Due to the deplorable conditions of human rights violations on the African continent especially the rights of women, the African Commission decided to appoint three Special Rapporteurs, amongst whom was a Special Rapporteur on the Rights of Women.¹⁰⁷ The Special Rapporteur on the Rights of Women in Africa was expected to submit an interim report to the 24th Session of the African Commission as to the protection of economic and social welfare rights. At that session it was noted that she had indeed presented a preliminary report pertaining to her mandate, as well as reporting on activities so far undertaken. With the appointment of a new Special Rapporteur in 2001, time has been spent instead on visits in Africa. The truth is that, though materials have been collected on abuses on women rights focus has been concentrated more on the development of the draft Women's Protocol.¹⁰⁸ The Special Rapporteur still therefore has to revisit the ambit of her mandate and make girl child education *the* issue and not *an* issue.

Though the African Charter offers little protection to girl child education on the continent at the moment, the draft Women's Protocol and the African Children's Charter both could be used to complement the protection guaranteed in this instrument. Operating in isolation could pose several conflicting problems. Moreover it is important to remain optimistic about the envisaged African Court on Human and Peoples' Rights (the African Court), which could in future handle these issues with care and precision. Such a Court should in no way hamper the promotional and protective mandate of the African Commission. It is also important to look at the work done in girl child education by non-governmental organisations on the continent.

¹⁰⁶ Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Inter-africaine des Droits de L'Homme, Les Témoins de Jehovah v Zaire, Communications 25/89, 47/90, 56/91 and 100/93(joined) Decision of the Commission adopted at its 18th ordinary session at Paris (Cape Verde), Ninth Annual Activity Report of the African Commission on Human and Peoples' Rights 1995/1996, assembly of Heads of State and Government, thirty-second Ordinary Session, 7-10 July 1996, Yaounde, Cameroon.

¹⁰⁷ Evans & Murray (n 94 above) 280.

¹⁰⁸ Evans & Murray (n 94 above) 298.

4.2.2 Non-Governmental Organisations (NGOs) and girl child education

NGOs have also been very instrumental to the promotional and protective mandate of the African Commission. Even prior to the establishment of the Commission, NGOs played a role in the drafting of the African Charter, its adoption by the Organisation of African Unity (OAU), and its ratification by African states.¹⁰⁹

NGOs have used the occasion of the African Human Rights Day,¹¹⁰ and the day of the African child¹¹¹ to promote human rights generally.¹¹² It is unfortunate that a large number of complaints filed by NGOs have been considered inadmissible by the Commission on the basis that they failed to fulfil the requirements of Article 56 of the Charter. In most instances, the inadmissibility is based on the failure of the author of the complaint to exhaust local domestic remedies or to articulate why local remedies could not be exhausted or because they would be unduly prolonged.¹¹³ This concern was brought to the light during a conference held in Arusha, Tanzania, from January 18 to January 22, 1999. During this conference, which was also attended by delegates from international organisations and NGOs, the Arusha Resolutions were adopted. With the adoption of the Arusha Resolutions, a main concern of the delegation present was to ask the Commission to reconsider the requirement that indigenous peoples exhaust their local remedies before lodging a complaint with the Commission as the lengthy delays and postponements in judicial proceedings affecting them effectively denies justice.¹¹⁴

A number of NGOs such as Med-Air, ACROSS, Raddar Bamed and ADRA are involved in education in the African region, especially in the Upper Nile Region in Sudan. Sudan Education Association (SEDA), and a local Sudanese NGO, Sudan Production Aid (SUPRAID), are amongst the many organisations that are involved in supporting education for the girl child in Africa.¹¹⁵

4.3 Comparative regional system study in girl child education

It is clear from the above sections that the African Charter does not clearly protect girl child education on the continent. Moreover the African Commission has to still strengthen this

¹⁰⁹ A Motala 'Non-Governmental Organisations in the African System' in Evans & Murray (n 94 above) 246.

¹¹⁰ African Human Rights Day is celebrated on the 27 October every year.

¹¹¹ The day of the African Child is celebrated on the 16 of June every year.

¹¹² Motala (n 94 above) 246.

¹¹³ See Communication, 72/92 *Bamidele Aturu v Nigeria* in *Compilation of Decisions on Communications of the African Commission on Human and Peoples' Rights* 193.

¹¹⁴ See 'The Arusha Resolutions' <<http://www.iwgia.org/sw579.asp>>(accessed 2 September 2003).

¹¹⁵ For work done by International organisations in girl child education <<http://home.africaonline.co.ke/fawe/Contents/newslet73c.html>> (accessed 24 July 2003).

position jurisprudentially. At this point in time it is necessary to consider protection against discrimination especially related to girl child education, by other regional institutions such as the Inter-American and the European systems. As mentioned in the introduction of this chapter, these systems afford experience in terms of jurisprudence, instruments and implementation mechanisms.

The institutions established to enforce the American and European Conventions have mainly endeavoured to construe and make available the equality and non-discrimination provisions of their instruments. The approaches favoured by these institutions irrefutably reveal that women's rights are human rights to which effect must be given by all states that are parties to the Conventions in the same manner as other human rights.

4.3.1 The Inter-American system

The Inter-American system for the protection of human rights has two distinct legal systems. One is the Charter of the Organisation of American States (the OAS Charter), and the other source is the American Convention on Human Rights (the American Convention). The institutions of this system have a different history and different powers depending on whether they were established pursuant to the Charter or the Convention.¹¹⁶ It is useful to treat them separately especially with respect to jurisprudence which can be related to discrimination in girl child education.

In 1960, based on some very general references to human rights in the 1948 OAS Charter, the OAS established the Inter-American Commission on Human Rights. The Commission, created as an 'autonomous entity' of the OAS under a Statute adopted by the OAS Council, was charged with the task of promoting the human rights proclaimed in the American Declaration of the Rights and Duties of Man that has been adopted in 1948 in the form of a non-binding OAS conference resolution. When the OAS Charter was amended in 1970, the Commission became an OAS Charter organ.¹¹⁷ The amendment strengthened the constitutional authority and legal powers of the Commission and, by necessary implication, the normative status of the American Declaration.¹¹⁸

When the Commission acts pursuant to its OAS Charter mandate, it may investigate human rights conditions in any OAS member state without having to await formal inter-state or individual complaints.¹¹⁹ This power has proved to be of great value for the protection of

¹¹⁶ T Buergenthal, 'The Inter-American System for the Protection of Human Rights' in T Meron (ed) *Human Rights in International Law: Legal and Policy issues* (1984) 439.

¹¹⁷ See OAS Charter as amended, art. 51(e)[now art 52(e)].

¹¹⁸ OAS as amended, arts 112[now art.111] and 150. Also see Buergenthal, 'The Revised OAS Charter and the Protection of Human Rights' (1975) 69 *American Journal of International Law* 828.

¹¹⁹ Statute of the Inter-American Commission on Human Rights, arts 18 and 20.

human rights, especially issues revolving around discrimination in education and gender in the Inter- American system, this permitting speedy intervention that would not be possible under the formal system established by the American Convention.

As the other distinct source of the Inter-American system, the American Convention was modelled on the European Convention and resembles the latter in its institutional structure. The American Convention,¹²⁰ anchors the Inter-American human rights system, embodies non-discrimination and equality protection provisions among 22 specified basic civil and political rights.¹²¹ Unlike its European counterpart, the American Convention contains a federal-state clause, which enables some federal states to assume more limited territorial obligations than those incumbent on unitary states.¹²²

The American Convention establishes an Inter-American Commission on Human Rights and an Inter-American Court of Human Rights (the inter-American Court).¹²³ This same Commission acts both as the OAS Charter organ referred to in above discussions of this contribution.

The principal function of the Commission under the Convention is to deal with communications charging violations of the rights the treaty guarantees.¹²⁴ On the other hand the Inter-American Court has contentious and advisory jurisdiction.¹²⁵ Under its contentious jurisdiction, the court has the power to decide cases involving charges that a state party has violated the rights in the Convention, especially discrimination in education. This jurisdiction is optional and must be accepted by the states parties before cases may be filed by or against them. Only the Commission and the states may bring cases to the Court; individuals lacking standing to do so.¹²⁶

In the first few years of the Inter American Court, which was established in 1979, its judicial practice consisted almost entirely of advisory opinions.¹²⁷ Today the Inter-American Court has developed an equality jurisprudence, which leaves no doubt about the equality of men and women.¹²⁸

¹²⁰ AMCHR (Nov.22, 1969), OAS. Off. Rec. OEA/Ser.K/XVI/1, Corr.2 of 7 Jan.1970, reprinted in 9ILM.673

¹²¹ See Arts. 1(1), 17(4) and 24.

¹²² Art. 28 of the American Convention.

¹²³ Art 36 and 53 of the American Convention.

¹²⁴ Arts 41(f), 44-51 of the American Convention

¹²⁵ Arts 62 and 64 of the American Convention.

¹²⁶ Art 61 of the American Convention.

¹²⁷ Buergethal 'The Advisory Practice of the Inter-American Court of Human Rights' (1985) 79*American Journal of International Law*1.

¹²⁸ See Proposed Amendments to the Naturalisation Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, 19 Jan.1984, Inter-Am. Ct. H.R. (ser. A, no 4), where the Court found *inter alia*, that granting naturalisation rights to wives but not to husbands of Costa Ricans constituted sex discrimination in violation of human rights principle of sex equality.

There is also a Special Rapporteur on women's rights in the Inter-American Commission on Human Rights (IACHR). Recognition of the fact that women can be victimised by discrimination of their race as well as sex, or because they are indigenous as well as female has become a noticeable feature in the Inter-American system. The Special Rapporteur on women's rights of the IACHR identified a range of countries in which reform of curricula and textbooks was undertaken to eliminate gender discrimination.¹²⁹

The Inter-American system also has an Inter-American Commission of Women (Commission of Women). This Commission has worked considerably in the protection of women's rights in the Inter-American system.¹³⁰ However, the Commission of Women has noticed that Bolivia is a country in South America with serious problems of female illiteracy. School attendance rates show a 10% bias in favour of male literacy. Although there is evidence that female illiteracy rates are declining, the country still has a female illiteracy rate of 25% in Urban and 37% in rural areas.¹³¹ The government of Bolivia acknowledges that the implementation and development of these strategies and measures will require constant reviews and evaluation.¹³²

4.3.2 The European System

The European Commission on Human and Peoples' Rights (the European Commission) and the European Court on Human and Peoples' Rights (the European Court) anchor the European Human Rights System. These two institutions have as a guiding instrument, the European Convention on Human and Peoples' Rights (the European Convention).

Article 2 of Protocol No.1 of the European Convention provides for the right to education and the free choice of education. Article 13 stipulates that everyone whose rights and freedoms mentioned in the European Convention are violated shall have an effective remedy before national authorities, notwithstanding the fact that persons acting in an official capacity have committed the violation. Article 14 prohibits discrimination. These are all provisions within the European Convention, which afford some degree of protection to girl child education. The European Commission and the European Court are charged with supervising compliance with the obligations by the Contracting States.¹³³

Though many cases concerning education and discrimination by the European Court have been decided, statistics of decisions by the Court from 1999 to 2002 show that no case has

¹²⁹ See Organisation of American States-*Annual Report of the Inter-American Commission on Human Rights*, Doc OEA/Ser.L/VII.98, Washington, D.C., 1998, 1017-1018.

¹³⁰ T Buergenthal & D Shelton (4th rev. ed) *Protecting Human Rights in the Americas: Cases & Materials* (1995) 328.

¹³¹ Buergenthal & Shelton (n 130 above) 334.

¹³² Buergenthal & Shelton (n 130 above) 333.

¹³³ P van Dijk & GHJ van Hoof (ed) *Theory and practice of the European Convention on Human Rights* (1999) 82.

featured the discrimination factor in girl child education.¹³⁴ However a close case concerning discrimination and education is *Ingrid Jordebo Foundation of Christian Schools and Ingrid v. Sweden*.¹³⁵ In this case, the European Commission affirmed the right to establish private schools, subject to their regulation and supervision by the government to ensure that education, especially its quality, conforms to the prescribed standards. Another case where the discrimination factor in education, was quashed is *Karadunaman v. Turkey*.¹³⁶ In this case the European Commission held that a young woman's choice of particular educational institution entails the acceptance of the rules adopted by that University. Consequently, the European Commission determined that the prohibition of wearing a headscarf did not constitute a human right violation.¹³⁷

In the Organisation for Security and Co-operation in Europe (OSCE), the European Union (the EU) has stressed the importance of education as a basis for democratic society.¹³⁸ The EU has emphasised the importance of equal opportunities for all citizens. According to the Treaty of Amsterdam,¹³⁹ gender equality is an objective of the European Community under Articles 2 and 3. The EU has actively raised the rights of the girl child as well as the position of women in particularly difficult circumstances. Being aware of the fact that girls are often not brought up to assume important roles in society, the EU supports special programmes directed at girls and young women.

The entry into force of the Amsterdam Treaty reinforces the EU's commitment to the principle of non-discrimination. The new Article 13 lays a basis for enhanced action to counteract discrimination based on gender, ethnic origin, religion, disability, age or sexual orientation. The EU found out that girls often still did not have equal access to education and health care. The EU is fully committed to eliminating harmful traditional practices as well as gender stereotyping affecting girls. The EU also underlines the urgent need to prohibit genital mutilation of girls where it still exists. Laws alone cannot achieve implementation of such prohibition. Education, especially focused on women's health, must be a vital part of any effective programme. The EU therefore calls for the abolition of legislation promoting the unequal treatment of girls.¹⁴⁰

¹³⁴ For statistics of judgements from 1999 to 2002 by the European Court <<http://www.echr.coe.int/Eng/Judgments.htm>> (accessed 2 September 2003).

¹³⁵ Application No. 11533, Decision of 6 March 1987, Decisions & Reports, vol.51, p.125 in Tomaševski (n 23 above) 18.

¹³⁶ Application No.16278/90, Decision of 3 May 1993, Decisions & Reports, vol. 74, 1993, p.93 in Tomaševski (n 23 above) 37.

¹³⁷ Same as above.

¹³⁸ Importance of education by the OSCE<http://ue.eu.int/pesc/human_rights/en/99/main5.htm> (accessed 3 September 2003).

¹³⁹ For an analysis of the Treaty of Amsterdam see<http://www.europarl.eu.int/topics/treaty/analysis/section1_en.htm> (accessed 3 September 2003).

¹⁴⁰ See n 138 above.

4.4 Conclusion

The above regional systems especially the African system, afford some level of protection for the girl child. As a matter of fact, from the protection afforded by the Inter-American and European systems, a lot of work still has to be done at the level of the African System. With the envisaged African Court an adequate judicial protection for cases of the girl child could be achieved, especially cases evolving around educational rights, if there exists solid enforcement mechanisms.

CHAPTER 5: NATIONAL LEGAL RESPONSES TO GIRL CHILD EDUCATION IN AFRICA

5.1 Introduction

At national levels, countries especially in the Southern African region have identified critical issues that are a priority to them. Out of the several national priority areas for 12 of these countries, are the concerns of the girl child.¹⁴¹ The US Supreme Court, stated in the case of *Planned Parenthood v Danforth*:¹⁴²

Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.¹⁴³

There has been a growing acceptance of the necessity for governmental intervention all over the world concerning access to primary education for girls. Many economists refer to the rationale for such intervention as a market failure. Simply put, parents are unwilling to send their daughters to school because there is no economic rationale to invest in their daughters' education.¹⁴⁴ All the same, most states in the world still concentrate on issues of capitalist development rather than giving some attention to feminist and race politics as elements of state policy.¹⁴⁵

The contributions in this chapter are therefore, to show to what extent certain states in Africa have addressed the concerns of girl child education. Arguments for and against this discrimination in certain African democracies will be brought to the surface. This chapter will as a matter of fact, view these arguments with respect to African democracies such as Egypt, South Africa and Cameroon.¹⁴⁶ There is also a contention that Muslim girls face a lot of difficulty with achieving education.¹⁴⁷ This chapter will address this issue with respect to countries where this seems to be an issue such as Cameroon¹⁴⁸ and Egypt.

¹⁴¹ For information of Southern African countries public policy issues see <http://www.sardc.net/widsaa/wid_national_pfa.htm> (accessed 26 August 2003).

¹⁴² (1976) 428 US 52.

¹⁴³ This case is quoted in De Waal, Currie & Erasmus (n 38 above) 456.

¹⁴⁴ Tomaševski (n 23 above) 27.

¹⁴⁵ A Madeleine 'A crisis in Patriarchy? State Regulation of Gender and Feminist Educational Politics' *Reproducing Gender? Essays on Educational Theory and Feminist Politics* (2002) 145,146.

¹⁴⁶ For reasons of selecting Egypt, Cameroon and South Africa see (n 9 above).

¹⁴⁷ Muslim girls struggle for education <http://news.bbc.co.uk/1/hi/world/middle_east/3130234.stm> (accessed 23 September 2003).

¹⁴⁸ For information of factors affecting girl child education in Cameroon see <<http://www.bcis.gov/graphics/services/asylum/ric/documentation/CMR03004.htm>> (accessed 23 September 2003).

5.2 Egypt

Egypt has ratified all UN human rights treaties but with reservations. However, Egypt has not ratified all regional treaties.¹⁴⁹ Free, compulsory and all-encompassing education is guaranteed in Article 18 of the Egyptian constitution.¹⁵⁰ According to Article 8 of the Egyptian Constitution, the State shall guarantee equality of opportunity to all Egyptians. Equality of opportunity implicitly includes an opportunity for the girl child in Egypt. Furthermore, Article 20 states that educational institutions shall be free of charge in their various stages and Article 21 adds that combating illiteracy shall be a national duty for which all the people's capacity shall be mobilised. Article 40 complements Article 18 stating that all citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed. The Education Act No. 39 of 1981 amended by Act 233 of 1988 states:¹⁵¹

- 15 Basic education shall be the right of every Egyptian child who has attained the age of six. The State shall provide it and parents or custodians are bound to abide by it, for the duration of eight years. [...]

An active body concerned with girl child education in Egypt, the National Council for Childhood and Motherhood (the National Council), held a conference headed by Egypt's first lady Mrs. Suzan Mubarak, to launch the second decade for the Egyptian child, 2000-2010. The conference comprised of top ranking speakers and specialists from the Egyptian Ministry of Social Affairs, other ministerial departments in Egypt and also international representatives. During this conference the first lady acknowledged as follows:¹⁵²

"Girls' education is the most successful and rewarding investment given its potential to generate on-going and concrete impacts to the process of integrated sustainable development."

The National Council was established in 1988 through Presidential Decree No. 54 as the highest government authority entrusted with policymaking, planning, coordinating, monitoring and evaluation of activities in the areas of protection and development of children. The jurisdiction of the National Council extends to all government bodies, including the Ministry of

¹⁴⁹ Tomaševski (n 14 above) 39.

¹⁵⁰ According to Article 18 - Education is a right guaranteed by the State. It is obligatory in the primary stage. The State shall work to extend obligation to other stages. The State shall supervise all branches of education and guarantee the independence of universities and scientific research centers, with a view to linking all this with the requirements of society and production.

¹⁵¹ See the education Act in Egypt <<http://www.right-to-education.org/content/age/egypt.html>>(accessed 29 September 2003).

¹⁵² Conference held from 20-22 November 1999 <<http://www.ibnkhaldun.org/newsletter/1999/dec/report1.html>> (accessed 4 September 2003).

Justice, and NGOs on both the national and local levels. The decree establishing the National Council stipulates that its declarations are mandatory, final and binding for all ministries, authorities, local administration units and public sector in implementing plans, projects and programs set by the National Council in the fields of childhood and motherhood.¹⁵³

In the year 2000, Egypt was among the first countries to respond to the UN Secretary General's Initiative and show its commitment to the Dakar declaration on Education For All, with the National Council playing a leading role. A ladder approach was introduced by the National Council as an effective methodology for implementation to the Girls Education Initiative launched by the UN Secretary General in 2000 at Dakar.¹⁵⁴ In October 2001; a National Taskforce for Girls' Education was established by the National Council including members of line ministries, concerned authorities, civil society and UN agencies.¹⁵⁵

Though the provisions of the Egyptian Constitution and institutions such as the National Council offer protection to girl child education, there still seems to be problems. The project co-ordinator of "Choices for Girls project" (a project on girl child education in Egypt), Hajia Jummai Bappah made an assertion at a workshop that inadequate enlightenment campaign on Girl-Child education has been identified as one of the problems militating against the successful implementation of the scheme.¹⁵⁶

Dalenda Lagueche is however of the view that the presence of the colonial masters still has effects on the lives of African and Maghrebian women today.¹⁵⁷ Lagueche elucidates further by saying that the Maghreb society though faced with a lot of divergence and contradictions when it comes to the question of girl child education, is making an effort to discard gender related beliefs and practices.¹⁵⁸ The Egyptian government similarly strives to curb the ills of discrimination in girl child education.

¹⁵³ The National Council <<http://www.nccm.org.eg/>>(accessed on 5 September 2003).

¹⁵⁴ See n 82 above.

¹⁵⁵ Achievements of the National Council <<http://www.nccm.org.eg/>> (accessed 5 September 2003).

¹⁵⁶ S Awofadeji 'Why Girl-Child Education Scheme Failed' <http://www.amanjordan.org/english/daily_news/wmview.php?ArtID=2131>(accessed on 31 August 2003).

¹⁵⁷ "Le context colonial n'a pas été sans effets sur les conditions de vie des femmes maghrébines. Confrontée à de nouveaux defies et à une modernité auxquels elle était mal préparée, la société maghrébines se voit aux prises avec des divergences et contradictions devant les questions de l'éducation et de l'instructions des filles. Un dualisme s'installe, il traverse la culture et la société. La processus est complexe et contradictoire, il met en conflit facteurs de changement et pesanteurs de la tradition; il offre tout de même des conditions à l'émergence d'une identité féminine en pleine mutation." in D Lagueche (Textes réunis) *Histoires des Femmes au Maghreb-Culture Maténelles et Vie Quotidienne*-Centre de Publication Universitaire, 2000, 7.

¹⁵⁸ Same as above.

A recent law of June 2003 created a National Council for Human Rights.¹⁵⁹ With respect to Article 3(9) of this Act, the Council for Human Rights is charged with coordinating together with the State's institutions situations of human rights in the country and also to cooperate in the field with the National Council for women¹⁶⁰, the National Council and other concerned councils and organisations. This act seems promising for the situation of human rights in Egypt, especially for girl child education.

Despite the achievements registered during the last decade in improving children's and women's survival and narrowing the gender gap in education enrolment, there are still disadvantaged groups that require attention. This is especially evident in Upper Egypt, which is largely rural.

Proposed changes to the law that would allow children of Egyptian mothers and foreign fathers to be given Egyptian nationality periodically causes a stir, but until now, the situation remains the same. This is a tough situation for children especially if they are girls. Enrolling one's child in a proper school is hard enough, given age restrictions, high tuition fees and the like. But mothers of foreign children, including Egyptian mothers, must jump through several more hoops. They have to amass a slew of documents before their children are admitted.¹⁶¹ There is presently movement to correct this.¹⁶²

This poses a similar problem for refugee girl children in Egypt who have a long way to go with respect to the right to education.¹⁶³ In a letter dated 13 December 2000, Minister of Education Hussein Kamel Baha Al Din announced a plan to address the problem of access to education for refugee children. The government plans to implement a 1992 Ministerial Decree allowing the children of legally recognised refugees and selected asylum seekers from Sudan to attend Egyptian government schools. This measure represents a positive first step in tackling the complex issue of providing education to refugee children, but does not solve the problem completely, especially since a majority of the southern Sudanese children come from families who probably will not qualify for refugee status and have mixed feelings about educating their children in an Arab milieu.¹⁶⁴

¹⁵⁹ Law 94 for the year 2003, creating the National Council for Human Rights.

¹⁶⁰ See National Council for women <<http://ncw.gov.eg>>. Other organisations involved in the fight against discrimination in girl child education in Egypt are the Egyptian Centre for the Rights of the child <ecrc-egypt@yahoo.com> and the Centre for Women's legal Aid <www.cwla.org> (accessed 11 September 2003).

¹⁶¹ Love and hardship <<http://weekly.ahram.org.eg/2002/572/li1.htm>>(accessed 2 September 2003).

¹⁶² R Leila 'Egyptian at last?' *Al Ahrām Weekly* 2-8 October 2003.

¹⁶³ An interview with Mr. Alistair of the United Nations High Commission for Refugees, Cairo Egypt (conducted on 24 September 2003). Nevertheless see positive work done by The Health of Adolescent Refugees Project (HARP) in Egypt in educating refugee girls <http://www.fhi.org/en/RH/Pubs/Network/v20_3/>(accessed 1 October 2003).

¹⁶⁴ N Peterson 'Schools Out – For the children of Sudanese refugees in Cairo, a normal childhood remains a distant dream'. <<http://www.cairotimes.com/content/archiv05/refugees.html>>.

5.3 South Africa

South Africa has not ratified all UN human rights treaties.¹⁶⁵ However children are afforded some protection under Section 28 of the South African Bill of right of the 1996 Constitution.¹⁶⁶ Amongst several factors this provision gives children in general protection from maltreatment, neglect, abuse or degradation.¹⁶⁷ A very fundamental section of the 1996 constitution, which also affords some degree of protection for girl child education, is Section 9. According to Section 9(1), everyone is equal before the law and has the right to equal protection and benefit of the law. Section 9(2) goes further to stipulate that equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken. Section 9(3) requires the state not to unfairly discriminate directly or indirectly against anyone on one or more grounds, including race gender and sex. Section 9(4) strengthens these subsections by making sure no person unfairly discriminates directly or indirectly against anyone on one or more grounds in terms of subsection (3) above. Subsection (4) also requires the state to enact national legislation in order to prevent or prohibit unfair discrimination. The South African Schools Act (1996) provides for compulsory education between the ages of 7 and 15.¹⁶⁸

Various national legal systems, especially South Africa¹⁶⁹ are drawing on international human rights law in giving content to domestic law, whether by way of statutory interpretation or constitutional adjudication.¹⁷⁰ For instance the “best interest” principle enshrined in the CRC¹⁷¹ has been constitutionally entrenched by Section 28 (2) of the South African Bill of Rights.

Some writers contend that determining “the best interest of the child” is not without difficulty. It is controversial because it has failed in the past to provide a reliable or determinate standard.¹⁷² They contend that if the courts provide sound guidelines, it should provide a basis on which to work.¹⁷³

¹⁶⁵ Tomaševski (n 14 above) 54.

¹⁶⁶ See Sec 28 of the Constitution of the Republic of South Africa Act108 of 1996.

¹⁶⁷ Sec 28(1) (d) of the Constitution of the Republic of South Africa Act108 of 1996.

¹⁶⁸ See South African School Act <http://www.right-toeducation.org/content/age/south_africa.html> (accessed 1 October 2003).

¹⁶⁹ The South African Human Rights Commission (SAHRC) created by Act 54 of 1994, is an institution, which respects international law in South Africa.

¹⁷⁰ C Scott & P Alston ‘Adjudicating Constitutional priorities in a transnational context: A comment on Soobramoney’s legacy and Grootboom’s promise’ (2000) 16 *South African Journal of Human Rights*212.

¹⁷¹ Sec 3 of the UNCRC.

¹⁷² De Waal, Currie & Erasmus (n 38 above) 467.

¹⁷³ For a good basis of the application of the test, see *K v K* 1999(4) 691(C) in De Waal, Currie & Erasmus (n 38 above) 467.

The 1996 South African Bill of Rights also contains a general limitation clause in Section 36. It is general because the clause applies generally to all the rights listed in the Bill of Rights. This requires a two-stage process of analysis.¹⁷⁴ If it is argued that conduct or a provision of the law infringes a right in the Bill of Rights, it will first have to be determined whether that right has been infringed.¹⁷⁵ The second stage commences once it has been shown that a right has indeed been infringed.¹⁷⁶

As seen above, Section 9 (4) requires the enactment of national legislation to prohibit or prevent unfair discrimination, particularly what can be described as “private discrimination” practised by the individuals or institutions other than the state. Item 23(1) of Schedule 6 of the Constitution provided that the legislation must be enacted within three years of the commencement of the Constitution, that is, by 3 February 2000.¹⁷⁷ The Promotion of Equality and Prevention of Unfair Discrimination, Act No.4 of 2000/8, is aimed at fulfilling this requirement. It aims at eradicating social economic inequalities especially those, which are systemic in nature such as discrimination in girl child education. In actual fact it promotes the achievement of substantive equality.¹⁷⁸ This act goes further than Section 9(5) of the 1996 Constitution in that it presumes discrimination on an analogous ground to be unfair.¹⁷⁹ This Act differs from Section 9 of the 1996 Constitution in that the respondent always bears the burden.

Although the Republic of South Africa now dedicates a lot of time and energy to gender related issues, it registers high statistics of sexual harassment cases in schools.¹⁸⁰ Among the startling facts presented to Parliament in 2002 by Professor Andy Dawes, was the extent of the problem. Professor Dawes, who works in the Child, Youth and Family Development (CYFD) research programme of the Human Sciences Research Council (HSRC), quoted police statistics showing that 15% of South African rape victim-survivors are younger than 12 years old, and 41% are under 18.¹⁸¹ In South Africa, a recent report by Human Rights Watch (HRW) also warned that sexual violence and abuse is hampering girls’ access to education.¹⁸²

¹⁷⁴ See Chapter 7 of De Waal, Currie & Erasmus (n 38 above) 144 to 165.

¹⁷⁵ De Waal, Currie & Erasmus (n 38 above) 202.

¹⁷⁶ Same as above.

¹⁷⁷ See secs 6, 8 and 28 of the Promotion of Equality and Prevention of Unfair Discrimination Act No.4 of 2000/8.

¹⁷⁸ De Waal, Currie & Erasmus (n 38 above) 225.

¹⁷⁹ S 13(2) of the Promotion of Equality and Prevention of Unfair Discrimination Act No.4 of 2000/8.

¹⁸⁰ For statistics on rape victims in neighbourhoods and schools see <http://www.hsrb.ac.za/about/HSRCReview/Vol1No1/index.html?violence_in_schools.html~content> (accessed 2 September 2003).

¹⁸¹ Same as above.

¹⁸² For information on problems faced by girls in South Africa See ‘When girls go missing from the classroom’ <http://www.unesco.org/courier/2001_05/uk/education.htm> (accessed 31 August 2003). Also see n 60 above.

The US Department of Education, Office for Civil Rights outlines two forms of sexual harassment; the one being sexual harassment in which a school employee subdues a student to forceful sexual activity.¹⁸³ The second being hostile environmental sexual harassment.¹⁸⁴ These are all contributing factors to girls withdrawing from schools especially in South Africa.

The newly democratic South Africa is failing to meet the needs of an increasingly large refugee population. The protection of human rights is built into the Constitution, yet in South Africa the rights of refugees are being violated on a daily basis.¹⁸⁵ Furthermore, refugee children, especially girl children are specifically recognised in international law as benefiting from special protection. This has been recognised not only in the South African Constitution, but also in the CRC, whereby all children should have guaranteed access to education regardless of their legal status, or that of their parents. This is gradually being translated into the practice of states.¹⁸⁶

All the same, though the South African Bill of rights guarantees free, compulsory and all-encompassing education, children's rights especially for girls still need a lot of constitutional and jurisprudential protection. Under the Child Care Act, parents are required to provide for their children's socio-economic rights including educational rights.¹⁸⁷ Section 28 (1) (c) makes it clear that when the parents do not fulfil their common law and statutory obligations, the state has a duty to step in and support the children. The Constitutional Court of South Africa has been presented with two opportunities to interpret Section 28(1) (c) of the 1996 Constitution, in *Grootboom*¹⁸⁸ and the *Treatment Action Campaign*¹⁸⁹ case. However, on both occasions, the Court found it appropriate to base its findings on the socio-economic rights of everyone as entrenched in Sections 26 and 27 of the 1996 Constitution. Despite the fact that children, especially girl children represent a significant portion of the group of persons affected and that arguments based on children's socio-economic rights were placed before the Court, the judgments provided limited guidance on the interpretation of Section 28 (1) (c). The absence of jurisprudence dealing with an interpretation of Section 28(1) (c) has resulted in a lack of clarity as to exactly how this section enhances the substantial legal protection accorded to children especially girl children in South Africa. This argument goes to prove the

¹⁸³ Rousso & Wehmeyer (n 25 above) 187.

¹⁸⁴ Same as above.

¹⁸⁵ R Krochmal 'The Current Refugee Situation in South Africa: Cause for Concern' <http://www.academy.umd.edu/education/SouthAfrica/SA2001/article_krochmal.htm>.

¹⁸⁶ Tomaševski (n 14 above) 19.

¹⁸⁷ Section 50(2) of the Children's Status Act 82 of 1987.

¹⁸⁸ *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

¹⁸⁹ *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (10) BCLR 10333 9(CC).

fact that though Section 28 protects children in South Africa, girls do not benefit fully from this protection.

5.4 Cameroon

5.4.1 Girl child education: The road half-travelled

Socio-economic rights are all buried in the preamble of the 1996 Constitution of Cameroon.¹⁹⁰ With respect to girl child education, the preamble of the 1996 Constitution of Cameroon therefore mentions that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights. It goes further to stipulate that the people of Cameroon affirm their attachment to the fundamental freedoms enshrined in the UDHR, the UN Charter, the African Charter and all duly ratified international conventions relating thereto.¹⁹¹ The preamble then refers to particular principles. The principles referred to, which are of relevance to Cameroon's contribution to girl child education include principles such as the obligation by the State to ensure that everyone is provided with conditions necessary for their development, the protection of minorities and the guarantee of children's rights to education, especially making primary education compulsory for all.

Cameroon has a National Commission for Human Rights and Freedom (the NCHRF).¹⁹² The NCHRF, which has a legal status and financial autonomy, is charged with the defence and promotion of human rights including those of the girl child. The country also has a Ministry of Social Affairs, which has a department in charge of Family and Child Welfare.¹⁹³

In conformity with the decisions taken during the world summit on children held in New York on September 29 and 30, 1990, Cameroon adopted a national plan of action in 1995. This plan of action was geared to implementing decisions concluded at the world summit with respect to the follow up, the protection and the development of the child in the 1990s.¹⁹⁴

It is worthwhile to mention that the Cameroon judicial system is bi-jurial, thanks to its colonial history.¹⁹⁵ Some of the most important texts with respect to the protection of the rights of children include the French Civil Code of 1804¹⁹⁶, the decree of 30 November 1928 instituting

¹⁹⁰ See the Preamble of the 1996 Constitution of the Republic of Cameroon.

¹⁹¹ Paras 4 & 5 of the Preamble of the 1996 Constitution of Cameroon.

¹⁹² The NHRC was set up by Decree No 90/1459 of 8 November 1990.

¹⁹³ The department in charge of Family and Child Welfare is as a result of Decree No 98/069 of 4 May 1998 organising the Ministry of Social Affairs.

¹⁹⁴ IG Mwambo, *Social welfare policy and child abuse in Cameroon: an analytical and evaluative socio-legal approach* (1999) Thesis in partial fulfilment for postgraduate diploma in social work³⁴.

¹⁹⁵ For the bi-jurial system of Cameroon <<http://www.ukcle.ac.uk/clea/newsletter/87/cameroon.html>> (accessed 1 October 2003).

¹⁹⁶ See articles related to children in the French Civil Code < http://www.napoleon-series.org/research/government/code/book1/c_title09.html> (accessed 1 October 2003). The code has undergone some modifications with time. The most important is ordinance No 81/02 of 29 June 1981 relative to the organisation of the civil status. These texts regulate conditions of marriage, problems of parental responsibility, adoption, guardianship and the interest of the child in case of family crisis.

special jurisdiction and the regime of “liberté surveillée” for minors,¹⁹⁷ decree of 30 October 1935 relating to the protection of childhood¹⁹⁸ and the Children and Young Persons Ordinance.¹⁹⁹ With cases related to girl child education in schools, the Cameroonian Penal Code (CPC) is also instrumental.²⁰⁰ There are texts with social implications for children, which either protect or support minors who are facing problems. These texts, some of which will be included below, protect girl children, children who are abandoned, neglected and also abused.

According to Law No 90/963 of 9 December 1990 on Social Insurance of family allowance, family allowance is provided to parents with the aim of taking care of their children’s basic needs. This scheme in no way allows for discrimination between girls and boys especially with respect to education. There is also another decree, which lays down the conditions for the State to grant assistance to the poor and needy.²⁰¹ This decree privileges needy parents with large families. As far as schools are concerned, the provisions of the Constitution and of article 9 of Act No. 98/004 of 14 April 1999 on education guidelines in Cameroon provide that primary education is compulsory, but do not refer to any age limit for school attendance.²⁰²

Cameroon, like most countries around the globe, has made major international commitments regarding gender equity and women empowerment. Compulsory and all encompassing education is guaranteed in the Constitution.²⁰³ The notion of gender equity derives from the injustices women across the world suffer, especially women in poor parts of the world like Cameroon. In many poor countries of the world, this situation has been compounded by the preference of customary laws, which favour overt discrimination against women to civil laws, which seek to protect the rights of all the citizens in the country regardless of their gender.²⁰⁴ Government’s inadequate commitment to gender equality and women’s empowerment is to blame for the continuation of discrimination against women.

Cameroon was represented at the UN International Conference on Population and

¹⁹⁷ See the decree of 30 November 1928 <<http://www.right-to-education.org/content/age/cameroon.html>> (accessed 28 October 2003).

¹⁹⁸ This decree has become inadaptable because of the intervention of a new text in 1972 on judicial organisation.

¹⁹⁹ This ordinance is applicable in the two English-speaking provinces of Cameroon. It is part of the Laws of the Federation of Nigeria and Lagos enforced on the first day of June 1958. A child in this ordinance is defined a person less than 14 years. A young person signifies someone whose age is between 14 and 16 years (n 194 above 36).

²⁰⁰ The CPC protects the girl child from abuse especially by forbidding forced marriages between a boy of 16 and a girl of 14 years. Also see arts, 337-355 of the CPC.

²⁰¹ Decree No 82/412 of 9 September 1982.

²⁰² See n 188 above.

²⁰³ As enshrined in the Preamble of the 1996 Constitution of Cameroon.

²⁰⁴ J Arrey ‘Assessing Cameroon’s Commitment to Gender Equity and Women Empowerment’ <<http://www.geocities.com/camheroes/GenderEquity.htm>> (accessed 1 September 2003).

Development (ICPD) and the Fourth World Conference on Women in Beijing, China.²⁰⁵ Like most countries, Cameroon reaffirmed its commitment to the equal rights and inherent dignity of women and men and other purposes and principles enshrined in international instruments.

5.4.2 The Need for Greater Commitment by the government

It is important at this point to underscore that much of the progress made by the government in this regard is basically in the major cities of the country. In the rural areas of the country that are seriously begging for these initiatives so that the rural woman can be released from the shackles of tradition and stereotype, women are not having access to the education they need and deserve. In these areas of the country, traditional laws, which have enslaved the woman and made her inferior to the man, still govern those who reside there. Girls are treated differently from boys in these areas, and in certain cases, the girls are not allowed to go to school. They are, in certain circumstances, compelled to marry against their wish and, in most cases, they marry men who are a lot older than they are.²⁰⁶

UNICEF is working with the Government of Cameroon, key leaders and other partners to address the many obstacles to girls' education. The 'Child-friendly, girl-friendly schools' initiative supports quality education and contributes to an increase in girl enrolment in non-formal basic education settings. Through the African Girls' Education Initiative, UNICEF is actively supporting many changes, including policy development and gender sensitisation in education. The Girl Child Education project provides educational materials and equipment, and improves the learning environment through the promotion of child-friendly concepts and community participation.²⁰⁷

²⁰⁵ Same as above.

²⁰⁶ Same as above.

²⁰⁷ See work done by UNICEF in Cameroon <<http://www.unicef.org/infobycountry/cameroon.html>> (accessed 3 September 2003).

CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS

The aim of this paper was to revisit the debates revolving around the discrimination in girl child education in Africa and to address this problem with respect to certain stereotyped beliefs and the cultural settings of African societies. It has been shown that, given the historical and social context of many African countries, they share a history of stereotypical, cultural and undemocratic traditional practices. Analyses of participation rates in different social and cultural contexts show that they reflect closely the relative status of women and the power of tradition.²⁰⁸ In such a context the issue of girl child education cannot be left unattended for without an improvement in this primary concern, progress will not be achieved in Africa. Given the existing institutions in these countries, addressing girl child discrimination with negligence and reluctance is not a solution either. The challenge, which remains for African democracies, is in defining discrimination in girl child education as narrowly as possible to prevent an overflow of litigation and therefore insure better protection.

In formulating legislation for an equal opportunity for girls, the question is whether to uphold the teachings of affirmative action, or also to consider indirect discrimination as well as direct discrimination, as amounting to discrimination in girl child education. These various qualifications all need precautions when formulating legislation against discrimination in girl child education. For instance advocating for substantive equality and therefore affirmative action, when formulating legislation against girl child education should be seen as a necessity rather than discrimination in itself.²⁰⁹

Some writers seem to suggest a scope for regulation, which is wider than just considering factors as indirect and direct discrimination. According to Merelyn Devine²¹⁰ an action for discrimination especially girl child discrimination in education must have an element of intent attached to it. The burden of proof is on the victim to show that there was indeed discrimination, allowing the accused to argue otherwise. If this act of discrimination was committed indirectly or unknowingly then the case needs a careful legal analysis on the part of the presiding officer or judge.

International human rights norms should indeed become part of the legal culture of any given society. To do so, they must strike responsive chords in the general human public consciousness. A defensible way in which this challenge may be met is to acknowledge that

²⁰⁸ EM King & MA Hill *Women's education in developing countries, barriers benefits and policies* (1993) 38.

²⁰⁹ See the discussion of formal and substantive equality above (n 49 above).

²¹⁰ Devine (n 17 above).

universality and specificity are not necessarily intrinsically oppositional forces, nor are they mutually exclusive, either conceptually or practically.²¹¹

While many secular feminists have criticised patriarchal religiously justified laws in Muslim countries, many Muslim women have defended Islam as the guarantor par excellence of women's rights. This broad perceptual gap among women is partly explained by some as the result of miscommunication. Secular feminists tend to blame Islam for laws in Muslim countries, which are oppressive to women. Muslim women tend to defend Islam in light of their familiarity with the 'ideals of Islam'. Azizah al-Hibri tackles this debate with precision and care in relation to countries such as Egypt, Morocco and Tunisia. She argues that a defective law does not necessarily imply that the premise from which it is derived suffers a similar defect. In fact, the defect may be the result of a faulty derivation or even a misunderstanding of the proper scope or significance of the premise.²¹² Our conclusion to this argument is that religion is therefore not to blame for any discrimination in girl child education. Instead, the problem comes in from the application of certain religious norms and customs to society. Various governments should therefore revisit the ambit of this application.

Gender and educational policy analysis exist, but the truth is that this is of no use if it remains theoretical and not operational from a practical perspective. There is need for school policy to adopt teachings of non-discrimination as part of the curricula, need for teachings of sex and gender education and most importantly, the need to train policy markers who will implement these recommendations.

From a human rights perspective this paper did not set out to diminish the importance of religion, cultural values and the respect of family life. However, in a human rights culture, the overall objective is to protect and promote human rights, especially the right to education for girls, not only selected rights and freedoms considered important by certain groups of people. Therefore, despite the arguments raised against certain stereotyped, cultural practices, which are advocated in this paper, it is done in an effort to strike a balance between competing rights especially socio-economic rights, in a continent known for its neglect for the importance of equal opportunities, especially in education. The African Commission should be able to investigate human rights conditions, especially those pertaining to discrimination in girl child education in any African member state, without having to await formal inter-state or individual complaints. African democracies should be able to overcome the barriers, which are hindering the protection of girls' education, with respect to certain guidelines provided in this paper.

Word count: 17977

²¹¹ Fox (n 16 above).

²¹² A al-Hibri Islam, Law an Custom: Redefining Muslim Women's Rights (1997) *12 American University Journal of International Law & Policy* 1.

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ANNEXTURES

ANNEXTURE A

**African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990),
entered into force Nov. 29, 1999.**

PREAMBLE

The African Member States of the Organisation of African Unity, Parties to the present Charter entitled 'African Charter on the Rights and Welfare of the Child',

CONSIDERING that the Charter of the Organization of African Unity recognises the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status,

RECALLING the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.I) adopted by the Assembly of Heads of State and Government of the Organisation of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia. from 17 to 20 July 1979, recognised the need to take appropriate measures to promote and protect the rights and welfare of the African Child,

NOTING WITH CONCERN that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care,

RECOGNISING that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality. the child should grow up in a family environment in an atmosphere of happiness, love and understanding,

RECOGNISING that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in conditions of freedom, dignity and security,

TAKING INTO CONSIDERATION the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

CONSIDERING that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone,

REAFFIRMING ADHERENCE to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organisation of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

HAVE AGREED AS FOLLOWS:

PART 1: RIGHTS AND DUTIES

CHAPTER ONE: RIGHTS AND WELFARE OF THE CHILD

Article 1: Obligation of States Parties

1. Member States of the Organisation of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.
2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.
3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a Child

For the purposes of this Charter, a child means every human being below the age of 18 years.

Article 3: Non-Discrimination

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Article 4: Best Interests of the Child

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.
2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings. and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

Article 5: Survival and Development

1. Every child has an inherent right to life. This right shall be protected by law.
2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.
3. Death sentence shall not be pronounced for crimes committed by children.

Article 6: Name and Nationality

1. Every child shall have the right from his birth to a name.
2. Every child shall be registered immediately after birth.
3. Every child has the right to acquire a nationality.
4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognise the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 7: Freedom of Expression

Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

Article 8: Freedom of Association

Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

Article 9: Freedom of Thought, Conscience and Religion

1. Every child shall have the right to freedom of thought conscience and religion.
2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.

3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 10: Protection of Privacy

No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

Article 11: Education

1. Every child shall have the right to an education.

2. The education of the child shall be directed to:

(a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;

(c) the preservation and strengthening of positive African morals, traditional values and cultures;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;

(e) the preservation of national independence and territorial integrity;

(f) the promotion and achievements of African Unity and Solidarity;

(g) the development of respect for the environment and natural resources;

(h) the promotion of the child's understanding of primary health care.

3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:

(a) provide free and compulsory basic education:

(b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;

(c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;

(d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;

(e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to

ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph 1 of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

Article 12: Leisure, Recreation and Cultural Activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 13: Handicapped Children

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

Article 14: Health and Health Services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - (a) to reduce infant and child mortality rate;
 - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) to ensure the provision of adequate nutrition and safe drinking water;
 - (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
 - (e) to ensure appropriate health care for expectant and nursing mothers;
 - (f) to develop preventive health care and family life education and provision of service;
 - (g) to integrate basic health service programmes in national development plans;
 - (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
 - (i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;
 - (j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Article 15: Child Labour

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organisation's instruments relating to children, States Parties shall in particular:
 - (a) provide through legislation, minimum wages for admission to every employment;
 - (b) provide for appropriate regulation of hours and conditions of employment;
 - (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
 - (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

Article 16: Protection Against Child Abuse and Torture

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.
2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

Article 17: Administration of Juvenile Justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:
 - (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
 - (b) ensure that children are separated from adults in their place of detention or imprisonment;
 - (c) ensure that every child accused in infringing the penal law:
 - (i) shall be presumed innocent until duly recognized guilty;
 - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
 - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
 - (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
 - (d) prohibit the press and the public from trial.
3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18: Protection of the Family

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.

2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the even of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.

3. No child shall be deprived of maintenance by reference to the parents' marital status.

Article 19: Parent Care and Protection

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.

2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.

3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.

4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:

(a) to ensure that the best interests of the child are their basic concern at all times-

(b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and

(c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. States Parties to the present Charter shall in accordance with their means and national conditions the all appropriate measures;

(a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programs particularly with regard to nutrition, health, education, clothing and housing;

(b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and

(c) to ensure that the children of working parents are provided with care services and facilities.

Article 21: Protection against Harmful Social and Cultural Practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

(a) those customs and practices prejudicial to the health or life of the child; and

(b) those customs and practices discriminatory to the child on the grounds of sex or other status.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Article 22: Armed Conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts, which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23: Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organisations, which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply *mutatis mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.

Article 24: Adoption

States Parties, which recognise the system of adoption, shall ensure that the best interest of the child shall be the paramount consideration and they shall:

- (a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information. that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that. if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counseling;
- (b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter. may. as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;
- (e) promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;
- (f) establish a machinery to monitor the well-being of the adopted child.

Article 25: Separation from Parents

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;
2. States Parties to the present Charter:
 - (a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others. foster placement, or placement in suitable institutions for the care of children;
 - (b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.
3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's up-bringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection Against Apartheid and Discrimination

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime.
2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.
3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.

Article 27: Sexual Exploitation

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:
 - (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
 - (b) the use of children in prostitution or other sexual practices;
 - (c) the use of children in pornographic activities, performances and materials.

Article 28: Drug Abuse

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29: Sale, Trafficking and Abduction

- States Parties to the present Charter shall take appropriate measures to prevent:
- (a) the abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child;
 - (b) the use of children in all forms of begging.

Article 30: Children of Imprisoned Mothers

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:
 - (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
 - (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;

- (c) establish special alternative institutions for holding such mothers;
- (d) ensure that a mother shall not be imprisoned with her child;
- (e) ensure that a death sentence shall not be imposed on such mothers;
- (f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

Article 31: Responsibility of the Child

Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;

- (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- (b) to serve his national community by placing his physical and intellectual abilities at its service;
- (c) to preserve and strengthen social and national solidarity;
- (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;
- (e) to preserve and strengthen the independence and the integrity of his country;
- (f) to contribute to the best of his abilities. at all times and at all levels, to the promotion and achievement of African Unity.

PART 11

CHAPTER TWO: ESTABLISHMENT AND ORGANIZATION OF THE COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD

Article 32: The Committee

An African Committee of Experts on the Rights and Welfare of the Child hereinafter called 'the Committee' shall be established within the Organisation of African Unity to promote and protect the rights and welfare of the child.

Article 33: Composition

1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.
2. The members of the Committee shall serve in their personal capacity.
3. The Committee shall not include more than one national of the same State.

Article 34: Election

As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the States Parties to the present Charter.

Article 35: Candidates

Each State Party to the present Charter may nominate not more than two candidates. The candidates must have one of the nationalities of the States Parties to the present Charter. When two candidates are nominated by a State, one of them shall not be a national of that State.

Article 36

1. The Secretary-General of the Organisation of African Unity shall invite States Parties to the present Charter to nominate candidates at least six months before the elections.
2. The Secretary-General of the Organisation of African Unity shall draw up in alphabetical order, a list of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.

Article 37: Term of Office

1. The members of the Committee shall be elected for a term of five years and may not be re-elected, however. the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.
2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organisation of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.
3. The Secretary-General of the Organisation of African Unity shall convene the first meeting of Committee at the Headquarters of the Organisation within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.

Article 38: Bureau

1. The Committee shall establish its own Rules of Procedure.
2. The Committee shall elect its officers for a period of two years.
3. Seven Committee members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The working languages of the Committee shall be the official languages of the OAU.

Article 39: Vacancy

If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term - subject to the approval of the Assembly.

Article 40: Secretariat

The Secretary-General of the Organisation of African Unity shall appoint a Secretary for the Committee.

Article 41: Privileges and Immunities

In discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organisation of African Unity.

CHAPTER THREE: MANDATE AND PROCEDURE OF THE COMMITTEE**Article 42: Mandate**

The functions of the Committee shall be:

(a) To promote and protect the rights enshrined in this Charter and in particular to:

(i) collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to Governments;

(ii) formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;

(iii) cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.

(b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.

(c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organisation of African Unity or any other person or Institution recognized by the Organisation of African Unity, or any State Party.

(d) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

Article 43: Reporting Procedure

1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organisation of African Unity, reports on the measures they have

adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:

- (a) within two years of the entry into force of the Charter for the State Party concerned: and
- (b) and thereafter, *every three years*.

2. Every report made under this Article shall:

- (a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and
- (b) shall indicate factors and difficulties, if any, affecting the fulfilment of the obligations contained in the Charter.

3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (a) of this Article, repeat the basic information previously provided.

Article 44: Communications

- 1. The Committee may receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.
- 2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

Article 45: Investigations by the Committee

- 1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.
- 2. The Committee shall submit to each Ordinary Session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under Article [44] of this Charter.
- 3. The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.
- 4. States Parties shall make the Committee's reports widely available to the public in their own countries.

CHAPTER FOUR: MISCELLANEOUS PROVISIONS

Article 46: Sources of Inspiration

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the

Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights. and from African values and traditions.

Article 47: Signature, Ratification or Adherence

1. The present Charter shall be open to signature by all the Member States of the Organisation of African Unity.
2. The present Charter shall be subject to ratification or adherence by Member States of the Organization of African Unity. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organisation of African Unity.
3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the Organisation of African Unity of the instruments of ratification or adherence of 15 Member States of the Organisation of African Unity.

Article 48: Amendment and Revision of the Charter

1. The present Charter may be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the Organisation of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment.
2. An amendment shall be approved by a simple majority of the States Parties.

ANNEXTURE B

The table below is illustrative of 11 African countries out of 24 countries in the world with the largest gender gap in secondary school where girls are disadvantaged. (Sourced from 'A New Global Partnership Meets an old Challenge'p4 <www.ifuw.org/circulars/ungei-brochure.pdf> (accessed 14 July 2003).

Some African Countries	Male	Female	Gap
Togo	40	14	26
Congo	62	45	17
Côte d' Ivoire	33	16	17
Ghana	45	29	16
Benin	24	10	14
Guinea	20	7	13
Zambia	34	21	13
Congo Democratic Republic	32	19	13
Gambia	30	18	12
Cameroon	32	22	10
Egypt	80	70	10

ANNEXTURE C

The table below is an analysis by UNICEF, which exposes Educational statistics in Egypt. Extracted from <http://www.unicef.org/infobycountry/egypt_statistics.html#4> (accessed 25 September 2003).

Primary school enrolment ratio 1995-199

Male (gross)	104
Female (gross)	96
Male (net)	95
Female (net)	90

Net primary school attendance %1992-2001

Male	88
Female	84

% Of primary school entrants reaching grade 5 1995-99

Both male and female	92

Secondary school enrolment ratio 1995-99* (gross)

Male	86
Female	81

UNICEF statistics of female enrolment in Egypt Extracted from <http://www.unicef.org/infobycountry/egypt_statistics.html#7> (accessed 25 September 2003).

Gross enrolment ratios females as a % of males

1995-99 primary school *	92
1995-99 secondary school *	94

ANNEXTURE D

The table below is an analysis by UNICEF, which exposes Educational statistics in South Africa. Extracted from <[http://www.unicef.org/infobycountry/southafrica_statistics .html#4](http://www.unicef.org/infobycountry/southafrica_statistics.html#4)> (accessed 25 September 2003).

Primary school enrolment ratio 1995-99

Male (gross)	121
Female (gross)	117
Male (net)	95
Female (net)	96

% of primary school entrants reaching grade 5 1995-99*	76
Secondary school enrolment ratio 1995-99* (gross)	
Male	86
Female	95

UNICEF statistics of female enrolment in South Africa. Extracted from < http://www.unicef.org/infobycountry/southafrica_statistics.html#7>(accessed 25 September 2003).

Gross enrolment ratios females as a % of males 1995-1999

Primary school	97
Secondary school	110

ANNEXTURE E

The table below is an analysis by UNICEF, which exposes Educational statistics in Cameroon. Extracted from <http://www.unicef.org/infobycountry/cameroon_statistics.html#4> (accessed 25 September 2003).

Primary school enrolment ratio 1995-99

Male (gross)	88
Female (gross)	74
Male (net)	81
Female (net)	71

Net primary school attendance % 1992-2001

Male	76
Female	71
% of primary school entrants reaching grade 5 1995-99	51
Secondary school enrolment ratio 1995-99*	
Male (gross)	22
Female (gross)	17

UNICEF statistics of female enrolment in Cameroon. Extracted from <http://www.unicef.org/infobycountry/cameroon_statistics.html#7> (accessed 25 September 2003).

Gross enrolment ratios females as a % of males 1995-99

Primary school	84
Secondary school	77