

**THE RIGHT TO EDUCATION  
FOR THE GIRL-CHILD AND PROBLEMS FACING  
ADOLESCENT GIRLS IN THE PURSUIT OF THEIR  
RIGHT TO EDUCATION: A FOCUS ON SOUTH AFRICA**

**DJOUGUELA FOTSO DANIELLE**

**2012**

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**By**

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**Submitted in fulfillment of the requirement for the degree of  
Master (LLM) in the Faculty of Law at University of Pretoria**

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<b>DEDICATION.....</b>	<b>i</b>
<b>SUMMARY.....</b>	<b>ii</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>iii</b>
<b>CHAPTER ONE: INTRODUCTION.....</b>	<b>1</b>
<b>I. BACKGROUND.....</b>	<b>1</b>
<b>II. PURPOSE OF THE STUDY .....</b>	<b>3</b>
<b>III. SIGNIFICANCE OF STUDY .....</b>	<b>3</b>
<b>IV. DEFINITION OF KEY TERMS AND CONCEPTS.....</b>	<b>4</b>
1. The Girl Child - Adolescent Girl .....	4
2. The Right to Education.....	5
<b>V. RESEARCH QUESTIONS.....</b>	<b>5</b>
a) What has been done at international and regional levels to protect and promote adolescent girls' right to education?.....	6
b) What is the present situation on the ground in South Africa?.....	6
c) What are the challenges and constraints that adolescent girls continue to face in the pursuit of their right to education? .....	6
d) How and to what extent may these challenges be addressed?.....	6
<b>VI. RESEARCH METHODOLOGY .....</b>	<b>6</b>
<b>VII. LITERATURE REVIEW.....</b>	<b>6</b>
<b>VIII. LIMITATIONS OF THE STUDY.....</b>	<b>7</b>
<b>IX. OVERVIEW OF CHAPTERS.....</b>	<b>7</b>
<b>CHAPTER TWO: INTERNATIONAL AND REGIONAL INSTRUMENTS THAT MAKE PROVISION FOR THE PROTECTION OF THE RIGHT TO EDUCATION ..</b>	<b>9</b>
<b>I. INTRODUCTION.....</b>	<b>9</b>
<b>II. MAJOR PROVISIONS AT INTERNATIONAL LEVEL ON THE RIGHT TO EDUCATION .....</b>	<b>9</b>
1. The Universal Declaration of Human Rights (UDHR) .....	10
2. International Covenant on Economic Social and Cultural Rights(ICESCR).....	11
3. Convention on the Right of the Child (CRC).....	12
4. UNESCO Convention Against Discrimination in Education, 1960 .....	12
5. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) .....	14
<b>III. PROVISIONS AT REGIONAL LEVEL ON THE RIGHT TO EDUCATION.....</b>	<b>14</b>
1. The African Charter on Human and Peoples' Rights (ACHPR).....	15
2. The African Charter on the Rights and Welfare of the Child (ACRWC) .....	15
3. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	16
4. African Youth Charter (AYC).....	17

IV.	CONCLUSION .....	18
<b>CHAPTER THREE: RECOGNITION AND ENFORCEMENT OF ADOLESCENT GIRLS’ RIGHT TO EDUCATION IN SOUTH AFRICA .....</b>		
<b>19</b>		
I.	INTRODUCTION .....	19
II.	SOUTH AFRICA STATUTES ON THE RIGHT TO EDUCATION FOR ADOLESCENT GIRLS ...	20
1.	Significance of Education to the Girl Child and to the Nation.....	20
2.	Constitutional Protection of the Right to Education.....	21
a.	The right to education .....	22
b.	Equal protection. ....	22
c.	Non-discrimination .....	23
3.	Educational Policies Guaranteeing Girls’ Right to Education.....	24
a.	South African Schools Act No. 84 of 1996 .....	24
b.	National Education Policy Act No. 27 of 1996.....	25
III.	ENFORCEMENT OF THE RIGHT TO EDUCATION FOR ADOLESCENT GIRLS .....	26
1.	Administrative and Programmatic Measures .....	26
a.	Administrative measures.....	26
b.	Programmatic measures .....	27
2.	Judicial Enforcement .....	28
a.	The Courts.....	29
b.	Quasi-judicial enforcement mechanisms .....	30
IV.	CONCLUSION .....	30
<b>CHAPTER FOUR:PROBLEMS FACING ADOLESCENT GIRLS INSOUTH AFRICA IN THE PURSUANCE OF THEIR RIGHT TO EDUCATION.....</b>		
<b>32</b>		
I.	INTRODUCTION .....	32
II.	GENDER DISCRIMINATION.....	33
1.	Definition of Gender Discrimination .....	33
2.	Impacts and Consequences of Gender Discrimination on Adolescent Girls’ Education .....	33
III.	EARLY MARRIAGE .....	34
1.	Definition .....	35
2.	Manifestation and Effects of Early Marriage on Adolescent Girls’ Education.....	36
IV.	TEENAGE PREGNANCY.....	37
3.	Description and Consequences of Teenage Pregnancy on Adolescent Girl’s Education .....	38
V.	SEXUAL HARASSMENT AT SCHOOLS .....	40
1.	Definition of Sexual Harassment .....	40
2.	Manifestation and Consequences of Sexual Harassment on Adolescent Girls’ Education.....	41
VI.	CONCLUSION .....	41

**CHAPTER FIVE: CHALLENGES IN OVERCOMING THE PROBLEMS THAT ADOLESCENT GIRLS' FACE AND NECESSARY ACTIONS THAT CAN BE TAKEN ..... 43**

<b>I.</b>	<b>INTRODUCTION</b> .....	<b>43</b>
<b>II.</b>	<b>LOOKING AT THE CHALLENGES FROM A MULTI-FACETED PERSPECTIVE</b> .....	<b>44</b>
<b>1.</b>	<b>Socio-Economic Circumstances</b> .....	<b>44</b>
<b>2.</b>	<b>Tradition, Culture and Religious Beliefs</b> .....	<b>45</b>
<b>4.</b>	<b>Hostile Educational Environment</b> .....	<b>48</b>
<b>III.</b>	<b>TAKING ACTION TO OVERCOME THE CHALLENGES</b> .....	<b>50</b>
<b>1.</b>	<b>Basic Tools for Action</b> .....	<b>51</b>
<b>a.</b>	<b>Information and sensitization</b> .....	<b>51</b>
<b>b.</b>	<b>Support mechanisms</b> .....	<b>51</b>
<b>2.</b>	<b>Taking Action</b> .....	<b>51</b>
<b>a.</b>	<b>At the individual level:</b> .....	<b>52</b>
<b>b.</b>	<b>At the community level</b> .....	<b>52</b>
<b>c.</b>	<b>At the level of government</b> .....	<b>53</b>
<b>d.</b>	<b>The role of civil society organisations</b> .....	<b>54</b>
<b>IV.</b>	<b>CONCLUSION</b> .....	<b>54</b>
<b>BIBLIOGRAPHY</b> .....		<b>56</b>
<b>I.</b>	<b>BOOKS AND CHAPTERS IN BOOKS</b> .....	<b>56</b>
<b>II.</b>	<b>JOURNAL ARTICLES, REPORTS AND CONFERENCE PAPERS</b> .....	<b>57</b>
<b>III.</b>	<b>LAWS, LEGISLATIONS AND POLICIES</b> .....	<b>60</b>
<b>IV.</b>	<b>CASES</b> .....	<b>62</b>
<b>V.</b>	<b>INTERNET SOURCES</b> .....	<b>62</b>

## **DEDICATION**

I dedicate this work to all African girl children facing challenges at school.



## SUMMARY

This dissertation examines the problems facing adolescent girls in the pursuit of their right to education and this especially in South Africa. It presents the right to education as a human right belonging to everyone; not a privilege reserved for a category of person. The right to education is a fundamental human right and an empowerment right because it contributes to the achievement of other rights. The dissertation describes the provisions of relevant international and regional human rights instruments and assesses whether South African laws, policies and practices on the ground adhere to the requirements' of international and regional law. It asserts that, though there has been provision for universal and compulsory primary schooling and higher participation rate for girls, big challenges particularly for adolescent girls are still prevalent, particularly after primary school even though the cracks may appear very subtle and almost none issue.

This dissertation shows that to solve these problems and make the right to education realizable for every child, the South African government should consider the cultural and religious environment of the adolescent girl and also renew its commitments and strategies designed to improve their retention rate and advancement at school.

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# THE RIGHT TO EDUCATION FOR THE GIRL-CHILD AND PROBLEMS FACING ADOLESCENT GIRLS IN THE PURSUIT OF THEIR RIGHT TO EDUCATION: A FOCUS ON SOUTH AFRICA

## CHAPTER ONE: INTRODUCTION

### I. BACKGROUND

Human Rights are universal and enjoyed by everyone. According to the United Nations Convention on the Rights of the Child (CRC) of 1989, a child is defined as a human being below the age of eighteen years unless under the law applicable to the child, the age of majority is attained earlier.<sup>1</sup> The child is therefore entitled to the enjoyment of all the rights pertaining to human beings regardless of sex, race, ethnicity or other status of the child. In the growing up and development process children go through adolescence, which is the transition period between puberty and adulthood. Adolescence is a challenging period in the life of every child because during this stage the child wants to affirm him or herself by trying to establish a personal identity that is separate from parents and peers.<sup>2</sup>

All over the world, children are regarded as tomorrow's leaders and to achieve that mission, they need to have a proper education. Education is a human right belonging to everyone; it is not a privilege and therefore, both boys and girls are equally entitled to it. The aim of education is to strengthen and develop the inherent dignity and freedom of every human being and to promote self-esteem and respect for other human beings.<sup>3</sup> In other words, education is the preparation of the child for responsible life in a free society, in the spirit of peace, tolerance, equality of sexes, and friendship among all people. In Africa, children constitute 50% of the population,<sup>4</sup> but their situation, particularly that of adolescent girls is not enviable, because more than half of children,

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<sup>1</sup> Convention on the Rights of the Child, 1989 Art 1.

<sup>2</sup> DG Benner & PH Baker *Encyclopedia of Psychology & Counseling* (1999) 47.

<sup>3</sup> W Bray *Human rights in education* (2000) Pretoria: University of Pretoria, CELP 1.

<sup>4</sup> J Sloth-Nielsen *Children's Rights in Africa A Legal Perspective* (2008) Ashgate Publishing, Ltd., 6.

particularly in Sub-Sahara Africa live in poverty, and therefore many grow up deprived of education.<sup>5</sup>

Education is recognised both as a civil and political right as well as a socio-economic and cultural right in different International Human Rights documents such as the 1948 Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). Education is both the foundation and unifying force of a democratic way of life, the motivational force for economic and social development. It is also the most effective investment that a society can make and the richest reward it can offer. Because education helps men and women realise their potential in economic, political and social arenas; it is also the single most powerful way to get people out of poverty. The right to education is a fundamental human right not only because it contributes to the achievement of other rights, but also because the United Nations (UN) has given priority to it as one of the goals to be achieved in the Millennium Development Goals (MDG). Special consideration accorded to girls' right and access to education are contained in MDG No. 2 and MDG No.3, which respectively aim to achieve universal primary education by ensuring that all boys and girls complete a full course of primary schooling and also to promote gender equality by eliminating gender disparity in primary and secondary education by the 2015 established dateline.<sup>6</sup>

According to John Eekelaar, the idea of “best interests” attributable to the rights of the child include firstly, basic interests, for example to physical, emotional and intellectual care, secondly, developmental interests, to enter adulthood as far as possible without disadvantage and thirdly autonomy, especially in the freedom to choose a lifestyle of their own.”<sup>7</sup> Every child should be given education as an opportunity to become a successful adult, in other words, a productive adult who can contribute to national development as well as to the development of Africa, without any discrimination with regard to sex or gender. This can only be achieved if education is made available and accessible to every child.

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<sup>5</sup> J Amer *Children in Africa, A strategic framework for Sub – Saharan Africa* (2003) Plan, 5.

<sup>6</sup> UNDP “Millennium Development Goals: Eight Goals for 2015” Available at: <http://www.undp.org/content/undp/en/home/mdgoverview.html> (accessed: 16 October 2012).

<sup>7</sup> J Ekelaar “The importance of thinking that children have rights’ (1992) 6 *International Journal of Law and Family* 230-231.

The right of the adolescent girl to education is one of the most indispensable of all rights, because education performs an important role in her life. Through education the girl child is able to secure other rights. However, adolescent girls in many African societies including South Africa, face many obstacles to accessing education because the established norms and systems within these societies favour and place a higher value on boys than girls, thereby limiting the potential of the girls to develop to their full potential.

## **II. PURPOSE OF THE STUDY**

This paper aims to draw attention to the fact that sometimes, in education, adolescent girls are lost in the system in Africa, because they are confronted with more difficulties and challenges in accessing education and in remaining in school, than their male counterparts; due in the first place to social attitudes and secondly to poverty, family pressures and external factors such as pregnancy. There is a crucial need for special policies and legal frameworks on the advantages of enabling adolescent girls, through the medium of education to contribute and promote economic and social development, which stands as a common goal for Africa in general.<sup>8</sup> The study will focus on the realisation of adolescent girls' right to education and will seek to identify some of the problems facing adolescent girls' in the pursuance of their right to education in South Africa. A number of recommendations will be proffered on the possibility of addressing these problems.

## **III. SIGNIFICANCE OF STUDY**

Education is a fundamental tenet of any nation's capital investment. This defines the reason why article 26 of the UDHR links education to the importance of developing the whole person and the ability to participate effectively in a free society.<sup>9</sup> The rights of women and adolescent girls are a current concern both in local communities and internationally; and their right to education in

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<sup>8</sup> C Pereira *Gender in the Making of the Nigerian University System* (2007) James Currey, London and Heineman Educational Books, Ibadan 8.

<sup>9</sup> A Bösl & J Diescho *Human Rights in Africa Legal Perspectives on their Protection and Promotion* (2009) Windhoek, Macmillan Education 55.

particular is widely recognized in international and regional human rights instruments as well as some special instruments such as the World Declaration on Education for All.<sup>10</sup>

The fact remains that adolescent girls encounter many problems like unplanned or unwanted pregnancies, early marriages, gender attitudes, household chores and responsibilities that restricts the pursuance of their education. Considering the empowered women principle, education increases the opportunities of obtaining a well-paid job, which again has a number of advantages including social security and old age security. However, in many countries across Africa and around the world at large, there still exist some cultures in which adolescent girls are denied access to education like under the Taliban regime in Afghanistan, for example. The study focuses on South Africa because in spite of the progressive laws, policies and enforcement mechanisms the challenges encountered by adolescent girls in the pursuit of their right to education still exist. While an abundance of literature on children's education, and on gender equality is commonly available, there is a dearth of research documentation on the difficulties adolescent girls encounter in pursuing their education.

#### **IV. DEFINITION OF KEY TERMS AND CONCEPTS**

##### **1. The Girl Child - Adolescent Girl**

A "child" is defined by the South African Constitution as well as the Children's Act as a person under the age of 18 years.<sup>11</sup> Professor Chibiki Offorma defines the girl child as a biological human being of the female sex from birth to the age of 18 – the period before young adulthood.<sup>12</sup> She presents the notion of the girl-child as a period within the development of the young child made up of infancy, childhood, early and late adolescence stages where she is totally under adult (parental or guardian) care - malleable, defenseless and very dependent on the significant others on whom she models her behavior through observation, repetition and imitation; the period during which her physical, mental, social, spiritual and emotional developments start and progress to gets to the peak

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<sup>10</sup>World Conference on Education for All "World Declaration on education for all and framework of action to meet basic learning needs" (1999) *UNESCO* Jomtien, Thailand.

<sup>11</sup> The Constitution of the Republic of South Africa, 1996 S28(3), Children's Act No 38 of 2005, S12.

<sup>12</sup> G C Offorma 'Girl-child education' (2009) *Keynote address presented at the Conference of the Federation of University Women of Africa held in Lagos, Nigeria 16 – 19 July 2009*, Available at: <http://www.ifuw.org/fuwa/docs/Girl-Child-Education-Africa-part2.pdf> (accessed: 10 October 2012).

at the young adult stage.<sup>13</sup> Adolescent girl thus refers to the girl child in the later stage of development towards young adulthood and generally covers the period between 12 to 18 years. Prof. Offorma presents the girl child not only as a vulnerable person who needs care and protection in the growing up stage but also as a personality with the potential to develop and become the “mother” and “guardian of the future” and therefore in need of nurturing and education.<sup>14</sup> My research will focus mainly on adolescent girls and not on the girl child as a whole.

## 2. The Right to Education

Education is one of the most fundamental rights available to every individual.<sup>15</sup> The right to education provides the opportunity for every person to acquire information, knowledge, skills, attitudes and values to be able to develop physically, mentally, socially, emotionally, spiritually, politically and economically; a means of preserving, transmitting and improving the culture of the society and to be able to function optimally within society.<sup>16</sup> Thus the right to education provides individuals the opportunity to become functional members of society. Generally, the right to education is supposed to be available and accessible to all without discrimination of any kind but because of systemic societal limitations some groups within society are denied or deprived of the full enjoyment of the right. The study focuses on adolescent girls as one of such groups that meet barriers to taking full advantage of the right to education.

## V. RESEARCH QUESTIONS

Human capital is the accumulation of knowledge, skills and experience of people that make them productive.<sup>17</sup> This dissertation draws from the assumption that the education of girls is important for a country’s development, and that educating young girls is a key factor for the alleviation of poverty. The essential research question is whether sufficient gains have been achieved with respect to the full realisation of girls’ rights to education, particularly in South Africa where girls’ right to

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<sup>13</sup> Offorma (n 12 above) 1.

<sup>14</sup> Offorma (n 12 above) 2.

<sup>15</sup> Offorma (n 12 above) 2.

<sup>16</sup> Offorma (n 12 above) 2.

<sup>17</sup> Amer (n 5 above) 4.

education was blatantly abused under the apartheid system and continues to be abused even under the present democratic government. The specific elements of this question are as follows:

- a) What has been done at international and regional levels to protect and promote adolescent girls' right to education?
- b) What has been done at a constitutional level in South Africa or how strong is South Africa constitution on the right to equal education?
- c) Are South Africa's laws and policies adequate?
- d) What are the challenges and constraints that adolescent girls continue to face in the pursuit of their right to education?
- e) How and to what extent may these challenges be addressed?

## **VI. RESEARCH METHODOLOGY**

The basis of this research is legal because the study examines applicable laws. It further considers the practical application and impact of the laws in society. In this regard, perspectives from other disciplines such as psychology, culture, sociology and religion will narrowly be considered in exploring the problems facing young girls in their quest for education. The study is based on library research for international, regional and domestic laws, policies and regulations on girls' right to education, case law, and the analysis of published and unpublished texts that have authority on the subject. The study also relies extensively on reliable internet sources.

## **VII. LITERATURE REVIEW**

For the purpose of this study, I direct my focus on the current corpus of books relating to equal access to education, children's rights in Africa, human rights in education, and articles on problems facing adolescent girls in the pursuance of their right to education. The material available focuses on legal policy and documents in regional and international law providing for the right to education. In 2007, Ann Skelton wrote an article on girls' socio-economic rights in South Africa showing that girls, when they are babies and young children, enjoy relatively equal access with their male counterparts to socio-economic services made available to children by the South African state but



during the adolescence they often struggle to get educated.<sup>18</sup> In 2001, Finberg Alan wrote on sexual violence against girls in South African schools, depicting how many young girls are scared at school.<sup>19</sup> Chigona and Rajendra also wrote on challenges and lacunae of teenage mothers and schooling in South Africa, considering that pregnancy is a factor contributing to school drop-out in South Africa as in many other schools in Africa.<sup>20</sup>

## VIII. LIMITATIONS OF THE STUDY

The study focuses particularly on South Africa and only considers the socio-economic side of the right to education because it is a protective measure against economic exploitation of the young girl both by parents or the society, and also against child labour and trafficking. The study is limited to the analysis of secondary data. An empirical research on the subject would have produced a more elaborate and comprehensive analysis but due to the constraints of time and resources I rely most of the time on articles, commentaries, policies, legislation and conventions.

## IX. OVERVIEW OF CHAPTERS

The study is divided into five chapters. This first chapter presents an introductory background to the study. It highlights the purpose and significance of the study, the research questions, the methodology used, and a brief review of relevant literature as well as the scope and limitation of the study. In chapter two I examine the range of international and regional laws that conceptualise universal rules on the right to education. Chapter three focuses on the recognition and enforcement of adolescent girls' right to education in South Africa. It looks at the Constitution, national legislation, regulations, policies, programmes as well as enforcement mechanisms that guarantee practical application of girls' right to education in South Africa. Chapter four relates to the actual problems facing adolescent girls in the pursuit of their right to education. The chapter identifies specific problems that restrict girls in the pursuit of their right to education among which are gender

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<sup>18</sup> A Skelton 'Girls' socio-economic rights in South Africa' (2010) 26 *South African Journal on Human Rights*, 141.

<sup>19</sup> E George & A Finberg *Scared at School: Sexual Violence Against Girls in South African Schools* (2001) Human Rights Watch.

<sup>20</sup> A Chigona & C Rajendra 'Girls' Education in South Africa: Special Consideration to Teen Mothers as Learners' (2007) *JEID* 3.

discrimination, early marriage, teenage pregnancy and sexual harassment at school. In chapter five I examine the challenges in overcoming these problems. I examine the challenges from a multifaceted perspective ranging from the socio-economic, tradition, culture and religious beliefs to the hostile education environment. I then go further to look at how some of these challenges can be overcome at the individual, family and community, government and civil society levels.

## **CHAPTER TWO: INTERNATIONAL AND REGIONAL INSTRUMENTS THAT MAKE PROVISION FOR THE PROTECTION OF THE RIGHT TO EDUCATION**

### **I. INTRODUCTION**

No human right, except the right to life itself, is more fundamental than this; a person's freedom of learning is part of his or her freedom of thought, which is even more basic than his or her freedom of speech.<sup>21</sup> If we take from someone the right to decide what he or she will to be curious about, we destroy that person's freedom of thought - we say, in effect, you must think not about what interests you and concerns you, but about what interests and concerns us.<sup>22</sup> As well as being a right itself, the right to education is also an enabling right; education creates the voice through which right can be claimed and protected.<sup>23</sup> The right to education occupies an important place in human rights and is indispensable for the exercise of all human rights and for development.<sup>24</sup> No other right can be exercised by individuals unless they have received a certain minimum education.<sup>25</sup> There are various conventions and agreements signed by many countries all over the world including African countries, to protect and preserve the right to education to all children without discrimination.

### **II. MAJOR PROVISIONS AT INTERNATIONAL LEVEL ON THE RIGHT TO EDUCATION**

Many international human rights instruments make provision for the protection of the right to education. As a human right, the right to education belongs to all human beings regardless of nationality or citizenship. Everybody in any country is therefore equally entitled to education

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<sup>21</sup> J Holt 'The right to control one's learning' *The Natural Child Project* available at: [http://www.naturalchild.org/guest/john\\_holt3.html](http://www.naturalchild.org/guest/john_holt3.html) (accessed: 12 April 2011).

<sup>22</sup> Holt (n 21 above).

<sup>23</sup> The Right to Education Project 'Defining the right to education' available at: <http://www.right-to-education.org/node/233> (access: 12 April 2011).

<sup>24</sup> UNICEF 'Education for all' available at: <http://www.unescobkk.org/education/efa/efa-other-initiatives/> (accessed: 12 April 2011).

<sup>25</sup> UNESCO 'Right to Education' available at: [http://portal.unesco.org/geography/en/ev.php-URL\\_ID=5993&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/geography/en/ev.php-URL_ID=5993&URL_DO=DO_TOPIC&URL_SECTION=201.html) (accessed: 12 April 2011).

without discrimination. It is interesting to note that the European Convention for the Protection of Human Rights in its Additional Protocol 1 Article 2 simply states that no person shall be denied the right to education.<sup>26</sup> The right as it is presented is not a positive right, which means the state does not have any positive obligation to provide or subsidise a particular type of education; unlike the American Convention on Human Rights which makes a more elaborate provision for the right to education in its Additional Protocol. Article 13 of the Protocol places an obligation on States parties to recognise the right to education as a positive right. The right to education has also been affirmed in the Universal Declaration of Human Rights of 1948, the Convention on the Rights of Children of 1989, and also by the World Summit for Children in 1990. It is also important to examine some of the United Nations Economic and Social Council (UNESCO) instruments which have been created in order to meet the learning needs of children.

### **1. The Universal Declaration of Human Rights (UDHR)**

Human rights first gained international recognition in 1948 when the Universal Declaration of Human Rights guaranteed the inalienable and inviolable civil and political rights as well as social, economic and cultural rights to which people everywhere are entitled.<sup>27</sup> The UDHR however, has no binding legal force but has an undeniable moral force which provides practical rules of conduct to guide the action of state parties.<sup>28</sup> Included in the range of rights provided by the UDHR is the right to education.

Article 26(1) of the UDHR states that everyone has the right to education, that education shall be free, at least in the elementary and fundamental stages, that elementary education shall be compulsory, and that technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. According to the Declaration, everyone is entitled to the right to education, which means that government has a responsibility according to its available resources to ensure that everyone has access to education

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<sup>26</sup> 'Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11' Paris, 20 III 1952 *European Treaty Series - No. 009*.

<sup>27</sup> UN 'The Universal Declaration of Human Rights, 1948' Available at: <http://www.un.org/en/documents/udhr/> (accessed: 12 June 2012).

<sup>28</sup> OHCHR 'Universal Human Rights Instruments' available at: <http://www2.ohchr.org/english/law/> (accessed: 29 June 2012).

regardless of sex. The purpose of education therefore, is to promote the complete development of the person that will provide him or her opportunity to demand other human rights. Thus the right to education is fundamental in empowering the individual to claim and enjoy not only socio and economics rights but also civil and political rights. The preamble reaffirms the commitment of the State parties in respecting, promoting and protecting the fundamental rights, the dignity and worth of the human person and the equal rights of men and women.

South Africa has adopted the UDHR and is a member state of the United Nations (UN) human rights since November 1945. The UDHR is not a treaty and therefore by its nature has no legal binding force. While not a treaty itself, the Declaration was adopted for the purpose of enforcing the UN Charter, which is binding on all member states and therefore it remains a fundamental constitutive document of the UN.<sup>29</sup> Thus South Africa, as a member state of the UN is morally bound by the provisions of the UDHR including the equal right to education for men and women. Since all people in South-Africa are entitled to all the rights and freedoms set forth in the UDHR it follows that its enforcement guarantees to everyone in South-Africa the right to education, which shall be free and compulsory, at least in the elementary and fundamental stages.<sup>30</sup>

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

The International Covenant on Economic Social and Cultural Rights together with the UDHR and the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols form part of the International Bill of Rights, which constitutes the UN's major frameworks for human rights. Article 13 of the ICESCR states that all parties to the covenant recognise the right of everyone to education, that they agree that education shall be directed to the full development of the human personality and the sense of its dignity; and they also further agree that education shall enable all persons to participate effectively in a free society.<sup>31</sup>

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<sup>29</sup> Wikipedia 'Universal Declaration of Human Rights' available at: [http://en.wikipedia.org/wiki/Universal\\_Declaration\\_of\\_Human\\_Rights#Education](http://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights#Education) (accessed: 12 April 2011).

<sup>30</sup> 'Abuse issues - right to information Reports on Human Rights in South-Africa' available at: <http://www.human-rights-online.org/Human-Rights-in-Africa/Human-Rights-in-South-Africa/>(accessed: 12 April 2011).

<sup>31</sup> ICESCR art 13(1) available at: <http://www2.ohchr.org/english/law/cescr.htm> (accessed: 12April 2011).

Like the UDHR the ICESCR declares that primary education shall be free and compulsory to all.<sup>32</sup> In General Comment No 13, it is provided that education shall be accessible, acceptable and adaptable for all. Education as an empowerment right is the primary vehicle by which economically and socially marginalized adults and children can boost themselves out of poverty and get the means to participate fully in their communities.<sup>33</sup> It has a role in empowering women. The ICESCR is a treaty and therefore has legally binding effect on member countries that are party to it. South Africa has signed but not ratified the treaty, which might imply that it is not legally bound by its provisions. However, in the *Grootboom* judgment, for example the Constitutional Court has relied extensively on the ICESCR in interpreting the socio-economic rights provisions enshrined in the South African Constitution.<sup>34</sup>

### **3. Convention on the Right of the Child (CRC)**

By ratifying the Convention on the Rights of the Child South Africa has effectively made the convention binding domestically.<sup>35</sup> Though the treaty is not automatically binding, according to a constitutional provision, courts must favour any reasonable interpretation of legislation that is consistent with international law.<sup>36</sup> Education has a vital role in promoting human rights and democracy. It has the potential to set the girl child free, because article 28 of the CRC provides that States parties must recognise the right of the child to education on the basis of equal opportunity; and should take measures to encourage regular attendance at schools and also ensure that drop-out rates are reduced.<sup>37</sup> As it is the case with the UDHR, all States parties to the CRC acknowledge that education shall be directed to the development of the child, his or her preparation for responsible life in a free society.<sup>38</sup>

### **4. UNESCO Convention Against Discrimination in Education, 1960**

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<sup>32</sup> ICESCR (n 31 above) art 13(2).

<sup>33</sup> UNESCO (n 25 above)

<sup>34</sup> *Government of the Republic of South Africa and Others v. Grootboom and Others* 2000 (11) BCLR 1169 (CC) at para 26-30

<sup>35</sup> Ratified by South Africa in June 1995.

<sup>36</sup> The Constitution (n 11 above) s 233.

<sup>37</sup> OHCHR 'Convention on the Rights of the Child, 1989' art 28(1) (e) available at: <http://www2.ohchr.org/english/law/crc.htm> (accessed: 14 April 2011).

<sup>38</sup> OHCHR (n 37 above).

In line with the provisions of the UDHR, UNESCO has adopted the principle of non-discrimination, which asserts and proclaims that every person has the right to education; considering that discrimination in education is a violation of the rights enumerated in the UDHR.<sup>39</sup> It has as its main objectives to prohibit any form of discrimination in education and to promote equality of opportunity and treatment for all in the field of education, while respecting the diversity of national education systems. The UNESCO Convention stipulates in article 1 as follows:

*1(1) For the purpose of this Convention, the term “discrimination” includes any distinction, exclusion, limitation or preference which, being based on race, color, 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 group of persons; or*
- d) Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.*

*(2) For purpose of this Convention, the term “education” refers to all type and levels of education, and includes access to education, the standard and quality of education, and the condition under which it is given.*

Equality of opportunity and treatment for all in the field of education should be understood here to mean that the right should not only be acknowledged in principle, but that everyone should actually have a fair chance to attain or make use of the opportunities in the field of education.<sup>40</sup>

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<sup>39</sup> OHCHR ‘Convention against Discrimination in Education, 1960’ available at: <http://www2.ohchr.org/english/law/education.htm> (accessed 12 April 2011).

<sup>40</sup> C A C Che ‘Educational opportunities for the girl child in Africa: A necessary revisit of the discrimination factor with reference to Egypt, South Africa and Cameroon’ [http://repository.up.ac.za/bitstream/handle/2263/985/chofor%20che\\_c\\_1.pdf?sequence=1](http://repository.up.ac.za/bitstream/handle/2263/985/chofor%20che_c_1.pdf?sequence=1) (accessed: 12 April 2011).

## **5. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**

The Convention on the Elimination of all forms of Discrimination Against Women affirms principles of fundamental human rights and equality for women around the world.<sup>41</sup> The convention provides women, including adolescent girls the rights to education among other rights.<sup>42</sup> Article 10 of the CEDAW states that all States parties to the Convention should take all appropriate measures to eliminate discrimination against women in order to ensure they have equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women; the same conditions in career and vocational guidance, access to education, the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely.

The CEDAW recommends that signatories to the convention provide effective legal measures to protect women against violation of the provisions contained therein, take preventive measures to change attitudes and also provide services and assistance to women.<sup>43</sup> Internationally, discrimination against girls and women is regarded as a violation of human rights and therefore, since South African has signed and ratified the treaty the government is obliged to report regularly to the UN on the steps it has taken to improve the status of girls and women.<sup>44</sup>

### **III. PROVISIONS AT REGIONAL LEVEL ON THE RIGHT TO EDUCATION**

Many years after the adoption of international instruments confirming and protecting the right to education, African states realised that those international conventions did not reflect African reality. It therefore became necessary to draw up regional treaties that would respond specifically to the African context. Among those conventions, are the African Charter on Human and Peoples'

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<sup>41</sup> UN Women 'Convention on the Elimination of Discrimination Against Women, 1979' Available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> (accessed: 07 May 2011).

<sup>42</sup> UN Women (n 41 above) art 10, arts 11.1 & 13 and art 12.1 respectively.

<sup>43</sup> UN Women (n 41 above) art 2.

<sup>44</sup> UN Women (n 41 above) art 18



rights,<sup>45</sup> the African Charter on the Rights and the Welfare of the Child,<sup>46</sup> the African Youth Charter,<sup>47</sup> the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,<sup>48</sup> which all have a particular concern about education of children in Africa and their participation in the development of the continent.

## 1. The African Charter on Human and Peoples' Rights (ACHPR)

The African Charter on Human and Peoples' Rights was adopted by the Organisation for African Unity (OAU) and it remains the pivotal human rights instrument for the African continent.<sup>49</sup> The Charter recognises individual rights as well as peoples' rights and duties, and some socio-economic rights.<sup>50</sup> In most cases it only prohibits discrimination in the enjoyment of the right and freedoms as is provided for by article 2 which states, “[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter 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.” Article 3(1) provides that “[e]very individual shall be equal before the law”. Its only provision about education is article 17(1) which states that “[e]very individual shall have the right to education.”

## 2. The African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC is similar to the CRC but makes special provision to ensure and guarantee girls' right to education. Article 11 of the ACRWC provides for the right to education for *every* child and in section (3) enjoins States Parties to the convention to take all appropriate measures with a view to achieving the full realisation of the right and more specifically obliges States Parties in section 3(e)

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<sup>45</sup> Ratified by South Africa in

July 1996. [http://www.achpr.org/english/ratifications/ratification\\_african%20charter.pdf](http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf) (accessed 07 May 2011).

<sup>46</sup> Ratified by South Africa in January 2000.

<sup>47</sup> Ratified by South Africa in May 2009 <http://www.africa-union.org/root/au/documents/treaties/list/youth%20charter.pdf> (accessed 07 May 2011).

<sup>48</sup> Ratified by South Africa in May 2007 [http://www.achpr.org/english/info/women\\_prot.htm](http://www.achpr.org/english/info/women_prot.htm) (accessed 07 May 2011).

<sup>49</sup> C Heyns & M Killander *Compendium of key Human Rights Documents of the African Union* (2007) 29.

<sup>50</sup> Heyns & Killander (n 49 above) 29.

to 'take special measures in respect of *female*, gifted and disadvantaged children, to ensure equal access to education for all sections of the community (emphasis added).'<sup>51</sup> Persons under the age of 18 years enjoy a higher level of protection under the Charter, than in the UNCRC, which besides protecting the rights also provides an individual complaint procedure.<sup>52</sup> The African Charter gives a better African perspective and lays more emphasis on the best interest of the child.<sup>53</sup> Concerning education, the ACRWC states:

*11 (1) every child shall have the right to education*

*(2) The education of the child shall be directed to the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;*

*(3) States parties to the Charter shall take appropriate measures with a view to achieving the full realisation of this right and shall in particular (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all; (c) Make 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.*

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

Adopted in Maputo, Mozambique in July 2003 and entered into force in November 2005, the Protocol recognises that there still exists inequality between men and women in Africa.<sup>54</sup> Article 2 of the Protocol puts the responsibility on States Parties to combat all forms of discrimination against women through appropriate legislative, institutional and others measures.<sup>55</sup> Article 12 pertaining to the right to education and non-discrimination states as follows:

*12(1) States parties shall take all appropriate measures to:*

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<sup>51</sup> The African Charter on the Rights and Welfare of the Child (ACRWC), 1999. Available at: <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/> (accessed: 18 December 2012).

<sup>52</sup> Heyns & Killander (n 49 above) 62.

<sup>53</sup> Che (n 40 above) 24.

<sup>54</sup> Heyns & Killander (n 49 above) 47.

<sup>55</sup> ACHPR *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* PULP Pretoria24.

- a) *Eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;*
  - b) *Eliminate all stereotype in textbooks, syllabuses and the media, that perpetuate such discrimination;*
  - c) *Protect women, especially the girl-child from all forms of abuse, including sexual harassment in school and other educational institutions and provide for sanctions against the perpetrators of such practices;*
  - d) *Provide access for counseling and rehabilitation services to women who suffer abuses and sexual harassment;*
  - e) *Integrate gender sensitization and human right education at all levels of education curricula including teacher training.*
- (2) *States parties shall take specific positive action to:*
- a) *Promote literacy among women;*
  - b) *Promote education and training for women at all levels and in all disciplines, particularly in the fields of science and technology;*
  - c) *Promote the enrolment and retention of girls in schools and other training institutions and the organization of programmes for women who leave school prematurely.*<sup>56</sup>

#### **4. African Youth Charter (AYC)**

The AYC was adopted in Banjul, Gambia in July 2006.<sup>57</sup> The Charter is similar to the ACWRC and carries with it the spirit that Africa's greatest resource is its youthful population who's active and full participation has the potential to enable all Africans without any discrimination to surmount the difficulties that lie ahead. In article 13 entitled 'skills and development' it says every young person shall have the right to education of good quality, education of young people shall be directed to the promotion and holistic development of the young person's cognitive and creative and emotional abilities to their full potential. The AYC adds more value to the protection of the right to education as compared to the ACWRC. Article 13(4) states that parties shall take all appropriate measures

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<sup>56</sup> ACHPR (n 55 above) 31.

<sup>57</sup> Heyns & Killander (n 49 above) 94.

with a view to achieving full realisation of the right to education and shall take steps to encourage regular school attendance and reduce drop-out rates.<sup>58</sup>

#### IV. CONCLUSION

With regards to the provision and protection of the right to education, it is not only necessary to have all the international and regional instruments in place but most importantly, State parties to those conventions must take all measures to ensure their effective implementation and realisation. The ideals of equal opportunity, formal and substantive equality are concepts that are still to be well understood especially in Africa<sup>59</sup> because, as Skelton has put it ‘the nexus of female children in the development context has remained relatively unexplored’.<sup>60</sup> Such exploration should start by looking at the problems that girls encounter in pursuing education.

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<sup>58</sup> AYC art 13(4) available at <http://www.africa-union.org/root/ua/conferences/mai/hrst/charter%20english.pdf> (accessed: 07 May 2011).

<sup>59</sup> Che (n 40 above) 16.

<sup>60</sup> A. Skelton ‘Girls’ socio-economic rights in South Africa’ (2010) 26 *SAJHR*, 141.

## **CHAPTER THREE: RECOGNITION AND ENFORCEMENT OF ADOLESCENT GIRLS' RIGHT TO EDUCATION IN SOUTH AFRICA**

### **I. INTRODUCTION**

A study conducted by the Commission on Gender Equity (CGE) identified that gender differentiation in schools in South Africa is a legacy of the apartheid system that pursued a discriminatory and sexist educational policy, which affected the participation of minorities, including women and girls and discouraged them from acquiring certain skills and levels of education.<sup>61</sup> Consequently, girls developed low aspirations and those who took the challenge to pursue studies in fields considered to be male domain faced a hostile environment filled with discrimination and harassment.<sup>62</sup>

South African schools during the apartheid period as well as under the present democratic government have been noted as spaces where girls' rights are frequently violated.<sup>63</sup> The CGE reports that it carried out its research at a period when there was high media coverage of the prevalence of pregnant teenage students and gender violence in schools around the country.<sup>64</sup> This is a disturbing trend that continues to have a negative impact on the girls' right to education. In this chapter therefore, I examine the extent to which the right to education as stipulated in the international and regional human rights instruments identified in the previous chapter has been given recognition in South Africa, especially in connection with the special situation of girls who constitute a vulnerable and disadvantaged category in terms of the enjoyment of the right. In the section that follows I examine how the right to education is given recognition in South Africa. I go further to look at how practically the right to education for girls in general and adolescent girls in particular is been implemented. I then make a summary conclusion of the chapter.

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<sup>61</sup> CGE "Gender in the curriculum" (2007) *Commission on Gender Equality – Education Report*, 8-12.

<sup>62</sup> CGE (n 61 above) 12.

<sup>63</sup> CGE (n 61 above) 14.

<sup>64</sup> CGE (n 61 above) 8.

## II. SOUTH AFRICA STATUTES ON THE RIGHT TO EDUCATION FOR ADOLESCENT GIRLS

South Africa had become part of the international human rights community with a new Constitution that was adopted in 1996 providing for a broad range of rights including the right to education and equality. Recognising the need to transform the education system in order to redress the legacies of past racially discriminatory laws and practices all over the country, the government has adopted a number of legislative, administrative and other measures that subscribe to all international laws; and education policies that seek to promote the right to education and gender equity in the educational system.<sup>65</sup> There is no specific legislation in South Africa that seeks to protect girls' rights to education but generally there is a growing acceptance of the necessity of governmental intervention on access to education for girls.<sup>66</sup> The measures that the government has put in place make provision for, protect and guarantee not only the right to education but also provide access and equal opportunity among girls and boys in the enjoyment of the right.

### 1. Significance of Education to the Girl Child and to the Nation

The apartheid education system was designed to encourage and promote gendered educational outcomes and therefore, restricted life opportunities for women and girls, as the curriculum and all school activities were aimed at instilling in the students the idea of stereotyped roles for women and girls in society.<sup>67</sup> Girls were generally orientated to pursue subject areas such as needlework and cookery, traditionally designated for female learners, which caused them to perform poorly in such areas as mathematics and science regarded as male domain.<sup>68</sup> Realising the importance of education not only as a right but also as a tool for the development of society the new government of South Africa embarked on an extensive programme to redress the legacy of the apartheid regime on the

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<sup>65</sup> CGE (n 61 above) 10.

<sup>66</sup> Che (n 40 above) 42.

<sup>67</sup> CGE (n 61 above) 12.

<sup>68</sup> CGE (n 61 above) 12.

education system.<sup>69</sup> In spite of challenges the education of the girl child remains a priority for the government of South Africa.<sup>70</sup>

The common statement which says, “educate a woman, you educate a nation,” was reiterated by then Deputy President, Mlambo-Ngcuka in 2007, to emphasise the importance of education for girls.<sup>71</sup> Education has the advantage of providing information to help an inexperienced person develop physically, mentally, socially, emotionally, spiritually, politically and economically; to enable the person to become a functional member of society.<sup>72</sup> Not only do girls have the right to receive quality education, they also have the right to the knowledge and skills that will enable them to contribute economically and socially – that will enable them to lift themselves out of poverty and gain the means to contribute to and participate in their communities.<sup>73</sup> Thus education provides them the opportunity to improve their social standing and economic status.<sup>74</sup> Education of the girl child is a critical development issue – both because of its inherent value to individual girls, and for its wider societal benefits.<sup>75</sup> Girls’ inability to realise this right has profound effects on their ability to realise their other social, political and economic rights.<sup>76</sup>

## 2. Constitutional Protection of the Right to Education

The South African Constitution is the supreme law in the country and it is enforced to everybody, even the State. The right to education in South Africa first gained recognition in the Interim Constitution of 1993<sup>77</sup> and was later recaptured by the Bill of Rights in the 1996 Constitution which

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<sup>69</sup> CGE (n 61 above) 16.

<sup>70</sup> CGE (n 61 above) 16.

<sup>71</sup> L Anzia “Educate a Woman, You Educate a Nation” – South Africa Aims to Improve its Education for Girls’ available at: <http://womennewsnetwork.net/2007/08/28/%E2%80%9Ceducate-a-woman-you-educate-a-nation%E2%80%9D-%E2%80%93-south-africa-aims-to-improve-its-education-for-girls/> (accessed: 16 October 2012).

<sup>72</sup> Offorma (n 12 above) 1-2.

<sup>73</sup> M Haslegrave *et al* ‘The Multi-faceted Right to Education: A Guide to Implementation & Monitoring’ (2011) *International Federation of University Women (IFUW) Switzerland* 2. Available at: <http://www.ifuw.org/priorities/eahandbook/handbook.pdf> (accessed: 10 October 2012).

<sup>74</sup> CGE (n 61 above) 15.

<sup>75</sup> S Gibson ‘Girls’ education in Africa: An overview of what works’ (2004) *The IDL Group*, 4.

<sup>76</sup> Gibson (n 75 above) 4.

<sup>77</sup> Constitution of the Republic of South Africa Act 200 of 1993, sect 32 (Interim Constitution) available at: <http://www.info.gov.za/documents/constitution/93cons.htm> (accessed: 10 October 2012).

makes a more comprehensive provision for the right.<sup>78</sup> Apart from the Constitution there are other statutes and policies that provide for and protect the right to education, and by extension the equal enjoyment of the right by the girl-child.

**a. The right to education**

The right to education was first enshrined in the 1993 Interim Constitution which provided in section 32 that, “[E]very person shall have the right; a) to a basic education and to equal access to educational institutions” (emphasis added). The 1996 Constitution contains a better and more comprehensive provision of the right to education than does the interim Constitution.<sup>79</sup> Section 29 provides as follows:

(1) *Everyone has the right-*

- a) *To a basic education, including adult basic education; and*
- b) *To further education, which the state, through reasonable measures, must make progressively available and accessible (emphasis added).*

Though the two post-apartheid constitutions make provision for the right to education, they do not specify any particular protection imputable to the girl child or more precisely adolescent girls as a vulnerable, disadvantaged and marginalised category. The Interim Constitution attributes the right to ‘every person’ and the 1996 Constitution stipulates that the right belongs to ‘everyone.’ These qualifications are to the effect that the right belongs to both boys and girls. We need also to read into other provisions to be able to deduce the attribution of the right to the girl child.

**b. Equal protection.**

Girls’ right to equality in education in South African can also be deduced from the equality clause of the Constitution. Section 9 provides for equal protection and equality of opportunity. It states that:

(1) *Everyone is equal before the law and has the right to equal protection and benefit of the law.*

(2) *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*

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<sup>78</sup> The Constitution (n 11 above) s29.

<sup>79</sup> R Malherbe ‘A fresh start I: Education rights in South Africa’ (2000) 4 *EJEL & P* 52.



*or categories of persons, disadvantaged by unfair discrimination may be taken (emphasis added).*

**c. Non-discrimination**

The equality clause is further enhanced by a guarantee of non-discrimination. Thus section 9 further promises that:

- (3) *The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth (emphasis added).*
- (4) *No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination (emphasis added).*

It is important to note that the right to education in South Africa has a general application as stipulated in section 29 of the 1996 Constitution. The provision does not specifically mention the girl-child<sup>80</sup> and therefore, their enjoyment of the right to education can only be assumed from the equality clause in the Constitutional text.<sup>81</sup> I focus on the equality clause in the 1996 Constitution, which is to the effect that adolescent girls have the right to equal protection and benefit under the education system (section 9(1)), equality of opportunity, which would mean equal access to educational opportunities as contained in section 9(2), as well as the right not to be unfairly discriminated against on the grounds of sex and pregnancy among others as stipulated in sections 9(3) & (4). The equality clause also requires the state to take legislative and other measures – administrative or otherwise to protect and promote the rights of persons or categories of persons such as adolescent girls who may be unfairly discriminated against.<sup>82</sup>

From the above analysis, Constitution provide solid and strong recognition of girls right to education and equality in South Africa but, Eric Berger argues that the current formation of the South African education system is such that it is structured to violate the Constitution's guarantees

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<sup>80</sup> Offorma (n 12 above) 3.

<sup>81</sup> Interim Constitution (n 76) s8.

<sup>82</sup> The Constitution (n 11 above) s 9(2) & (4).

of equal protection in the sense that if the State fails to take measures to prevent inequalities and discrimination as constitutionally required then it violates section 9 and as a result also violates the rights of girls to education.<sup>83</sup> Smit and du Plessis indicate that interpreting section 9 together with the right to education contained in section 29 means that in education girls and boys must be afforded the opportunity to be treated equally in schools, free from sexual harassment in any of the ways it can present itself, enjoy the right to equal schooling, the right not to be unfairly discriminated against, the right of protection of dignity and integrity, the right to freedom, the right to privacy and the right to a safe environment. Learners under the age of 18 have the additional right to be protected against abuse.<sup>84</sup> Most, if not all of these offences are committed against many girls and therefore their constitutionally guaranteed rights are infringed upon. This begs the question as to what the government has done or is doing about the situation.

### **3. Educational Policies Guaranteeing Girls' Right to Education**

Policy guarantees of the right to education are usually not as decisive and do not have as much legal force as constitutional provisions but ensuring the right to education by way of adopted policies has the advantage of allowing the state to articulate the right in more precise detail and to alter it more easily when necessary.<sup>85</sup> Policy measures therefore help to enhance constitutional protection of the right.<sup>86</sup> In relation to this, the government has besides the constitutional provision for the right to education also adopted a number of policies that spell out in more detail attributions of the right to education for girls.

#### **a. South African Schools Act No. 84 of 1996**

The Schools Act was enacted to set uniform norms and standards for the education of learners at school, to amend and repeal certain laws relating to schools, and to provide for matters connected therewith.<sup>87</sup> The Act prohibits any form of discrimination against learners and makes schooling compulsory for *all children* for at least the first levels of education, while also emphasising that

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<sup>83</sup> E Berger 'The right to education under the South African Constitution' (2003) *University of Nebraska College of Law, Faculty Publications* Paper 26, 640.

<sup>84</sup> D Smit & V du Plessis 'Sexual harassment in the education sector' (2011) 14 *PER* 173, 184.

<sup>85</sup> UNESCO (n 25 above) 23.

<sup>86</sup> UNESCO (n 25 above) 23.

<sup>87</sup> The South African Schools Act No. 84 of 1996, Preamble.

there should be no discrimination between boys and girls.<sup>88</sup> The Preamble of the Act undertakes a commitment to combat *sexism* and all other forms of discrimination.<sup>89</sup> Chapter two of the Act deals with compulsory attendance at school, and provide as follows:

*3 (1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year... until the last school day of the year...( emphasis added).*<sup>90</sup>

The emphasis on ‘must’ and on ‘every learner’ is to highlight that the Act makes education compulsory for all children, including the girl child and the boy child. Section 5 of the Act further prescribes appropriate measures that must be taken by government if a child who is subject to compulsory attendance fails to attend school for whatever reasons. According to the provisions of this Act, there is no reason that a child – a girl child most especially, should fail to take advantage of the opportunities that education provides.

#### **b. National Education Policy Act No. 27 of 1996**

The National Education Policy Act was passed with the aim to; among others redress apartheid oriented inequalities in the educational system by promoting gender equality and advancing the status of girls and women in general.<sup>91</sup> The Act mandates the Ministry of Education with the implementation of the policy, which should be directed at “achieving equitable education opportunities and the redress of past inequality in education provision, including the promotion of gender equality and the advancement of the status of women.”<sup>92</sup>

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<sup>88</sup> Schools Act (n 86 above), art 5 (1).

<sup>89</sup> Schools Act (n 86 above) Preamble.

<sup>90</sup> Schools Act (n 87 above) s3(1).

<sup>91</sup> CGE (n 601 above) 19.

<sup>92</sup> National Education Policy Act No. 27 of 1996, s 4 (c).

### III. ENFORCEMENT OF THE RIGHT TO EDUCATION FOR ADOLESCENT GIRLS

#### 1. Administrative and Programmatic Measures

##### a. Administrative measures

Recognising the subordination that girls and women go through in the course of their lives, the government has taken measures to ensure gender equality, which the Department of Education has taken the initiative to include in a number of its policies and plans of action.<sup>93</sup> A permanent Gender Equity Unit has been created in the Department charged with advising the Director General on all aspects of gender equity in the education system.<sup>94</sup> The Unit aims at a gender sensitive education system that facilitates the development of a non-sexist society and seeks among others to mainstream gender in all educational structures and functions and to reduce the incidence of sex-based and gender-based violence and harassment in the education system.<sup>95</sup> The Unit has produced a school-based module on “Managing Sexual Harassment and Gender-based Violence” covering issues on gender violence and sexual harassment, homophobia, abuse of learners, school policy on sexual harassment, among others.<sup>96</sup> The module serves as a handbook for both learners and educators and also as a valuable tool in protecting the rights of the girl child in the education system.<sup>97</sup>

The Director General at the national department responsible for the provision of social development services is also by provision of the Children's Act required to keep a National Child Protection Register as a measure of ensuring the safeguarding of the right of children generally against abuse.<sup>98</sup> It is the inherent right of learners to have a safe and secure environment that is conducive to education<sup>99</sup> In this regard; the Employment of Educators Act as well as South African Council for

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<sup>93</sup> ‘Gender equality in education’ available at: [www.thutong.doe.gov.za/ResourceDownload.aspx?id=44567](http://www.thutong.doe.gov.za/ResourceDownload.aspx?id=44567) (accessed: 12 October 2012).

<sup>94</sup> Schools Act (n 87 above).

<sup>95</sup> Schools Act (n 87 above).

<sup>96</sup> Schools Act (n 87 above).

<sup>97</sup> Schools Act (n 87 above).

<sup>98</sup> Children’s Act No. 38 of 2005, s 111, read with s 1.

<sup>99</sup> Smit & du Plessis (n 84 above) 186.

Educators Act prohibit sexual relationships between learners and educators and prescribe disciplinary action against educators who offend the rule.<sup>100</sup>

**b. Programmatic measures**

The Department of Education in partnership with UNICEF South Africa in 2003 launched the Girls' Education Movement (GEM) as a national child-driven programme where children in schools and the community are given the opportunity to work towards bringing positive changes in the lives of girls and boys.<sup>101</sup> The movement aims at the following goals:

- *Give girls equal access to education*
- *Improve the quality of education, especially in disadvantaged rural schools*
- *Make the school curriculum and schoolbooks gender responsive*
- *Create schools that are safe and secure for children, especially girls*
- *Work with boys as strategic partners*
- *Reduce gender-based violence*
- *Abolish harmful cultural practices such as early marriage for girls*<sup>102</sup>

Since its inception, GEM has grown and has become a dynamic mechanism for mobilising school communities to become more responsive to the needs and rights of the girl child.<sup>103</sup> The impact of how the movement operates and what it can accomplish is recorded in the case of a 15 year old girl in the Limpopo Province who is reported to have been forced to drop out of school because of an early marriage to a much older man. Her female classmates mobilised and went to the marital home chanting and singing for her to come back to school and that after several days the husband became irritated and called the young girl's parents to take her back.<sup>104</sup> The GEM implementation strategies vary from school to school but UNICEF reports that the impact on girls' right and access to education as well as reduced threats of gender inequality, violence and the impact of HIV/AIDS are

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<sup>100</sup> Employment of Educators Act No. 76 of 1998, sect 17(b), (c) and (d) amended by the Education Amendment Act No.53 of 2000; South African Council for Educators (SACE) Act No. 31 of 2000, s 23(c).

<sup>101</sup> UNICEF 'Girls' Education Movement South Africa' available at: [http://www.unicef.org/southafrica/SAF\\_resources\\_gembrief.pdf](http://www.unicef.org/southafrica/SAF_resources_gembrief.pdf) (accessed: 16 October 2012).

<sup>102</sup> UNICEF (n 25 above) 3.

<sup>103</sup> UNICEF (n 25 above) 3.

<sup>104</sup> UNICEF (n 25 above) 3.

considerable.<sup>105</sup> Other similar programmes include “Techno Girls,” a career mentorship programme that aims to and has encouraged thousands of girls from disadvantaged communities to pursue careers in the field of science and technology.<sup>106</sup>

The MDGs to which the government of South Africa has made a commitment to ensure its realisation by the 2015 dateline is a multilateral initiative that affirms access to education for girls.<sup>107</sup> With regards to girls’ access to education the MDG states as follows:

*Goal 2: Achieve universal primary education*

*Target 2A: Ensure that all boys and girls complete a full course of primary schooling*

*Goal 3: Promote gender equality and empower women*

*Target 3A: Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015.*<sup>108</sup>

Other civil society initiatives are also prevalent in South Africa, which aim to empower the girl child through education. The Oprah Winfrey Leadership Academy for Girls, for example strives to provide a nurturing educational environment for girls from disadvantaged backgrounds.<sup>109</sup>

## **2. Judicial Enforcement**

Justiciability is essential for upholding the right to education as an entitlement and in promoting its realisation.<sup>110</sup> This is however no longer an issue in South Africa as the problem about the justiciability of socio-economic rights, including the right to education has long been settled.<sup>111</sup> Therefore, all South African citizens, including adolescent girls who feel that they have been

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<sup>105</sup> UNICEF (n 24 above) 5.

<sup>106</sup> UNGEI ‘UNICEF South Africa’s “Techno Girls” mentorship programme enters growth phase’ Available at: [http://www.ungei.org/infobycountry/southafrica\\_627.html](http://www.ungei.org/infobycountry/southafrica_627.html) (accessed: 16 October 2012).

<sup>107</sup> Haslegrave *et al* (n 73 above) 3.

<sup>108</sup> UNDP “Millennium Development Goals: Eight Goals for 2015” Available at: <http://www.undp.org/content/undp/en/home/mdgoverview.html> (accessed: 16 October 2012).

<sup>109</sup> Oprah Winfrey Leadership Academy for Girls South Africa ‘Mission’ available at: <http://www.owla.co.za/mission.htm> (accessed: 16 October 2012).

<sup>110</sup> UNESCO (n 25 above) 35.

<sup>111</sup> *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa, 1996* (4) SA 744 (CC) at para 78.

victims of discrimination in education or whose constitutional right to education has been violated or denied are justified to approach the Constitutional Court or any other court for adjudication.<sup>112</sup> Legal representation is often provided freely by Legal Aid South Africa to persons who are unable to afford litigation costs.<sup>113</sup> Girls who become victims of violation or denial of the right to education may also gain access to justice through public interest litigation. Litigation can be utilised in a strategic manner to protect, establish and extend the right of the girl child - it provides an opportunity to give them a voice, and also creates space for children's rights (girls' empowerment) organisations to challenge systemic problems in an effective and constructive manner.<sup>114</sup>

#### a. The Courts

The Constitutional Court is empowered to rule on matters including; interpretation, protection and enforcement of the provisions of the Constitution.<sup>115</sup> The Constitution also allows any person acting in the interest of justice to bring a matter directly or to appeal from any other court directly to the Constitutional Court.<sup>116</sup> South Africa however, is yet to witness a dramatic movement for education reform through litigation as the Court's log of cases is scanty in the area of the right to education.<sup>117</sup> The only notable cases have dealt rather with issues around equality and non-discrimination and dignity and not specifically with access to education. In *Prinsloo v Van der Linde* the Court found that discrimination based upon sex and gender principally means treating people differently thereby impairing their dignity as human beings.<sup>118</sup>

Judicial verdicts in the field of education can have tremendous effect on the enforcement of the girls' right to education<sup>119</sup> or at least in raising awareness about the very sensitive issues. The recent case: *The Head of Department: Department of Education, Free State Province v Welkom High*

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<sup>112</sup> UNESCO (n 25 above) 36.

<sup>113</sup> UNESCO (n 25 above) 36.

<sup>114</sup> A Skelton 'Public interest litigation in the field of children's rights' *Save the Children – Regional Programme for Southern Africa*. Available at: [http://saf.savethechildren.se/Southern\\_Africa/News/Public-Interest-Litigation-in-the-Field-of-Childrens-Rights/](http://saf.savethechildren.se/Southern_Africa/News/Public-Interest-Litigation-in-the-Field-of-Childrens-Rights/) (accessed: 16 October 2012).

<sup>115</sup> The Constitution (n 11 above) s167 (6) & (7).

<sup>116</sup> The Constitution (n 11 above) s167 (6)(a) & (b).

<sup>117</sup> D Isaacs 'Interpreting, litigating and realizing the right to education in South Africa: Lessons from America.' (2007).

<sup>118</sup> Smit & du Plessis (n 84 above)182-183.

<sup>119</sup> UNESCO (n 25 above) 35.

*School & Another*<sup>120</sup> however, does not lay a good precedent. In spite of submissions by the Centre for Child Law acting as *amicus curiae* to the effect that the schools governing bodies' pregnancy policies were indeed discriminatory and therefore unconstitutional,<sup>121</sup> the Supreme Court of Appeal went on to uphold the Principals' decisions to exclude learners from school based on the pregnancy policies and for as long as the policies remained in force, notwithstanding that the policies are unconstitutional and the school governing body is not empowered to adopt such policies.<sup>122</sup>

#### **b. Quasi-judicial enforcement mechanisms**

Additionally, the Constitution makes provision for the creation of a number of institutions to sustain the country's constitutional democracy. Among these institutions, which are generally called chapter 9 institutions and would protect the rights of the girl child to education are the South African Human Rights Commission (SAHRC) and the Commission on Gender Equality.<sup>123</sup> The SAHRC is mandated among other functions 'to investigate and report on the observance of human rights' and also 'to take steps to secure appropriate redress where human rights have been violated.'<sup>124</sup> The CGE on the other hand is mandated to 'promote respect for gender equality and the protection, development and attainment of gender equality.'<sup>125</sup> Complaints on violation of girls' right to education can be made to either of these quasi-judicial institutions.

## **IV. CONCLUSION**

In this chapter, I have looked generally at the recognition and enforcement of adolescent girls' right to education. Specifically, I have looked at the recognition of the right to education for adolescent girls in which I explore the significance of education for the girl child, the constitutional recognition

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<sup>120</sup> *Head of Department: Department of Education, Free State Province v Welkom High School & Another* (766&767/2011) [2012] ZASCA 150

<sup>121</sup> *Head of Department: Department of Education, Free State Province v Welkom High School & Another* (n 120 above) para 7.

<sup>122</sup> *Head of Department: Department of Education, Free State Province v Welkom High School & Another* (n 120 above) para 29(a).

<sup>123</sup> The Constitution (n 11 above) s181 (1)(b) & (d).

<sup>124</sup> The Constitution (n 11 above) s184 (2)(a) & (b).

<sup>125</sup> The Constitution (n 11 above) s187 (1).



of the right to education – deducing from the provision of general application girls’ right to education in the equality clause, and also the educational laws guaranteeing adolescent girls’ right to education. I also examined the enforcement of the right to education for adolescent girls, in which I looked into administrative and programmatic measures as well as the judicial enforcement of the right.

However, research carried out in 2007 by the CGE based on ‘gender in the curriculum’ as part of its function to monitor changes on gender equity and gender equality in the education sector found out that in spite of the laws and policies in place schools continue to be sites for the perpetuation of gender inequities.<sup>126</sup> The Commission’s report further identifies that though the Department of Education has the powers to enact policy on gender in education through the National Education Policy Act, not much has been done and that as long as there is a policy gap, programming will remain fragmented.<sup>127</sup> I shall therefore, in the next chapter enquire into the problems that adolescent girls in South Africa continue to face in the pursuit of their right to education.

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<sup>126</sup> CGE (n 61 above) 9.

<sup>127</sup> *Prinsloo v Van der Linde* 1997 6 BCLR 759 (CC) para 31.

## CHAPTER FOUR: PROBLEMS FACING ADOLESCENT GIRLS IN SOUTH AFRICA IN THE PURSUANCE OF THEIR RIGHT TO EDUCATION

### I. INTRODUCTION

*“My uncle traveled abroad for a few months and my aunt arranged for me to be married to a complete stranger, a 43 year old man living in a village 100 kilometers away. One day after school this man came to get me from school and told me to come with him that he was my husband and my aunt made all the arrangements. I try to tell him that I must go and get my things, because I was thinking it would give me time to run away, but he said no and forced me into the car”,* said a 14 year old female learner, Limpopo.<sup>128</sup> This girl’s experience is an example of problems facing adolescent girls.<sup>129</sup> According to Aderinto, “the neglect of the problems of the girl child may have been informed by the assumption that the problems of the girl child are solved by solving those of her mother.”<sup>130</sup> This should not be the case because an adolescent girl is a person in her own right and her challenges and problems should be tackled separately from her mother’s.

The Bill of Rights in the South African Constitution provides a range of civil and political as well as socio-economic rights that guarantee to every South African certain inalienable fundamental rights.<sup>131</sup> These rights invariably provide guarantees of freedom and protect women and girls from any form of violence.<sup>132</sup> Section 29 expressly provides for the right to education.<sup>133</sup> South Africa is ranked in the world as having one of the highest rates of government investment in education<sup>134</sup> with an 18.5% allocation of its annual budget on education,<sup>135</sup> which means that the government places high priority on the education of its youths. Immediate causes and barriers to education, such as school fees, acquisition of books and other relevant study materials are gradually been addressed

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<sup>128</sup> F Wilson “ Gender Based Violence in South African Schools” UNICEF/IIEP Working document 4 (2011)10.

<sup>129</sup> A Aderinto ‘The status of the girl-child in Soweto, South Africa’ (2003) 7 *J. Soc. Sci.* 4 293.

<sup>130</sup> Aderinto (n 129 above).

<sup>131</sup> The Constitution (n 11 above) Bill of Rights.

<sup>132</sup> The Constitution (n 11 above) s7-8.

<sup>133</sup> The Constitution (n 11 above) s14.

<sup>134</sup> E ATaiwo ‘The implementation of the right to education in South Africa and Nigeria’ (2011) 7 *LLD Thesis, Faculty of Law Nelson Mandela Metropolitan University.*

<sup>135</sup> B M Modisaotsile ‘The failing standard of basic education in South Africa’(2012)*Policy brief - Africa Institute of South Africa, Briefing No 72.*

by the government and donors. However, once enrolled in school many girls continuously find themselves at risk of not completing their education as a result of a combination of factors. This chapter will focus on discussing these constraining factors that impact on the education of the girl child.

## **II. GENDER DISCRIMINATION**

This section will establish the definition of gender discrimination; examine its manifestation and its impact on adolescent girls' education in South Africa.

### **1. Definition of Gender Discrimination**

Generally, women make up the majority of people who never go to school or who drop out at an early stage of their studies. Gender discrimination may be defined as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing, or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms within every sector of society.<sup>136</sup>

### **2. Impacts and Consequences of Gender Discrimination on Adolescent Girls' Education**

The relevant instrument concerned with gender discrimination is the CEDAW. Article 10 of the treaty imposes a positive obligation on States to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure a basis of equality of men and women.<sup>137</sup> The disadvantaged position of women in society has the effect of denying the girl learner full enjoyment of the right to education. This usually happens when families refuse to send girls to school because of the high cost of school fees. Parents generally in Africa, especially those living in rural communities would often send their daughters to primary school, and not further. Former UN Secretary General Kofi Annan is reported to have stated that in Africa when

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<sup>136</sup> UN Women 'Convention on the Elimination of Discrimination Against Women, 1979' Available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm> (accessed: 07 May 2011) Art.1.

<sup>137</sup> UN Women (n 136 above) Art 10.

families have to make a choice, due to the limited resources, of educating either a girl or a boy child, it is always the boy that is given priority to attend school.<sup>138</sup>

Enrolment statistics are often used to determine equality of access to education in term of gender. In South Africa, at least at primary school level girl's enrolment is higher than boys.<sup>139</sup> It is important to note that there is a difference between enrolment and effective attendance at school. Learners can be enrolled but encounter several constraints that disturb their on-going attendance at school. According to a UNICEF household survey for South Africa covering the period 2003 to 2008, primary school attendance rates stood at 80% for boys and 83% for girls but this rate dropped at secondary school level where the attendance rates stood at (41%) for boys and (48%) for girls. However, boys are less likely to drop out in the 16-18 year old age group, their rate of attendance being 85.1% for boys as compared to 81.1% for girls.<sup>140</sup> South African society, as elsewhere in Africa is to a large extent patriarchal; girls and women are accorded lower social status and find themselves under the control and authority of men. They are more involved in family commitments, such as home keeping and child-bearing, looking after sick family members, thereby placing less value on their educational attainment.<sup>141</sup>

### III. EARLY MARRIAGE

Child marriage is an abuse of human rights that ignores the best interest of the girl child and her views and also undermines efforts aimed at the achievement of the MDGs. The harmful consequences include separation from family and friends, lack of freedom to interact with peers and to participate in community activities as well as reduced of opportunities for acquiring education. Like in others regions across Africa, early marriage remains a norm where about 20% to 50% of girls are married by the age of 18.<sup>142</sup>

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<sup>138</sup> Offorma (n 12 above).

<sup>139</sup> F Veriava 'Gender Equality and Education in South Africa' (2011)Juta, 229.

<sup>140</sup> Veriava (n 139 above) 230.

<sup>141</sup> UNICEF 'Girls Education Movement South Africa' available at:

[http://www.unicef.org/southafrica/SAF\\_resources\\_gembrief.pdf](http://www.unicef.org/southafrica/SAF_resources_gembrief.pdf) (accessed: 11 September 2012).

<sup>142</sup> J Bayisenge 'Early marriage as a barrier to girl's education: A Developmental Challenge in Africa' available at:<http://www.ifuw.org/fuwa/docs/Early-marriage.pdf> (accessed: 12 september2012) 3.

In many communities across Africa, because girls do not have the same standing as their male peers, they are considered not to have the same skills, and so education for them is considered something of less value. Marriage is looked upon as the most important way to secure their wellbeing. According to the Demographic Health Survey data, South Africa accounts for 8% of early marriages among Africa countries.<sup>143</sup>

## 1. Definition

Early marriage refers to any form of marriage that takes place before a child has reached 18 years. According to United Nations Populations Fund (UNFPA) early marriage is defined as any marriage carried out below the age of 18 years, that is before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and child-bearing.<sup>144</sup> The CRC considers any person under the age of 18 as a child in the sense that he or she is not capable of taking a decision or giving consent in a marriage negotiation. Early marriage therefore, is an arrangement between parents, families and relatives without ensuring the best interests of the child.<sup>145</sup>

The CEDAW, which is the most comprehensive international bill of rights for women provides in article 16(1) equally for men and women: (a) the same right to enter into marriage; (b) the same right to freely choose a spouse and to enter into marriage only with their free and full consent. Article 16(2) states that any engagement or marriage of a child is devoid of any legal status.<sup>146</sup> The Convention Committee states in General Recommendation 21, article 16(2) that the minimum age for marriage for both male and female should be 18 years, the age when “they have attained full maturity and capacity to act.”<sup>147</sup> Article 21 of the ACRWC states that child marriage and the

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<sup>143</sup> Bayisenge (n 142 above) 3.

<sup>144</sup> Bayisenge (n 142 above) 4.

<sup>145</sup> The Constitution s 28(2) provides, ‘[a] child’s best interest is of paramount importance in every matter concerning the child.’

<sup>146</sup> N O-Oyorley & S Pobi ‘Early marriage and poverty: exploring links and keys policy issues’ (2010) 20 *Gender & Development*43.

<sup>147</sup> UN General Recommendation 21 (2000) Art 16(2) available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21> (accessed: 12 September 2012).

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 eighteen years.

## **2. Manifestation and Effects of Early Marriage on Adolescent Girls' Education**

Husbands are often older men, who expect their young wives to follow tradition, stay at home and undertake household and child-care duties. The girl may not go against her husband's wishes. In traditional and poorer families where girls are viewed as a supplementary burden on family resources, parents tend to marry them off early as a family survival strategy.<sup>148</sup> Early marriage consists of exchange of bride price between families and those prices reinforces the inequality of women and strengthen the notion that the female can be exchanged or sold for a value that they bring into the receiving families. The payment of the bride price has also enslaved girls in marriages in cases where families cannot afford to return the bride price if the girl chooses to abandon an abusive marriage.

Premature marriages deny adolescent girls the opportunity to grow and attain their full potential and have also robbed them of the right to full reproductive health and wellbeing, and their active participation in civic life. Besides family, school is considered as an important institution in providing platforms for socialising, for exposing people to different dimensions of social roles and responsibilities. More years of schooling have been associated with many positive outcomes, including later ages of marriage, lower fertility, and healthier and better educated children, economic development.<sup>149</sup> Early marriage denies girls the right to education; the opportunity for their personal development, preparation for adulthood, and their effective participation in the future wellbeing of their families and societies.

Education is not only about providing technical skills, it is also about interacting with others; acquiring social skills and personal capacities needed to access opportunities.<sup>150</sup> Educated girls are likely to be more informed and knowledgeable about contraception and the healthcare needs of their

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<sup>148</sup> Bayisenge (n 142 above) 4.

<sup>149</sup> Bayisenge (n 142 above) 7.

<sup>150</sup> Bayisenge (n 142 above) 8.

children.<sup>151</sup> The universal right to education has been affirmed and recognized by the world's governments for more than 50 years, and recently in the year 2000 by the MDGs adopted by the 191 member's states of the UN. Although marriage does not mean that a girl's educational prospects are over, the attitudes and perceptions of parents, schools and spouses towards married women means that in practice it often does.

#### IV. TEENAGE PREGNANCY

Teenage pregnancy among school girls is a major concern. The Minister of Basic Education has stated that in spite of achievements made in establishing gender parity in basic education, pregnancy is amongst the major concerns that pose a serious threat to those gains achieved in public schools thus far.<sup>152</sup> She further emphasized that teenage pregnancy undermines the Department's efforts to ensure that girl children remain in school.<sup>153</sup> It has been cited as a limitation in the elimination of gender disparities in education, and in the achievement of the MDG of universal primary education and gender equality in education.

In a rights-based society like South Africa, it is against the constitutional rights of young girls who become pregnant to be denied access to education.<sup>154</sup> The equality provision of the Constitution in section 9(3) and (4) prohibits unfair discrimination on the grounds of pregnancy among others either by the state or a private person.<sup>155</sup> Refusing young girls access to education as a result of their pregnancy constitutes unfair discrimination and therefore, a violation of their constitutional rights unless it is established that such discrimination is fair as provided for by section 9(5) of the Constitution. These constitutional provisions have been reinforced by the Schools Act. The Act states the government's commitment to provide an education of progressively high quality *for all learners* and in so doing lay a strong foundation for the development of *all our people's* talents and capabilities, combat among others, all forms of unfair discrimination and intolerance, as well as

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<sup>151</sup> Bayisenge (n 142 above) 8.

<sup>152</sup> S Pandayet *al Teenage pregnancy in South Africa - with a specific focus on school-going learners* (2009) HSRC – Department of Basic Education, 3.

<sup>153</sup> Pandayet *al* (n 152 above) 3.

<sup>154</sup> Pandayet *al* (n 152 above) 9.

<sup>155</sup> The Constitution (n 11 above) s 9(3).

uphold the rights of all learners, alongside the rights of parents and teachers.<sup>156</sup> The Act further makes it obligatory for parents to compulsorily cause their children of between the ages of seven and fifteen (no matter that they may be pregnant) to attend school until they complete the ninth grade.<sup>157</sup> There is also a national policy that was passed in 2007 laying down measures for the prevention and management of pregnancy among learners in schools in South Africa.<sup>158</sup> In spite of the laws, regulations and policy, implementation of the provisions contained therein has been uneven and some girls continue to be stigmatized, suspended, or expelled from school when they respond to early pregnancy. This has been due to the fact that the policy document issued by the Department of Education was largely controversial, unfairly discriminatory and unconstitutional and against the rights of learners guaranteed by international human rights instruments such as the CRC and the ACRWC.<sup>159</sup> The policy, which many schools adopted, required learners who became pregnant to leave school during the eighth month of pregnancy and not to be readmitted in for up to about two years.<sup>160</sup>

### **3. Description and Consequences of Teenage Pregnancy on Adolescent Girl's Education**

Teenage pregnancy is formally defined as a pregnancy of a young woman who has not reached the age of 20 years when the pregnancy ends. There are many causes of teenage pregnancy. The lack of education on safe sex from parents, schools, or otherwise, is one cause of teenage pregnancy. Many teenagers are not taught about methods of birth control and how to deal with peers who pressure them into having sex before they are ready. Pregnant teenagers face serious health, socio-economic and educational challenges.<sup>161</sup> This problem is exacerbated by the fact that some schools do not allow pregnant girls and young mothers to attend classes and in some cases where teen mothers continue schooling, they are often described and assumed to be poor performers or incapable

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<sup>156</sup> Schools Act (n 87 above) Preamble & s5(1).

<sup>157</sup> Schools Act (n 8 above) sect. 3(1).

<sup>158</sup> DoE 'Measures for the prevention and management of learner pregnancy' (2007) *Department of Education*.

<sup>159</sup> Centre for Child Law 'Learner pregnancy: Welkom High School & Another Vs HOD, DoE (Free State) and Another Case 2011 (4) SA 531(FB)' (2012) Public Interest Law Gathering Education Litigation Panel Discussion, 6-7

<sup>160</sup> Centre for Child Law (n 159 above) 4

<sup>161</sup> Panday *et al* (n 152 above)3.



students”.<sup>162</sup> Teenage pregnancies are still stigmatised, making it difficult for young mothers to continue their studies despite legislation that protects their right to education.

Teenage pregnancy has been one of the major hindrances to the educational success of girls. The most recent Statistics South Africa Report of 2012 indicate an 11.5 percent pregnancy rate among girls aged 13 to 19 years between the period 2009 and 2010 and that approximately 2.3% of girls between the ages 7 and 24 years who were not attending any educational institution blamed pregnancy for dropping out of school.<sup>163</sup> Pregnancy among school girls is reaching crisis proportions in some South African schools – according to a 2010 Department of Education Report cited by Robert Morrell *et al* putting the number of learners who became pregnant in South Africa in 2007 at 49,636; with the Province of Kwa-Zulu Natal alone having 14, 246 and the Western Cape Province recording 2,179 who became pregnant.<sup>164</sup> Research remains limited in South Africa on the challenges young teen mothers go through when they go back to school. Ways of addressing these challenges so that the girls are able to finish their schooling also remain limited in South Africa and this situation is inevitably associated with societal problems.

Schools often have a tendency of refusing to allow married or pregnant girls or girls with babies to return and continue with their education.<sup>165</sup> The case of 15 years old and 17 years old adolescent girls of Welkom and Harmony High Schools respectively is reported in the Free State Province where both learners were expelled from school on the basis of a controversial pregnancy policy adopted by the schools governing bodies. The matter went to court and on appeal the court upheld the decisions of the Principals, notwithstanding that the pregnancy policies were discriminatory and unconstitutional and that the school governing body was not empowered to adopt such policies. School authorities believe that the presence of a pregnant girl in school will set a bad example to other pupils or those other parents will be angry to see the school go against traditional beliefs. Even if they do permit pregnant girls to return, the school environment – rules, timetables and

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<sup>162</sup> Chigona&Rajendra (n 20 above) 6.

<sup>163</sup> Statistics South Africa ‘General household survey 2011’ (2012) *Statistical Release P0318* Statistics South Africa, 18

<sup>164</sup> R Morrell *et al* ‘Pregnancy and parenthood in South African schools’ in R Morrell *et al* *Books and Babies: Pregnancy and Young Parents in Schools* (2012) Human Sciences Research Council, 1

<sup>165</sup> See the case *Head of Department: Department of Education, Free State Province v Welkom High School & Another* (n 120 above)

physical conditions – can make it difficult for the girls to attend school and perform their duties as wife, mother and student at the same time. Bullying and abuse by teachers, pupils and other parents can further reduce girls' self-confidence and sense of security, forcing them to give up on schooling.

## V. SEXUAL HARASSMENT AT SCHOOLS

Sexual harassment at school is a serious issue in South Africa but because of the lack of reliable statistics, this issue has had to be dealt with unofficially.<sup>166</sup> In 2001, Human Rights Watch (HRW) and other rights groups reported that South African girls had been raped, sexually abused, harassed and assaulted at school by teachers and male students.<sup>167</sup> After 1994 several pieces of legislation including the South African Schools Act 84 of 1996, the Domestic Violence Act 116 of 1998; and Children's Act No. 38 of 2005 were passed to defend the rights of children and the safety of learners and also to ensure impartiality in education and equal opportunities for all learners. However, reports have indicated that sexual harassment of girls continues to pose a serious challenge in many of South African schools.<sup>168</sup> A 2002 research report showed that one out of three black students in the Johannesburg area experienced sexual violence in their school.<sup>169</sup>

### 1. Definition of Sexual Harassment

The Sexual Offences Act of 2007 makes it an offence for an offender to use any bodily parts or object to touch the victim in an unwanted manner without the consent of the victim, especially when such an act is carried out on a victim under the age of sixteen.<sup>170</sup> Sexual harassment can take the form of unwelcome physical, verbal or non-verbal conduct and can also include suggestive gestures or jokes as well as the display of pornographic material.<sup>171</sup> Physical conduct includes all

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<sup>166</sup> Smit & du Plessis (n 84 above).

<sup>167</sup> HRW Report 'Scared at School: Sexual Violence in South African Schools' (2001) available at <http://www.hrw.org/legacy/english/doc/2001/03/27/safri324.htm> (accessed: 13 June 2011).

<sup>168</sup> S Prinsloo 'Sexual harassment and violence in South African schools' (2006) 26 *SAJE* 305.

<sup>169</sup> R Joubert & W E Thro 'Sexual Harassment in Elementary and Secondary Education: A Comparative Analysis of South Africa and the United States', available at: [http://repository.up.ac.za/bitstream/handle/2263/11926/Joubert\\_Sexual%282008%29.pdf?sequence=1](http://repository.up.ac.za/bitstream/handle/2263/11926/Joubert_Sexual%282008%29.pdf?sequence=1) (accessed: 13 June 2011).

<sup>170</sup> Sexual Offences Act 120 of 2009, sect. 4.

<sup>171</sup> Soul City 'Violence against women in South Africa' *Soul City Institute for Health and Development*, 27.

unwanted physical contact ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of a member of the opposite sex.<sup>172</sup> Verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments about a person's body made in their presence or to them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling by a person or a group of people.<sup>173</sup> Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects.<sup>174</sup> Concerning sexual harassment in education, there are three types of school-based harassment: sexual harassment perpetrated by one student on another student, sexual harassment committed by a teacher to a student and lastly sexual harassment that occurs on the way to and from school committed by community members.

## 2. Manifestation and Consequences of Sexual Harassment on Adolescent Girls' Education

The lack of separate school toilets for boys and girls increases girls' vulnerability to sexual violence. A 2001 Human Rights Watch report entitled, "Scared at School..." noted that girls regularly encountered violence in school, including rape, sexual abuse, sexual harassment and assault by male classmates and teachers. Sexual harassment against girls has the effect of causing physical and emotional trauma, low self-esteem, anger, depression, anxiety, guilt and hopelessness, suicide in some cases, unwanted pregnancies, STI/HIV infection and underperformance, causing some to drop out of school prematurely and resulting in a lot more not pursuing quality education.<sup>175</sup> Felicia Wilson also notes that if sexual violence in schools is left unchecked, it has a negative impact on the educational and emotional needs of girls and acts as a barrier to attaining education and that rape and other forms of sexual violence place girls at risk of contracting the HIV/AIDS virus, which has in turn taken its toll on the educational system and disrupted education, especially for girls.<sup>176</sup>

## VI. CONCLUSION

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<sup>172</sup> Prinsloo (n 168 above) 306-307.

<sup>173</sup> Prinsloo (n 168 above) 306-307.

<sup>174</sup> Prinsloo (n 168 above) 306-307.

<sup>175</sup> T Harbour 'Girls suffer in silence' (2010) *Mail & Guardian* available at: <http://mg.co.za/article/2010-11-12-schoolgirls-suffer-in-silence> (accessed: 13 June 2011).

<sup>176</sup> Wilson (n 128 above) 2.

In this chapter I have only mentioned a few problems facing adolescent girls, because they are specific to girls. There are others such as economic, geographic and cultural problems that affect girls as well as boys. Nevertheless, poor families will more easily send boys to school than girls because some parents consider that it is a waste of resources to send girls to school because they are presumed to be meant only for marriage and that the money they will earn when they start to work will be of benefit to their family-in-law. Concerning the geographic challenges in South Africa children, especially girls who walk long distances to school are likely to drop out of school early. Some parents, because of the fear of their girl children being kidnapped, raped or assaulted, would prefer to withdraw them from school.

Poverty and cultural beliefs are most of the time the reason why parents send their daughters into early marriages. The South African government as well as schools governing bodies and school authorities must ensure that the legislation and policies that seek to protect girls in school against sexual harassment are effectively implemented and that perpetrators are punished. Customary laws in South Africa need to be codified to ensure that cultural and traditional practices that allow for sexual harassment of adolescent girls are prohibited and made punishable. The role of the media is also important to be able to create awareness about the consequences of sexual harassment on young girls and the effect it has on their education and on society as a whole.

## **CHAPTER FIVE: CHALLENGES IN OVERCOMING THE PROBLEMS THAT ADOLESCENT GIRLS' FACE AND NECESSARY ACTIONS THAT CAN BE TAKEN**

### **I. INTRODUCTION**

In spite of South Africa's progressive legislation prohibiting discrimination on the grounds of gender among others, it appears that little has been achieved to facilitate equality of the sexes in the education system in particular.<sup>177</sup> South Africa has a Constitution that has commonly been described as the most progressive in the world because of its open-handed provision for rights and freedoms. In spite of this, together with the range of laws, policies, administrative and programmatic measures to ensure the protection and enforcement of the rights of the girl child to have access to education as the thesis has examined in the previous chapters, a number of constraining factors continue to pull together to prevent many adolescent girls from getting an education that provides them with the opportunity to improve their social standing and economic status.<sup>178</sup> Though there has been provision for universal and compulsory primary schooling and a higher participation rate for girls, enormous challenges particularly for adolescent girls are still prevalent even though the cracks may appear very subtle and almost none issue.

I assume that in the ideal context in which the right to education is available and enjoyed by every child and adolescent girl in particular this would lead directly to better opportunities, prospects for improve standards of living and general advancement of society; as girls who have an education are more likely to contribute fully to political, social and economic life.<sup>179</sup> The reality however is different and therefore, the question to ask is; what are the challenges in overcoming the problems faced by adolescent girls (a) and what can be done to ameliorate the situation (b)?

In attempting to answer these questions, I shall in section II that follows look at the challenges from a multidisciplinary perspective where I consider the sociological, psychological, cultural and religious factors that contribute to retarding progress for adolescent girls in the pursuit of their right

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<sup>177</sup> D Coetzee "South African education and the ideology of patriarchy" (2001) 21(4) *SAJE* 300.

<sup>178</sup> CGE (n 60 above) 15.

<sup>179</sup> Haslegrave *et al* (n 73 above) 3.

to education. I shall then further make recommendations on what could be done to ameliorate the situation.

## II. LOOKING AT THE CHALLENGES FROM A MULTI-FACETED PERSPECTIVE

The factors that contribute in holding efforts aimed at enabling adolescent girls to have access to the right to education are substantial and multi-faceted and appear like strong currents pulling in different directions. The thesis examines these factors from the angle of socio-economic circumstances, tradition, culture and religious beliefs and also the hostile educational environment within which adolescent girls are expected to study in order to develop to their fullest potential.

### 1. Socio-Economic Circumstances

In families and societies with low socio-economic status, teenage girls are particularly vulnerable to sexual activities, becoming pregnant for social, cultural and economic reasons and possibly leading to HIV/AIDS infection and teenage pregnancy, which in turn compromise their education.<sup>180</sup> The social and economic circumstances of adolescent girls or of their families usually have a heavy impact on their education. It is commonly believed that most girls from poor households are intentionally become pregnant so that they can become beneficiary recipients of the child-support grant available to children younger than 18 who come from poor families but this has been proven wrong by a Human Sciences Research Council (HSRC) Report of 2005, which revealed that there is no empirical evidence of any causal relationship between the grant and teenage pregnancy.<sup>181</sup> There on and Dunn however, argue that adolescent childbearing is most prevalent among poor and low-income teenagers.<sup>182</sup> Chigona remarks that social and economic concerns also make school attendance for adolescent girls a complex decision for parents who may decide not to send the girls to school because they consider the benefits of education for girls to be limited and the cost of

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<sup>180</sup> HSRC 'Emerging Voices: A report on education in South African rural communities' (2005).HSRC Pretoria

<sup>181</sup> HSRC (n 180 above).

<sup>182</sup> L Theron and Dunn N "Coping strategies for adolescent birth-mothers who return to school following adoption" (2006) 26 SAJE4: 491, 492.

sending them to school to be unnecessary for the family budget.<sup>183</sup> Lack of finances is therefore, the most frequently cited excuse given by parents, children and teachers for non-enrolment and dropout of school, particularly amongst girls.<sup>184</sup>

Girls also often become more vulnerable when they get into the stage of adolescence. The opportunity cost of keeping them in school rises as their value as a bride grows, and as the value of their labour at home or in the marketplace increases.<sup>185</sup> Even if they do not have chores that keep them inside the home, girls may be required to support their mothers' businesses<sup>186</sup> or take on the role of caregivers to ill adults or to younger siblings rather than go to school, a burden that often makes it difficult or impossible in ensuring that girls attend school regularly.<sup>187</sup> Sometimes the parents feel insecure about their daughters - they believe their daughters may have difficulty succeeding in a system where the majority of teachers are male and even in some instances the majority of students are male.<sup>188</sup> In these circumstances, when families are constrained by financial difficulties to pay for their children's education, for example, they often give priority to the boys and the girls usually miss out.<sup>189</sup> This has contributed in keeping girls and women in a position of subservience through measures such as less educational opportunities than men, economic dependence, and physical harassment, exclusion from leading roles in later adulthood life.<sup>190</sup>

## 2. Tradition, Culture and Religious Beliefs

Education for women has faced a hard time with a history of conservative patriarchal customs that have caused tribal cultures to many times marginalise and devalue girls' education.<sup>191</sup> Most African societies, including South Africa are predominantly patriarchal – deeply influenced by the idea of

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<sup>183</sup> A Chigona 'Promoting girls' education in South Africa: with special reference to teen mothers as learners' (2007) *CPUT Theses & Dissertations*. Paper 110, 32.

<sup>184</sup> Chigona (n 183above) 46.

<sup>185</sup> Gibson (n 75 above) 8.

<sup>186</sup> Gibson (n 75 above) 16.

<sup>187</sup> Chigona (n 183above) 48.

<sup>188</sup> Chigona (n 183above) 32.

<sup>189</sup> Haslegrave *et al* (n 73 above) 11.

<sup>190</sup> Coetzee (n 177 above) 301.

<sup>191</sup> Anzia(n 71 above).

male supremacy and dominance.<sup>192</sup> Melissa Donahue notes that under the patriarchal system even male children have more rights than women, which results in esteem issues making women feel powerless and distanced from life in their culture.<sup>193</sup> Thus the problems that girls face in the pursuit of their right to education takes place within the context of entrenched traditional, cultural and religious beliefs and attitudes about gender roles, especially concerning male and female sexuality and patterns of economic inequality.<sup>194</sup> These belief systems are used to keep girls and women disempowered as they are made to believe that changing their lives and gender-roles is contradictory to the values and precepts of their traditions, culture or religion.<sup>195</sup> This tends to create systemic gender inequalities to the extent that girls and women are attributed a lower social status in society.<sup>196</sup> Coetzee identifies that since patriarchy is regarded as a fully-fledged ideology, it appears that the current pursuit of gender equality in South African education is pitched against a strong force of resistance.<sup>197</sup>

Deep-seated attitudes and stereotypes regarding not only the capacity of girls to participate in education but also the propriety of their doing so persist in many communities within South Africa and as a result, varying levels of discrimination against girls remain an obstacle to accessing education.<sup>198</sup> In the first place, early marriage and bride price are important factors in the social life of many African communities, which practices generally impact negatively on families' complex decision making around sending girls to school.<sup>199</sup> A UNESCO/IIEP research report by Felicia Wilson indicates that in many sub-Saharan African countries, traditions and cultures are so steadfast that a girl's virginity is considered an honour to the family to the extent that if she is raped or sexually violated, she may either be forced to marry her assailant or killed by brothers or fathers for

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<sup>192</sup> Coetzee (n 177 above) 300.

<sup>193</sup> M Donahue "Transitioning from Patriarchal Society: Women's Rights and Gender Equality" (2007) 5 *ESSAI* 18, 2 available at: <http://dc.cod.edu/essai/vol5/iss1/18> (accessed: 20 October 2012).

<sup>194</sup> Wilson (n 128 above) 2.

<sup>195</sup> F Shaheed "Structural barriers, cultural constraints, meso traps & other challenges women's empowerment in institutional mechanisms and power & decision-making: The Beijing platform for action 15 years on" (2009) *Expert Group Meeting in Preparation for the High-level Intergovernmental Meeting on the Review of Implementation of the Beijing Platform for Action UN ESCAP, Bangkok*, 18.

<sup>196</sup> A Chapman "Gender bias in education" Available at: <http://www.edchange.org/multicultural/papers/genderbias.html> (accessed: 19 October 2012).

<sup>197</sup> Coetzee (n 177 above) 300.

<sup>198</sup> Haslegrave *et al* (n 73 above) 11.

<sup>199</sup> Gibson (n 75 above) 15.



bringing embarrassment to the family.<sup>200</sup> It is also believed in some communities that education may actually reduce girls' marriage prospects and raise dowry payments to unaffordable levels and therefore, investing in the education of sons, rather than daughters, is perceived as bringing higher financial returns for families.<sup>201</sup>

Reports about the GEM programme reveal that its implementation in the province of Kwa-Zulu Natal for instance is impeded by strongly held views that cultural and traditional beliefs and practices must not be tampered with<sup>202</sup> and therefore the GEM programme may not interfere with the customary norms. Felicia Wilson's study identifies that parents were most reluctant to accepting the changing roles and responsibilities of the girl-child as advocated for by the GEM programme.<sup>203</sup> She says that a large proportion of the community were suspicious of GEM teachings, which they believe would make their daughters disrespectful and disobedient; quoting the example of a father who shared experience of her daughter refusing to perform her usual chores of washing dishes and sweeping because of her membership and participation in GEM activities – the mother on the other hand disapproved of her daughters' participation in the programme because in her view the daughter was becoming disrespectful and always speaking about her rights, even though the daughters' side of the story was that she has two elder brothers who created all the mess in the house but were never asked to clean.<sup>204</sup> As tradition and culture would have it, the girl was forbidden by the family from continuing her membership in GEM.<sup>205</sup>

The threat of being detested by their own families and communities is a very powerful force that impacts negatively on adolescent girls' ability to resist the negative forces of tradition, culture and religion.<sup>206</sup> Girls find themselves caught between the promises of equality and benefits of the right of access to education held out by legislation and policies on the one hand, and the obligations of

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<sup>200</sup> Wilson (n 128 above) 2.

<sup>201</sup> DFID 'Girls' education: Towards a better future for all' (2005) *Department for International Development* 8.

<sup>202</sup> Wilson (n 128 above) 11.

<sup>203</sup> Wilson (n 128 above) 11.

<sup>204</sup> Wilson (n 128 above) 11.

<sup>205</sup> Wilson (n 128 above) 11.

<sup>206</sup> S haheed (n 195 above) 9.

maintaining their societal belonging in their smaller, more immediate social collectivities such as the family and school on the other.<sup>207</sup>

To effectively eliminate abuse of the right of girls as a whole and the right of access to education in particular requires a general change in attitude and behavior among the people of South Africa and a systemic cultural change in the value attached to girls and also in the way society perceives and relates with them.<sup>208</sup>

#### 4. Hostile Educational Environment

It is imperative that girls stay in school and remain safe to complete their education. However, instead of being the place of learning and for gaining skills, schools in South Africa has rather become places where the safety of girls is a cause for serious concern.<sup>209</sup> Wilson reports that the perpetration of violence is endemic in South African schools.<sup>210</sup> The CEDAW defines violence to include not only physical and sexual violence but also sinister behaviour against girls such as economically coerced sex, sexual harassment, demeaning language that undermines self-esteem and even assigning girls to perform domestic tasks at school while others study.<sup>211</sup> Thus violence against girls broadly incorporates behaviour that manifests as physical, sexual, or psychological damage and encompasses all the problems that adolescent girls encounter at school.

Research carried out by the Medical Research Council in 2003 identified the school environment as being essentially unsafe for learners, especially the girls.<sup>212</sup> In schools where sexual violence against girls is common; the education system itself may increase girls' chances of dropping out or interrupting their studies, experiencing an unintended pregnancy or becoming infected with HIV.<sup>213</sup> Some schools are also situated far from homes, consequently exposing the girls to the dangers of harassment, rape, sexual assault and physical violence when they walk the long

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<sup>207</sup> Shaheed (n 195 above) 9.

<sup>208</sup> Wilson (n 128) 11.

<sup>209</sup> Wilson (n 128 above) 2.

<sup>210</sup> Wilson (n 128 above) 3.

<sup>211</sup> UN Women (n 41 above) art 1 .

<sup>212</sup> S P Reddy *et al* "The first national South African youth behaviour survey" (2003) South Africa Medical Research Council,30-35.

<sup>213</sup> Wilson (n 128 above) 2.

distances.<sup>214</sup> Physical abuse and abduction are not only a major violation of girls' basic human rights, they also present a major practical constraint in getting to school and as such parents feel a duty to protect their daughters.<sup>215</sup> Instances of violence, abuse and otherwise may occur on the way to school or within the school environment itself, and can be perpetuated by teachers, parents, persons of perceived authority and fellow students. So, as girls make an effort to stay in school they also face the risk of being sexually harassed and exploited by teachers and fellow students.<sup>216</sup> Teachers, as well as others working in a professional capacity have been remarked for exploiting their positions of authority to sexually harass the vulnerable female learners or coerce them into gratuitous sexually relationships.<sup>217</sup> As the duty of care fades and breaks down within the school environment and the broader community, sexual violence against girls is condoned as 'normal' and as the young girls are exposed to acts of violence they tend to accept it as an inevitable part of their daily lives.<sup>218</sup>

The challenges that adolescent girls encounter in the pursuit of their right to education has the effect of causing physical and emotional trauma, low self-esteem, anger, depression, anxiety, guilt and hopelessness, withdrawal from social life and suicide in some cases; resulting in some girls prematurely dropping out from school, and performing very poorly education.<sup>219</sup> Adolescent girls who become victims of sexual violence, rape, violence are often reluctant to report the crime to the police or the family.<sup>220</sup> School authorities and the community tend to ignore violence committed against girls and are usually very indifferent to the female learners' complaints and therefore, many girls do not even complain not only because of a fear of reprisals, especially from teachers, but also because they believe that nothing will be done.<sup>221</sup> Cases of violation of girls' rights are therefore usually not reported and as a Soul City report states, there are no actual statistics of the number of violence cases reported to the police, for the simple reason that violence is not officially defined as a crime.<sup>222</sup>

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<sup>214</sup> Anzia (n 71 above).

<sup>215</sup> DFID (n 201 above) 9.

<sup>216</sup> Anzia (n 71 above).

<sup>217</sup> Wilson (n 128 above) 5.

<sup>218</sup> Wilson (n 128 above) 5.

<sup>219</sup> Harbour (n 175 above).

<sup>220</sup> Wilson (n 128 above) 2.

<sup>221</sup> Wilson (n 128 above) 4.

<sup>222</sup> Soul City (n 171 above).

### III. TAKING ACTION TO OVERCOME THE CHALLENGES

Education of the girl child needs to be given priority status in government planning.<sup>223</sup> Despite the importance of education for the development of the girl child, strategies designed to improve their retention rate and advancement at school has received relatively little attention.<sup>224</sup> Though it is noted that drop-out rates are low in South Africa, the categorisation is broad and does not take into account the drop-out rate among adolescent girls who often abandon schooling without acquiring the most basic skills.<sup>225</sup> The wide range of education laws, policies and programmes put in place by the South African government as identified in chapter three may account for the improved retention rate in schools. Coetzee however, argues that any attempt at transformation of education in South Africa should acknowledge the fact that mere policy statements prohibiting gender discrimination in society are destined to facilitate superficial changes only.<sup>226</sup> She argues further that to create a truly egalitarian education system that would address the challenges faced by adolescent girls for instance, requires more incisive action in evaluating and possibly eradicating the deep-rooted structures of dominance that permeate society.<sup>227</sup>

Thus, besides policy and programmatic interventions other measures are necessary for addressing the challenges in overcoming the problems encountered by adolescent girls in the pursuit of their right of access to education; taking into consideration that there is not one single intervention that will solve the complexity of the problems that adolescent girls face, it is important to take into account the possible externalities of different interventions.<sup>228</sup> In this regard the following suggestions have been proposed. These suggestions mainly involve taking concrete actions to reinforce legislations, policies and programmes that are in place.

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<sup>223</sup> Haslegrave *et al* (n 73above) 12.

<sup>224</sup> R Sabates *et al* 'School dropout: Patterns, causes, changes and policies' (2010) *Centre for International Education School of Education and Social Work, University of Sussex* 3.

<sup>225</sup> Sabates *et al* (n 224above) 3.

<sup>226</sup> Coetzee (n 177 above) 304.

<sup>227</sup> Coetzee (n 177above) 304.

<sup>228</sup> Sabates *et al* (n 224above) 20.

## 1. Basic Tools for Action

At the level of the essential tools needed for taking action it is recommended that in order to support the education of girls; increase their access and retention rate at school as well as curb drop-out rate, there is need for the following:

### a. Information and sensitization

Families and communities need to be informed about the benefits of educating the girl child.<sup>229</sup> Such information and sensibilisation campaigns, possible through the media is important for dispelling the myriad of traditional, cultural and religious myths surrounding the place and role of the girl child in society. Not only is the dissemination of information necessary in sensitising the public, it also helps to empower the girls in believing in knowing their rights and in believing in their abilities and potentials.

### b. Support mechanisms

Families, especially those that face financial and resource constraints need to know what programmes and resources are available to help them educate their girl children.<sup>230</sup> Providing micro-enterprise support for poor households is a necessary step for improving school retention for the girl child and will help to address some of the challenges that families face in giving the girl child the opportunity to access education.<sup>231</sup> Engaging families in poverty reduction strategies may help to strengthen the economy of the family and by so doing minimise the problem of not sending girls to school because of financial difficulties.

## 2. Taking Action

While government sets the scene for education, action to ensure that girls maximise the opportunity, needs to involve individuals and families and communities.

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<sup>229</sup> Haslegrave *et al* (n 73 above) 12.

<sup>230</sup> Haslegrave *et al* (n 73 above) 12.

<sup>231</sup> Sabates *et al* (n 224above) 19.

**a. At the individual level:**

- *Building self-esteem and future prospects:* Girls must evaluate their own thoughts and beliefs, and make adjustments where they believe it is necessary<sup>232</sup> with the understanding that education has a profound effect on their personal livelihood, their ability to claim other rights and achieve economic independence and career status in society.<sup>233</sup>
- *Role modeling:* Women, especially successful career professionals and those in higher levels of education must show themselves as role models to younger girls and encourage them to pursue their education so that they can also become successful and attain higher levels in society in later life.<sup>234</sup> The British Department for International Development (DFID) reports that empowering adult women – building their confidence and education levels – can have a powerful impact on enrolling more girls in schools as evidence gathered from other countries shows that women who participate in literacy classes are more likely to send their children to school, keep them there, and watch their progress closely.<sup>235</sup>
- *Pro-activeness:* Women must be willing to take action to advocate on behalf of younger girls who are still in school, and to take courageous and creative steps to find solutions to some of the problems that girls face in the pursuit of their education.<sup>236</sup>

**b. At the community level**

- *Acknowledging the significance of education for the girl child:* Families and whole communities need to value the importance of sending girls to school<sup>237</sup> and education should be seen as a valuable process in the development of every child regardless of sex, while traditional negative beliefs about education of the girl child need to be put aside and parents encouraged to send their girl children to school.<sup>238</sup>

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<sup>232</sup> Haslegrave *et al* (n 73 above) 13.

<sup>233</sup> DFID (n 201 above) 2.

<sup>234</sup> Haslegrave *et al* (n 73 above) 13.

<sup>235</sup> DFID (n 201 above) 13.

<sup>236</sup> Haslegrave *et al* (n 73 above) 13.

<sup>237</sup> DFID (n 201 above) 6.

<sup>238</sup> Haslegrave *et al* (n 73 above) 13.

- *Mobilisation:* Women can organize themselves to discuss the issues that prevent girls in their community from attending school; and therefore develop strategies or solutions to address the issues, and because such change is likely to be sensitive and relevant to the culture, and in return, the community may be more willing to embrace the change because it is coming from.<sup>239</sup> Communities should be encouraged to be involved with schools. This helps to build a sense of collaboration and cooperation that will strengthen the overall support for girls' education within the community, thereby encouraging attendance.<sup>240</sup>

**c. At the level of government**

- *Motivation:* Government needs to provide interventions or measures; either monetary or in-kind support as motivational factors to get families and households to enrol girls in school and ensure that they attend regularly. It is reported that income grants for children in South Africa, for instance has the effect of empowering households in their decision making towards children's schooling and help reduce drop-out rates.<sup>241</sup> The provision of basic necessities for girls, availability of female teachers and a gender sensitive curriculum may also have a huge impact in supporting adolescent girls in their pursuit of education.<sup>242</sup> Schools must be made affordable by eliminating barriers such as school fees, costs of transportation and equipment so that girls who are hindered by financial difficulties can be able to attend.<sup>243</sup> Scholarships and bursary programmes for girls from difficult family circumstances can also be a powerful incentive and a contributing factor in overcoming some of the challenges that adolescent girls face in education.<sup>244</sup>
- *Safety and security at school:* Government as well as school authorities must ensure that school environments are safe and girl-child friendly - that the school premises provide facilities that ensure security and safety for girls and that the educational programmes are gender sensitive and designed to encourage the girl child to participate and to achieve.<sup>245</sup>

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<sup>239</sup> Haslegrave *et al* (n 73 above) 13.

<sup>240</sup> Haslegrave *et al* (n 73 above) 13.

<sup>241</sup> Haslegrave *et al* (n 73 above) 9.

<sup>242</sup> Haslegrave *et al* (n 73 above) 9.

<sup>243</sup> Haslegrave *et al* (n 73 above) 14.

<sup>244</sup> Haslegrave *et al* (n 73 above) 15.

<sup>245</sup> Haslegrave *et al* (n 73 above) 15.

Safety and security measures should also aim to prevent trafficking and other malicious interests intended to exploit girls at school.<sup>246</sup> School governing policies should be designed to make schools accessible; to allow married and pregnant girls the opportunity to continue schooling and provide pathways back into education for girls who have been forced to leave school because of family circumstances or pregnancy.<sup>247</sup>

#### **d. The role of civil society organisations**

Civil society organisations have a multitude of roles to play in promoting girls' right and access to education. Their role may include providing services, carrying out advocacy on behalf of the girl child, lobbying government to introduce new strategies or improve on existing ones and also holding government accountable for commitments made in legislation, policies and international treaties ratified.<sup>248</sup> Civil society organisations also have the duty of monitoring government policies and/or programmes with regards to girl's right to education to see that they are being effectively implemented and, if not, lobbying for change, and/or resisting change when a successful programme is being threatened.<sup>249</sup> In their monitoring function civil society organisations should encourage collection and analysis of sex disaggregated data that can be used to support or facilitate advocacy and lobbying strategies for change.<sup>250</sup> They have a heavy task too of mobilising and educating communities to ensure that the rights of the girl child are being met through the education that is being provided.<sup>251</sup>

## **IV. CONCLUSION**

The thesis has in this concluding chapter examined the challenges in overcoming the problems that adolescent girls face in the pursuit of their right to education. The challenges are varied and multifaceted – ranging from the socio-economic; tradition, culture and religious beliefs to the hostile education environment, which deprives girls of the very resilience needed to overcome the challenges. In exploring the necessary actions that can be taken to address the situation the thesis

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<sup>246</sup> Haslegrave *et al* (n 73 above) 15.

<sup>247</sup> Haslegrave *et al* (n 73 above) 15.

<sup>248</sup> Haslegrave *et al* (n 73 above) 9, see also Art 4 of the CRC and Art 2 and 13 of the ICESCR.

<sup>249</sup> Haslegrave *et al* (n 73 above) 9.

<sup>250</sup> Haslegrave *et al* (n 73 above) 9.

<sup>251</sup> Haslegrave *et al* (n 73 above) 9.



has also looked at them from different levels, including at the levels of the individual, family and the community, government and also the pivotal role that civil society organisations could play in ensuring that girls effectively take advantage of and enjoy their right of access to education.

In coming to this final conclusion, the thesis wish to indicate that there is no one-size-fits-all solution to the problems that adolescent girls face in the pursuit of their right to education. The effectiveness of the strategies can only apply contextually and only if the social, economic, political, historical and cultural dimensions underlying the problems are fully understood can the problems ever be eliminated.<sup>252</sup> In a 2005 report on girl's education published by the DFID, British Secretary of State for International Development Hilary Benn sums up the significance of educating girls in these words: 'keeping our promise on girls' education will not just give girls better prospects; it holds the key to giving their families, communities and countries a better future as well.'<sup>253</sup>

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<sup>252</sup> Smit & du Plessis (n 84 above) 174.

<sup>253</sup> DFID (n 201 above) iv.

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