

**IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
ABUJA, NIGERIA**

SUIT NO: ECW/CCJ/APP/22/18

BETWEEN:

WOMEN AGAINST VIOLENCE AND EXPLOITATION IN SOCIETY (WAVES)

(ON BEHALF OF PREGNANT ADOLESCENT SCHOOL GIRLS IN SIERRA LEONE)

APPLICANTS

-AND-

THE REPUBLIC OF SIERRA LEONE

RESPONDENT

WRITTEN SUBMISSIONS OF *AMICUS CURIAE* AMNESTY INTERNATIONAL

A. Introduction

1. This is the brief of the Amicus Curiae pursuant to the leave of this Honourable Court granted on 7 May 2019 in the matter of Women Against Violence and Exploitation in Society (WAVES) and the Republic of Sierra Leone.
2. The Application concerns the ban by the Republic of Sierra Leone on pregnant girls attending mainstream school and sitting exams, introduced in 2015 by the then Minister of Education. The Amicus is not aware of any public statement or policy instituted by Sierra Leone withdrawing this ban.¹
3. This brief will focus on the following interrelated points of law:
 - a. Whether Sierra Leone's ban on pregnant girls accessing mainstream school and taking exams violates the rights of women and girls to education and non-discrimination and equality under the African Charter on Human and Peoples' Rights (African Charter), African Charter on the Rights and Welfare of the Child (African Children's Charter), Protocol to the African Charter on Human and

¹ A Ministry of Education official confirmed that the policy remains in place in a 2018 media article. Reuters, "Sierra Leone wants more girls in school – but not if pregnant" (23 August 2018) < <https://www.reuters.com/article/us-leone-education/sierra-leone-wants-more-girls-in-school-but-not-if-pregnant-idUSKCN1L824A> >

Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and Revised Treaty of the Economic Community of West African States (Revised ECOWAS Treaty);

- b. Whether the above-mentioned implementation of the ban violates the rights of pregnant girls to bodily integrity, privacy and freedom from cruel, inhuman or degrading treatment under the African Charter, Maputo Protocol, African Children's Charter, ICCPR, CRC, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Revised ECOWAS Treaty;
 - c. The nature of Sierra Leone's obligations under international law with regards to comprehensive sexuality education, sexual and reproductive health care information, services and goods and elimination of harmful and negative gender stereotypes, given that these are remedies requested by the Applicants in their petition before the Court.
4. The Amicus Curiae notes that Article 14(g) of the Revised ECWOAS Treaty provides for the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter. Further, Article 63 obliges Member States to *"establish appropriate policies and mechanisms for the enhancement of the economic, social and cultural conditions of women."*²

B. Violations of the Rights to Education, Non-Discrimination and Equality

The Right to Education

5. The right to education is enshrined in a number of international and regional treaties, including Article 13 of ICESCR, Articles 28 and 29 of the CRC, Article 17(1) of the African Charter and Article 11 of the African Children's Charter, all of which have been ratified by Sierra Leone. In particular, Article 13 of the ICESCR provides that *"education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms"* and that *"secondary education...shall be made generally available and accessible to all by every appropriate means."*³ Additionally, Article 29 of the CRC specifically states that *"State Parties agree that the education of the child shall be directed to: (d) The preparation of the child for responsible life in a free society, in the spirit of understanding...equality of sexes..."*⁴

² Revised ECOWAS Treaty (adopted 23 July 1993)

³ UNGA International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 <www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

⁴ UNGA Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 <www.refworld.org/docid/3ae6b38f0.html>.

6. In its General Comment 13, the Committee on Economic, Social and Cultural Rights (CESCR) describes the right to education as an “empowerment right” stating that, *“Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment.”*⁵
7. Article 12 of the Maputo Protocol sets out States’ obligations to guarantee girls and women the right to education, including the obligation to take positive action to promote literacy and education, as well as to ensure both the enrolment and retention of girls in schools.⁶ This provision further obliges States Parties to *“eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training”*⁷ These requirements recognise the pre-existing inequality and discrimination that frequently obstructs girls from accessing their right to education, amongst other rights, and the duty of States to take special measures to guarantee their access, and to ensure that services provided and measures taken respect girls’ right to equality and non-discrimination. Along similar lines, Article 10 of CEDAW states that *“States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: (a) The same conditions...for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training; (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality; (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.”*⁸ These protections highlighted in Article 10 enforce the right of women and girls to have access to the same educational standards of men and boys, in all aspects of education.
8. The duty to progressively realise the right to education includes ensuring that educational systems can respond to the needs of students within their different social and cultural

⁵ See para. 1 of UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 13: The Right to Education (Art. 13 of the Covenant)’ (8 December 1999) UN Doc E/C.12/1999/10 <<https://www.refworld.org/docid/4538838c22.html>>.

⁶ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) (entered into force 25 November 2005) adopted by the Second Ordinary Session of the Assembly of the Union (11 July 2003) CAB/LEG/66.6 reprinted in 1 Afr. Hum. Rts. L.J. 40.

⁷ Maputo Protocol, Article 12.

⁸ UNGA Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, UN Doc A/34/46.

contexts by *inter alia* the provision of appropriate and sufficient resources and facilities to meet those needs without discrimination, including adequate sanitation.⁹

The Right to Non-Discrimination and Equality

9. Article 2(2) of the ICESCR provides that the rights enunciated in the Covenant, including the right to education, will be exercised without discrimination of any kind including with respect to sex. CESCR has clearly defined the scope of States Parties obligations in relation to the right to non-discrimination as set out in Article 2(2), and the enjoyment of economic, social and cultural rights, including the right to education. *“Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2(2) requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Discrimination also includes incitement to discriminate and harassment.”*¹⁰ CESCR has further stated, *“Women are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination. Many women experience distinct forms of discrimination due to the intersection of sex with such factors as race, colour, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status, resulting in compounded disadvantage.”*¹¹
10. Article 10 of CEDAW explicitly calls on States Parties to *“take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: ...[including through reducing] the female student drop-out rates and the organization of programmes for girls who have left school prematurely...”*¹², among other things. This Committee has raised its concern with Sierra Leone about girls’ lack of access to education, including for reasons such as pregnancy. In 2014, the Committee urged Sierra Leone to *“remove all barriers to school attendance by pregnant girls and young mothers.”*¹³ On a previous occasion in 2007, CEDAW urged the Sierra Leonean government to *“implement measures to ensure equal access for girls and women to all*

⁹ See para. 13 of UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 13: The Right to Education (Art. 13 of the Covenant)’ (8 December 1999) UN Doc E/C.12/1999/10 <www.refworld.org/docid/4538838c22.html>.

¹⁰ For example, see para. 7 of UN Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)’ (2 July 2009) UN Doc E/C.12/GC/20 <www.refworld.org/docid/4a60961f2.html> and also para. 10(a) of the same.

¹¹ CESCR, ‘General Comment No.16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights’ (11 August 2005) UN Doc E/C.12/2005/4 <<https://www.refworld.org/docid/43f3067ae.html>>, para. 5.

¹² CEDAW, Article 10(f).

¹³ CEDAW, ‘Concluding Observations: Sierra Leone’ (10 March 2014) UN Doc CEDAW/C/SLE/CO/6, 2014, para. 29(c).

levels of education and retention of girls in school."¹⁴

11. Article 2 of the African Charter provides “*Every 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, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.*” The importance of non-discrimination as a precursor to the protection of other human rights has been recognised by the African Commission on Human and Peoples’ Rights (the African Commission), which has asserted: “*Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights.*”¹⁵ Notably, the African Commission has explicitly recognised in the Maputo Protocol, the importance of States Parties establishing “*adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women,*” as a key component of access to justice and to equal protection of men and women under the law.¹⁶
12. Moreover, the African Children’s Charter also enshrines the principle of non-discrimination in Article 3, including on the basis of sex, and Article 11 of this treaty also requires that the State Party take special measures to guarantee girls equal access to education.¹⁷ The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has specifically stated that “*deprivation of access to education through exclusion is considered to be discrimination in education.*”¹⁸
13. Importantly, the African Commission has further recognised that there can be multiple and intersecting forms of discrimination against women which are all prohibited. Some of these grounds are outlined in the Maputo Protocol and, specifically in relation to women and girls’ sexual and reproductive rights, are set out in the African Commission’s subsequent General Comment 2.¹⁹ Paragraph 22 in General Comment 2 especially asks States Parties to remove socio-cultural structures and norms that encourage and preserve gender-based inequality. In addition, the African Commission “*recognises that these forms of discrimination, individually or collectively, prevent women from realising their right to*

¹⁴ CEDAW, ‘Concluding Observations: Sierra Leone’ (11 June 2007) UN Doc CEDAW/C/SLE/CO/5, 2007, para. 31.

¹⁵ African Commission on Human and Peoples’ Rights, *Zimbabwe NGO Human Rights Forum v Zimbabwe* (2006) Communication No. 245/2002 <www.achpr.org/communications/decision/245.02/>, para. 169.

¹⁶ Maputo Protocol, Article 8.

¹⁷ African Charter on the Rights and Welfare of the Child (entered into force 29 November 1999) (1990) OAU Doc CAB/LEG/24.9/49 <www.refworld.org/docid/3ae6b38c18.html>.

¹⁸ African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Said & Yarg v Mauritania* (2017) Communication No. 007/Com/003/2015 <<https://acerwc.africa/wp-content/uploads/2018/13/ACERWC%20Decision%20Final%20ON%20Mauritania.pdf>>, para. 74.

¹⁹ See Article 2 of Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) (entered into force 25 November 2005) adopted by the Second Ordinary Session of the Assembly of the Union (11 July 2003) CAB/LEG/66.6 reprinted in 1 Afr. Hum. Rts. L.J. 40; and further para. 12 of African Commission on Human and Peoples’ Rights, ‘General Comment No. 2 on Article 14.1(a), (b), (c) and (f) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa’ (2014) adopted at the Fifty-Fifth Ordinary Session.

self-protection and to be protected.”²⁰

14. There are also important Sierra Leonean laws pertinent to the protection of girls’ right to education on an equal basis and without discrimination. Sierra Leone’s Constitution “prohibits legal provisions which are discriminatory either in and of itself or in its effect. Further, the Constitution prohibits discrimination on the basis of sex as well as other grounds.”²¹ Article 9(1) establishes the right to education and states that: “the Government shall direct its policy towards ensuring that there are equal rights and adequate educational opportunities for all citizens at all levels by - a. ensuring that every citizen is given the opportunity to be educated to the best of his ability, aptitude and inclination by providing educational facilities at all levels and aspects of education such as primary, secondary, vocational, technical, college and university; b. safeguarding the rights of vulnerable groups, such as children, women and the disabled in security educational facilities; and c. providing the necessary structures, finance and supportive facilities for education as and when practicable.”²² Further, the Sierra Leone Education Act 2004 establishes the principle of non-discrimination in accessing education, whilst the Child Rights Act 2007 upholds the fundamental principle of non-discrimination for children in the enjoyment of their human rights.²³

15. In addition, there are some key domestic ethical standards relevant to the issue of girls’ education, safety and bodily autonomy. These govern the professional conduct of teachers and must be adhered to by teachers in Sierra Leone. They are known as the Code of Conduct for Teachers and Education Personnel in Sierra Leone from August 2009. Article 2.2.3 of the Code states that “Teachers and other education personnel shall: (a) promote safe and conducive learning environment; (b) ensure that learners are treated with dignity and respect and their rights fully protected; (c) establish and maintain zero tolerance for all forms of sexual and gender-based violence, exploitation and abuse, physical and humiliating forms of punishment, psychological abuse, and child labour; and (d) eliminate

²⁰ See para. 4 of African Commission on Human and Peoples’ Rights, ‘General Comments on Article 14(1)(d) and (e) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa’ (2012) adopted at the Fifty-Second Ordinary Session.

²¹ See Article 27 of the Constitution of Sierra Leone (1991):

Subject to the provisions of subsection (4), (5), and (7), no law shall make provision which is discriminatory either of itself or in its effect. (2) Subject to the provisions of subsections (6), (7), and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority. (3) In this section the expression ‘discriminatory’ means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

²² See Constitution of Sierra Leone (1991).

²³ See Article 3(2)(a)(i) of Act No. 7 of 2007 (The Child Right Act) (Sierra Leone) <www.refworld.org/docid/468a5ed02.html>.

all forms of discrimination at all times.”²⁴

The Exclusion of Pregnant Girls from Education Violates the Right to Access Education Without Discrimination

16. The prohibition of discrimination based on adolescent pregnancy, together with the principle that pregnant girls should be afforded equal access to education, are firmly enshrined in international and regional human rights law. The CRC requires Sierra Leone to respect, protect and fulfil girls’ human rights, including their rights to non-discrimination,²⁵ education,²⁶ privacy²⁷ and bodily autonomy. Further, and crucially, the Committee on the Rights of the Child (CRC Committee) has specifically stated *“Discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured.”*²⁸ The CRC Committee has set out States Parties’ legal obligations to respect pregnant girls’ right to access education, stating that steps need to be taken to: *“Ensure that married adolescents, pregnant teenagers and adolescent mothers are supported and assisted in continuing their education in mainstream schools and that they can combine child rearing and completing education.”*²⁹ The CEDAW Committee has recommended that States Parties: *“Review and/or abolish laws and policies that allow the expulsion of pregnant girls and teachers and ensure that there are no restrictions on their return following childbirth.”*³⁰ and has stated that: *“When girls are unable to finish their education because of child and/or forced marriage and pregnancy, they face practical barriers, including forced exclusion from school, social norms confining girls to the home and stigma.”*³¹ Accordingly, the CEDAW Committee has recommended that States Parties: *“Formulate re-entry and inclusive education policies enabling pregnant girls, young mothers and married girls under 18 years of age to remain in or return to school without delay and ensure that such policies are disseminated to all educational establishments and administrators, as well as among parents and communities.”*³² Further, the CEDAW Committee has urged States to: *“Strengthen efforts to retain girls in school, including pregnant girls, facilitate the return to school of young mothers after giving birth by adopting the policy on second-chance*

²⁴ Ministry of Education, Youth and Sports, Sierra Leone, ‘The Code of Conduct for Teachers and Other Education Personnel in Sierra Leone’ (August 2009)

<http://teachercodes.iiep.unesco.org/teachercodes/codes/Africa/Sierra_Leone.pdf>.

²⁵ See Article 2 of UNGA Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 <www.refworld.org/docid/3ae6b38f0.html>.

²⁶ See *ibid*, Article 28.

²⁷ *Ibid*, Article 16.

²⁸ UN Committee on the Rights of the Child, ‘General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24)’ (17 April 2013) UN Doc CRC/C/GC/15 <www.refworld.org/docid/51ef9e134.html>, para. 56.

²⁹ See para. 60(c) of UN Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third and Fourth Periodic Reports of Indonesia’ (13 June 2014) UN Doc CRC/C/IDN/CO/3-4 <www.refworld.org/docid/541bef294.html> and further, see para. 48(b) of the UN Committee on the Rights of the Child, ‘Concluding Observations: Guyana’ (26 February 2004) UN Doc CRC/C/15/Add.224 for example.

³⁰ UN Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 36 (2017) on the rights of girls and women to education’ (16 November 2017) UN Doc CEDAW/C/GC/36, para. 24(g).

³¹ *ibid*, para. 52.

³² *ibid*, para. 55(g).

*education currently under consideration and by providing adequate childcare facilities, and ensure that girls are not expelled from school because they are pregnant...*³³ Significantly, the CEDAW Committee has also called for States to act by *“by imposing appropriate sanctions on those responsible for such dismissals.”*³⁴ This has been echoed by the ACERWC, which has stated that *“States Parties should pursue policies and plans designed to achieve equal access by girls and boys to education. These policies should include measures to encourage pregnant girls to keep attending or returning to school. It is compulsory for States Parties to facilitate the retention and re-entry of pregnant or married girls in schools and to develop alternative education programmes such as skills acquisition and vocational training in circumstances where women are unable or unwilling to return to school following pregnancy or marriage.”*³⁵

17. Several UN Treaty Bodies have raised specific concerns about Sierra Leone’s exclusion of pregnant girls from the mainstream educational system. In 2016, the CRC Committee issued Concluding Observations following the review of Sierra Leone’s obligations. It stated that urgent measures should be taken in relation to the following recommendations: *“Immediately lift the discriminatory ban on pregnant girls attending mainstream schools and sitting exams; Ensure that pregnant girls and adolescent mothers are supported and assisted in continuing their education in mainstream schools.”*³⁶ The CEDAW Committee has also raised concerns with Sierra Leone about girls’ lack of access to education, including for reasons such as pregnancy, urging Sierra Leone in 2014 to: *“Ensure that sexual abuse and harassment in school are adequately addressed and punished, and effectively implement the National Strategy for the Reduction of Teenage Pregnancy (2013) and the Code of Ethics for Teachers, and remove all barriers to school attendance by pregnant girls and young mothers.”*³⁷ In 2007, the CEDAW Committee similarly urged the Sierra Leonean government to *“implement measures to ensure equal access for girls and women to all levels of education and retention of girls in school.”*³⁸ During the Universal Periodic Review of Sierra Leone by the UN Human Rights Council in 2016, several States made recommendations for Sierra Leone to remove measures that exclude

³³ UN Committee for the Elimination of All Forms of Discrimination against Women, ‘Concluding Observations on the Combined Initial to Third Periodic Reports of Solomon Islands’ (14 November 2014) UN Doc CEDAW/C/SLB/CO/1-3 <<https://undocs.org/CEDAW/C/SLB/CO/1-3>>, para. 33(g).

³⁴ *ibid.*

³⁵ African Commission on Human and Peoples’ Rights, ‘Joint General Comment of the African Commission on Human and Peoples’ Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on Ending Child Marriage’ (2017) <www.achpr.org/news/2018/01/d321>, para. 31.

³⁶ See para. 35 of UN Committee on the Rights of the Child, ‘Concluding Observations on the Combined Third to Fifth Periodic Reports of Sierra Leone’ (1 November 2016) UN Doc CRC/C/SLE/CO/3-5 <www.refworld.org/docid/587ce56f4.html>.

³⁷ See para. 29(c) of UN Committee on the Elimination of Discrimination against Women, ‘Concluding Observations on the Sixth Periodic Report of Sierra Leone’ (10 March 2014) UN Doc CEDAW/C/SLE/CO/6 <<https://undocs.org/CEDAW/C/SLE/CO/6>>.

³⁸ See para. 31 of UN Committee on the Elimination of Discrimination against Women, ‘Concluding Comments of the Committee on the Elimination of Discrimination against Women: Sierra Leone’ (11 June 2007) UN Doc CEDAW/C/SLE/CO/5 <<https://undocs.org/CEDAW/C/SLE/CO/5>>.

pregnant girls from the educational system. Sierra Leone rejected those recommendations.³⁹

18. The fundamental right to access education without discrimination has been recognised by regional and domestic courts throughout the world. The Inter-American Commission of Human Rights (IACHR), for example, has held that States which are party to the American Convention of Human Rights have an obligation to ensure that schools (public or private) do not discriminate against students due to pregnancy. If States do not ensure this, they violate the student's right to honour and dignity, and also equality before the law. The ruling concerned a student in Chile who was expelled from a private school due to being visibly pregnant while taking an exam. The school's reasons for the expulsion were a violation of its internal moral code and that the student would set a bad example to other girls.⁴⁰ In the decision of this case, it was stated that the Government would publish an official communication on the matter, "*recognizing that rights of the petitioner enshrined in the American Convention on Human Rights—freedom from arbitrary or abusive interference with her private life and equal protection of the law—were violated when her enrollment was not renewed and she was obliged to leave the educational establishment where she was pursuing her studies... for the sole reason that she had become pregnant. In addition, steps would be taken to disseminate recent legislation (Law N° 19,688), amending the Education Act, which contains provisions on the rights of pregnant students or nursing mothers to have access to educational establishments.*"⁴¹ It is respectfully submitted that the jurisprudence of other regional courts should be considered as persuasive precedent for this Honourable Court.

19. Comparative African and Latin American jurisprudence has similarly held exclusion from education on the basis of pregnancy to be discriminatory, and in some cases a breach of the right to education.

- a. In *Student Representative Council of Molepolole College of Education v Attorney General* (1995),⁴² the Botswana Court of Appeal reviewed Regulation 6 of the Teacher's Training College, which demanded that students inform the college authorities as soon as a pregnancy was confirmed. According to the regulation, students who became pregnant between December and April would be forced to leave the college immediately and those whose pregnancy was confirmed between

³⁹ Amnesty International, 'Sierra Leone Must Protect and Promote Women and Girls' Human Rights, Including to Education and Physical Integrity' (London, 27 June 2016) <www.amnesty.org/download/Documents/AFR5143532016english.pdf>.

⁴⁰ Inter-American Commission on Human Rights, *Carabantes Galleguillos v Chile* (2002) Petition 12.046, Inter-Am. C.H.R., Report No. 33/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1. Domestic courts in Chile have also ruled on a similar basis. See *Maria Soledad Arze-Vargas v Universidad de Los Andes* (La Corte de Apelaciones de Santiago, Chile, 1992) Revista Fallos del Mes 409, 894, where the Santiago Court of Appeal held that the university had committed an arbitrary act by excluding a student due to pregnancy.

⁴¹ Inter-American Commission on Human Rights, *Carabantes Galleguillos v Chile* (2002) Petition 12.046, Inter-Am. C.H.R., Report No. 33/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1.

⁴² *Student Representative Council of Molepolole College of Education v Attorney General* (Botswana Court of Appeal 1995) 3 LRC 447.

May and November would be required to miss the next academic year. If a student became pregnant for the second time while at college, the institution had the right to expel her. The Court of Appeal held that Regulation 6 was unfairly discriminatory as it involved a “purely punitive” purpose and was not made for the benefit of the affected student, despite claims to the contrary. The Regulation unreasonably and without justification denied pregnant students the opportunity to continue their education, while male students involved were subject to no such exclusion and were not punished under Regulation 6. The Regulation was held unconstitutional and in this specific case the barrier impeding the pregnant students’ right to education was lifted.

- b. In *Mandizvidza v Chaduka Nor & Others* (1999),⁴³ the Supreme Court of Zimbabwe held that the expulsion of a female student who became pregnant while attending the teacher training college constituted gender-based discrimination and was contrary to public policy in a country where concerted efforts have been made to eliminate discrimination on the grounds of sex and gender.⁴⁴ The case related to a clause in a student-college contractual agreement requiring women to withdraw from the college if they became pregnant.
- c. In *Head of Department, Department of Education, Free State Province v Welkom High School and Another* (2013),⁴⁵ the Constitutional Court of South Africa ordered two public high schools to review their policies which provided for the temporary exclusion of students who were found to be pregnant. The Court ruled that the policies were *prima facie* unconstitutional, violating the rights to freedom from discrimination and to a basic education.
- d. In *Arriagada v Instituto Profesional Adventista* (2000),⁴⁶ the Chilean Court of Appeals held that the decision to exclude a pregnant university student for a year constituted an act of discrimination that infringed her right to equality before the

⁴³ *Mandizvidza v Chaduka NO and Others* (Supreme Court of Zimbabwe 1998) 2 ZLR 375.

⁴⁴ Affirmed in *Sasfin [pvt] Led v Benkes* [1989] (1) SA 1 [A] at 71-9A; *Botha [now Griesse] v Finanscredit [pvt] Ltd* [1989] (3) SA 773 [A] at 7821-783C; and *Mufamadi and Others v Dorbye Finance [pty] Ltd* [1996] (1) SA 799 [A] at 801 1-80. 1 A. See also the earlier case of *Wazara v Principal, Belvedere Technical Teachers’ College & Anor* (High Court of Zimbabwe 1997) 2 ZLR 508 H, where the High Court of Zimbabwe declared it was unlawful for the teachers’ training college to dismiss a pregnant student. The student had been dismissed five days before she was due to write her final exam. Following on from this case, a new policy was adopted in teachers’ colleges that enabled female students to stay in the college during pregnancy, except where they were unable to do so for health reasons.

⁴⁵ *Head of Department, Department of Education, Free State Province v Welkom High School and Another* (Constitutional Court of South Africa 2013) ZACC 25. Similarly, in *Mfolo and Others v Minister of Education, Bophuthatswana* (Supreme Court of South Africa 1992) 3 LRC 181, the Court held that regulations that required pregnant students to withdraw from a teachers’ training college was unconstitutional as it was inconsistent with section 9 of the Constitution (equality before the law). The case concerned the exclusion of four girls from continuing their studies and sitting the final exams as a result of falling pregnant.

⁴⁶ *Arriagada con Instituto Profesional Adventista*” La Corte de Apelaciones de Chillán, con fecha 10 de abril del año 2000, Revista Fallos del Mes, N° 498, Mayo, 2000, pp. 894-900.

law as pregnancy and breastfeeding are not impediments to enroll in or continue education.

- e. In *N Y Baca Barturén v Director de la Escuela Técnica Superior de la Policía de Chiclayo and Others* (2009),⁴⁷ the Constitutional Court of Peru held that it was unconstitutional to deprive a student of their education or professional formation due to pregnancy and that this amounts to gender discrimination.

20. In their application, the Applicants refer to the alternative “bridging” education system that was set up by the government of Sierra Leone in 2015 that allowed pregnant girls to continue going to school, but in different premises or at different times to their peers. The learning curriculum used in the scheme differed to that of mainstream schools and focused only on core subjects. Classes were only held three times a week for around two to three hours a day. These “bridging” schools ended in July 2017.⁴⁸ The Applicants argue that the provision of education was not of an equal quality to that of mainstream schools, was discriminatory and falls short of the adequacy requirement.⁴⁹

21. The Constitutional Court of Colombia has addressed a similar issue in the country in a case where a 17-year-old student became pregnant and was suspended by her school. She was allowed to resume limited education outside of school hours. The justification given for these actions by the school was that the student needed “special treatment so that she could prepare for her next role.” The Court held that the limited tutorials that the student received solely due to her pregnancy amounted to punishment due to the “disproportionate burden” she had to bear.⁵⁰ The Court stated, “*In the first place, it is an agreement that deals with the imposition of a sanction that, as it was seen, is unconstitutional insofar as it penalizes a situation that, like pregnancy, can not be subject to disciplinary treatment.*”⁵¹ Furthermore, the judgment called for the “...protection of the fundamental rights to equality, to privacy, to the free development of the personality and to the education of *Leydi Johanna Martínez Suárez.*”⁵² The Court ordered the school to allow the student to return to a normal timetable within 48 hours and receive an education equal to that of other students. The school was also obliged to amend its internal regulations, as the current policy on treatment of pregnant students was deemed unconstitutional.⁵³

⁴⁷ *Nidia Yesenia Baca Barturén v Director de la Escuela Técnica Superior de la Policía de Chiclayo and Others* (Constitutional Court of Peru 2009) STC No 5527-2008-PHC/TC <<http://www.tc.gob.pe/jurisprudencia/2009/05527-2008-HC.pdf>>.

⁴⁸ Interview with Official at Ministry of Education, Sierra Leone (Ministry of Education official, 21 July 2018). According to information provided, these schools have not started again due to lack of funding from donor partners.

⁴⁹ Application, *WAVES v Sierra Leone*, ECW/CCJ/APP/22/18, paras. 7.28 and 7.29

⁵⁰ Fons Coomans, ‘Justiciability of the Right to Education’ (2009) 2(4) *Erasmus L Rev* 427, 437 <http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Coomans_Justiciability_Right_to_Education_2009.pdf>.

⁵¹ *Crisanto Arcangel Martinez Martinez y Maria Eglina Suarez Robayo v Colegio Ciudad de Cali* (Constitutional Court of Colombia, 1998) No. T-177814 <www.corteconstitucional.gov.co/relatoria/1998/t-656-98.htm>.

⁵² *ibid.*

⁵³ *ibid.*

22. In sum, it is respectfully submitted that Sierra Leone's ban on pregnant girls from attending mainstream school and taking exams does not comply with the protections afforded by the rights to education, non-discrimination and equality under the African Charter, African Children's Charter, Maputo Protocol, ICCPR, ICESCR, CEDAW, CRC and Revised ECOWAS Treaty. Further, the alternative "bridging" scheme for pregnant girls is not consistent with the rights to education, non-discrimination and equality since it imposes an irrebuttable presumption that pregnant girls are unable to continue to attend mainstream school, provides unequal education and punishes girls who become pregnant.

C. Implementation of the ban violates the rights of pregnant girls to bodily integrity and freedom from cruel, inhuman or degrading treatment

Right to bodily integrity

23. The right to bodily integrity includes the right to be free from violence and other non-consensual acts against one's body. The concept and content of the bodily integrity is premised on recognition of a range of human rights, including the rights to life, equality and non-discrimination and freedom from torture and other cruel, inhuman or degrading treatment, among others. Along these lines, there are multiple international and regional treaties and domestic laws that require Sierra Leone to protect girls from violence, including through exercising their 'due diligence' obligations to investigate, prevent and punish violence (including sexual violence), as well as ensuring remedies and protection for survivors/victims.

24. Article 27(1) of the African Children's Charter requires that Sierra Leone protect children from sexual violence and takes measures to prevent the same. Article 2 of CEDAW also sets forth states' 'due diligence' obligations to condemn and eliminate discrimination against women in all its forms, including gender-based violence, by:

- adopting appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- establishing legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- refraining from engaging in any act or practice of discrimination against women and ensuring that public authorities and institutions shall act in conformity with this obligation;
- taking all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and
- repealing all national penal provisions which constitute discrimination against

women.⁵⁴

25. The CRC also obliges Sierra Leone to respect, protect and fulfil children's right to be free from violence, including sexual violence. Article 19(1) requires that States Parties "*take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*"⁵⁵ The CRC Committee has expressed concern that adolescents who suffer sexual violence are exposed to multiple risks including STIs, HIV/AIDS, and additionally for girls the possibility of unwanted pregnancies, unsafe abortions, further violence and psychological distress. The Committee underlines the state obligation to prevent sexual violence, protect those at risk and enact and enforce laws to prohibit and punish all forms of sexual violence.⁵⁶
26. By employing policies of exclusion and other punishments on the basis of pregnancy, the State unjustly confers all responsibility on girls for their early pregnancy and fails to account for its lack of compliance with states' 'due diligence' obligations to prevent, investigate and punish sexual violence and to ensure access to sexual and reproductive health information, services and goods, including access to modern contraception and safe and legal abortion services.⁵⁷

Obligation to prevent, eradicate, investigate and punish acts that could amount to cruel, inhuman or degrading treatment and punishment

27. Where there is an official policy of excluding pregnant girls from schools and/or colleges, teaching staff and other adults in positions of authority feel empowered, and indeed instructed, to take measures to ascertain girls' pregnancy status to enforce the ban. This is the case whether the policy of exclusion on the basis of pregnancy status is imposed at the individual school or college level or is a national government-backed policy. In countries where such policies persist, the practices of touching of girls' stomachs and breasts, or

⁵⁴ CEDAW, Article 2; CEDAW, 'General Recommendation 19 on violence against women' (11th session, 1992) UN Doc A/47/38 at 1; UNGA 'Declaration on the Elimination of Violence Against Women' (20 December 1993) UN Doc A/RES/48/104, Article 4(c); United Nations Commission on Human Rights, 'Resolution 1994/45: Question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women' (4 March 1994) UN Doc E/CN.4/Sub.2/1994/45; CEDAW, *Vertido v Philippines* (22 September 2010) UN Doc CEDAW/C/46/D/18/2008, para. 8.4 (The CEDAW Committee emphasized that States Parties to the Convention have an obligation to "take appropriate measures . . . to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women).

⁵⁵ UNGA Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 <www.refworld.org/docid/3ae6b38f0.html>.

⁵⁶ UN Committee on the Rights of the Child, 'General Comment No. 4 (2003) Adolescent health and development in the context of the Convention on the Rights of the Child' (1 July 2003) UN Doc CRC/GC/2003/4, para. 37.

⁵⁷ American University Washington College of Law Center for Human Rights & Humanitarian Law, 'Gender Perspectives on Torture: Law and Practice' (2018) <www.wcl.american.edu/impact/initiatives-programs/center/documents/gender-perspectives-on-torture>.

compelling them to take urine tests, are common.⁵⁸ Amnesty International documented that some girls in Sierra Leone were subjected to being “checked for pregnancy” in 2015 by having their breasts or stomachs felt or being made to take urine tests.⁵⁹ When such conduct is nonconsensual it amounts to gender-based violence and a violation of pregnant girls’ bodily integrity. In some cases, it may also violate pregnant girls’ right to be free from cruel, inhuman or degrading treatment or punishment.

28. Article 16 of CAT requires Sierra Leone to prevent, eradicate, investigate and punish acts of cruel, inhuman or degrading treatment or punishment.⁶⁰ The Committee against Torture has expanded on States Parties’ obligations under CAT in its General Comment 2, stating that “*States Parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented.*”⁶¹
29. Article 37(a) of the CRC requires States Parties to ensure that: “*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment*” and in Article 19(1) requires that “*States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*”⁶²
30. Article 5 of the African Charter requires States to prohibit all forms of torture, cruel, inhuman or degrading punishment and treatment.⁶³ Moreover, the African Child Rights Charter recognises this enhanced obligation and also requires Sierra Leone to respect and protect girls’ right to be free from cruel, inhuman or degrading treatment. Article 16 specifically obliges States to “*take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child,*” and further, to take “*effective*

⁵⁸ See, for example, Center for Reproductive Rights, ‘Forced Out: Mandatory Pregnancy Testing and the Expulsion of Pregnant Students in Tanzanian Schools’ (2013)

<www.reproductiverights.org/sites/default/files/documents/crr_Tanzania_Report_Part1.pdf>.

⁵⁹ Amnesty International, ‘Shamed and Blamed: Pregnant Girls’ Rights at Risk in Sierra Leone’ (2015)

<<https://www.amnesty.org/download/Documents/AFR5126952015ENGLISH.PDF>>.

⁶⁰ Importantly and relevant to this issue of the inhumane or degrading treatment of girls in Sierra Leone, in 2014 the UN Committee against Torture reminded Sierra Leone “*of the commitment it made during the dialogue with the Committee and recommends that it take the necessary legislative measures to explicitly prohibit corporal punishment in all settings, conduct public awareness-raising campaigns about its harmful effects, and promote positive non-violent forms of discipline as an alternative to corporal punishment.*” Corporal punishment is considered a breach of Article 16 of the Convention against Torture: the right to be free from cruel, inhuman or degrading treatment or punishment.

⁶¹ UN Committee Against Torture, ‘General Comment No. 2: Implementation of Article 2 by States Parties’ (24 January 2008) UN Doc CAT/C/GC/2 para. 4 <www.refworld.org/docid/47ac78ce2.html>.

⁶² UNGA Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 <www.refworld.org/docid/3ae6b38f0.html> arts 19(1) and 37(a).

⁶³ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (Banjul Charter).

procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse....”⁶⁴

31. At the national level, Article 33(1) of Sierra Leone’s Child Rights Act states “*No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanises or is injurious to the physical and mental welfare of a child.*”⁶⁵

32. In this case, where there the Sierra Leone government has an obligation to protect children (a particularly vulnerable group) from cruel, inhuman and degrading treatment or punishment and to monitor and regulate adults in positions of authority and entrusted with the care of children, the State has an enhanced duty of care toward children.⁶⁶ The State has a positive obligation to exercise ‘due diligence’ to ensure that girls are not subjected to cruel, inhuman or degrading treatment, including in educational settings. Nonconsensual touching of pregnant girls’ breasts and stomachs, nonconsensual pregnancy testing or other humiliating and degrading means used to ascertain a girl’s pregnancy status and then to exclude her from schools and exams on that basis, can arise to the level of cruel, inhuman and degrading treatment. The Human Rights Committee (HRC), when determining if the right to be free from inhuman treatment had been violated in a particular case, found that it “*depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the victim.*”⁶⁷ The power dynamic between a teacher or other person in a position of authority and a child or young person in their care is an important factor which increases the vulnerability of the girl in this case, and brings with it heightened and enhanced duties on the part of the state to prevent any abuse and ill-treatment in such contexts.

33. The State’s failure to protect girls and to prevent persons in positions of authority from engaging in cruel, inhuman or degrading treatment is also discriminatory. Notably, only pregnant girls are subjected to non-consensual groping and pregnancy testing and subsequent exclusion from school and exams. Boys are not subjected to similar or analogous cruel, inhuman or degrading treatment or denied the right to education in relation to a suspected pregnancy, even if they played some role in the pregnancy. The measures taken to ascertain girls’ pregnancy status and the subsequent exclusion as a punishment for the same are a particularly gendered form of cruel, inhuman or degrading treatment and punishment.

⁶⁴ African Charter on the Rights and Welfare of the Child (entered into force 29 November 1999) (1990) OAU Doc CAB/LEG/24.9/49 <www.refworld.org/docid/3ae6b38c18.html>.

⁶⁵ Act No. 7 of 2007 (The Child Right Act) (Sierra Leone) <, Article 33(1) <<https://www.refworld.org/docid/468a5ed02.html>>.

⁶⁶ See *ibid.*

⁶⁷ See para 9.2 of UN Human Rights Committee *Brough v Australia* (2006) Communication No. 1184/2003, UN Doc CCPR/C/86/D/1184/2003.

34. It is respectfully submitted that implementation of the ban on pregnant girls from accessing school violates the rights of pregnant girls to bodily integrity, non-discrimination and freedom from cruel, inhuman and degrading treatment under the African Charter, Maputo Protocol, African Children's Charter, ICCPR, CRC, CAT, and Revised ECOWAS Treaty.

D. Right to comprehensive sexuality education, sexual and reproductive health care information, services and goods and elimination of harmful and negative gender stereotypes

35. As the Applicant has requested various remedies related to these rights, this submission sets out Sierra Leone's obligations under international and regional human rights law to aid the Honourable Court.

Right to comprehensive sexuality education

36. Prevention of unwanted pregnancy is essential to ensuring a range of women and girls' human rights, including the rights to access education, health, life and equality and non-discrimination, among others. Allowing people to control and make informed and autonomous decisions about their fertility and in particular preventing unwanted pregnancy enables women, girls and all people who can become pregnant to avoid getting pregnant when they do not want to. This requires providing access and provision of modern methods of contraception and related accurate, evidence-based and non-biased information and comprehensive sexuality education.

37. With regard to comprehensive sexuality education, Sierra Leone's formal educational curriculum is wholly lacking.⁶⁸ The UNESCO International Technical Guidance on Sexuality Education defines comprehensive sexuality education as follows: "*an age-appropriate, culturally relevant approach to teaching about sex and relationships by providing scientifically accurate, realistic, non-judgmental information. Sexuality education provides opportunities to explore one's own values and attitudes and to build decision-making, communication and risk reduction skills about many aspects of sexuality.*"⁶⁹

38. Evidence has shown that providing young people with comprehensive sexuality education,

⁶⁸ Amnesty International, 'Shamed and Blamed: Pregnant Girls' Rights at Risk in Sierra Leone' (2015) <www.amnesty.org/en/documents/afr51/2695/2015/en> and recent discussion with health experts in Sierra Leone.

⁶⁹ See p. 2 of UNESCO, 'International Technical Guidance on Sexuality Education: An Evidence-Informed Approach for Schools, Teachers and Health Educators' (2009) and further, para. 25 of UNGA 'Report of the United Nations Special Rapporteur on the Right to Education' (23 July 2010) UN Doc A/65/162. See also para. 54 of UN Committee on the Rights of the Child, 'Concluding Observations: Antigua and Barbuda' (3 November 2004) UN Doc CRC/C/15/Add.247; and para. 31 of UN Committee on the Elimination of Discrimination against Women, 'Concluding Comments of the Committee on the Elimination of Discrimination against Women: Republic of Moldova' (25 August 2006) UN Doc CEDAW/C/MDA/CO/3; amongst other examples of where it has been recommended to states that CSE is provided as a compulsory component of education.

which includes scientifically accurate and rights-based information about sexuality and reproductive health appropriate to their age is effective in improving their health⁷⁰ and can equip them with knowledge and skills to exercise their human rights and make informed decisions about their lives. Lack of such education leaves them vulnerable to coercion, abuse, exploitation, unintended pregnancy and HIV/STIs.⁷¹

39. UN Treaty Bodies have recognised this reality and called on governments to guarantee the rights of all individuals, particularly of adolescents to health, life, education, and non-discrimination by providing them comprehensive sexuality education that is scientifically accurate and objective, age appropriate, and free of prejudice and discrimination.⁷² The CRC Committee emphasises that all adolescents have the right to access confidential, adolescent-responsive sexual and reproductive health information, education, and services, irrespective of age and without the consent of a parent or guardian.⁷³
40. States have the obligation to ensure access to comprehensive sexuality education. The obligation is founded on children's rights to the highest attainable standard of health, right to information and right to be free from violence, amongst other rights. The CESCR Committee has confirmed that States Parties have a core obligation to ensure, at the very least, minimum essential levels of satisfaction of the right to sexual and reproductive health, which includes ensuring "*all individuals and groups have access to comprehensive education and information on sexual and reproductive health that are non-discriminatory, non-biased, evidence-based, and that take into account the evolving capacities of children and adolescents ...*"⁷⁴ The CRC has stated within its General Comment 4 that: "*Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practice healthy behaviours. This should include information on...safe and respectful social and sexual behaviours,*"⁷⁵
41. The obligation of State Parties such as Sierra Leone to provide access to comprehensive

⁷⁰ UNESCO, 'International Technical Guidance on Sexuality Education: An Evidence-Informed Approach for Schools, Teachers and Health Educators' (2009); see also UNFPA, 'Comprehensive Sexuality Education: Advancing Human Rights, Gender Equality and Improved Sexual and Reproductive Health' (December 2010) <<https://www.unfpa.org/resources/comprehensive-sexuality-education-advancing-human-rights-gender-equality-and-improved>>.

⁷¹ UNESCO, 'International Technical Guidance on Sexuality Education: An Evidence-Informed Approach for Schools, Teachers and Health Educators' (2009), foreword.

⁷² CESCR, 'General Comment 22 (right to sexual and reproductive health)' (2 May 2016) UN Doc E/C.12/GC/22, 2016; CEDAW Committee, 'Concluding Observations: Italy' (24 July 2017) UN Doc CEDAW/C/ITA/CO/7, para. 35; CEDAW Committee, 'Concluding Observations: Nigeria' (24 July 2017) UN Doc CEDAW/C/NGA/CO/7-8, para. 34 (e); CEDAW Committee, 'Concluding Observations: Ireland' (9 March 2017) UN Doc CEDAW/C/IRL/CO/6-7, para. 39 (c); CRC Committee, 'Concluding Observations: Antigua and Barbuda' (30 June 2017) UN Doc CRC/C/ATG/CO/2-4, para. 45(a); ESCR Committee, 'Concluding Observations: Benin' (5 June 2002) UN Doc E/C.12/1/Add.78, para. 42.

⁷³ CRC Committee, 'General Comment No. 20' (6 December 2016) UN Doc CRC/C/GC/20, paras. 39, 59.

⁷⁴ CESCR, 'General Comment 22 (right to sexual and reproductive health)' (2 May 2016) UN Doc E/C.12/GC/22, para. 49(f).

⁷⁵ See para. 22 of CRC Committee, 'General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child' (1 July 2003) UN Doc CRC/GC/2003/4.

sexuality education is also set out as in CEDAW General Recommendation 21: *“In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h).”*⁷⁶

42. This has also been reinforced by the African Commission in General Comment 2 where it stated, *“States Parties must guarantee information and education on sex, sexuality, HIV, sexual and reproductive rights. The content must be evidence-based, facts-based, rights-based, non-judgemental and understandable in content and language. This information and education should address all taboos and misconceptions relating to sexual and reproductive health issues, deconstruct men and women’s roles in society, and challenge conventional notions of masculinity and femininity which perpetuate stereotypes harmful to women’s health and well-being. This should be pursued in line with the Maputo Plan of Action as well as articles 2 and 5 of the Protocol”.*⁷⁷ The CEDAW Committee has stated that: *“The sexual abuse of girls may result in unwanted pregnancies, and there is therefore a need to alert girls, in particular during adolescence to that problem and its consequences. An important response to the magnitude of the problem in the home, school and community is instituting mandatory, age-appropriate curricula, at all levels of education, on comprehensive sexuality education, including on sexual and reproductive health and rights, responsible sexual behaviour, prevention of early pregnancy and prevention of sexually transmitted infections, in line with articles 10 (h) and 12 of the Convention, the Committee’s general recommendation No. 24 (1999) on women and health and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.”*⁷⁸

Right to sexual and reproductive health care information, services and goods

43. Access to sexual and reproductive health information, services and goods is a key component of the right to sexual and reproductive health.⁷⁹ This right entails a set of freedoms and entitlements. The CESCRC Committee has confirmed that: *“The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one’s body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant.”*⁸⁰ This Committee has further confirmed that States Parties have a core obligation to *“ensure that all individuals and groups have equal access to the full range of sexual and reproductive*

⁷⁶ See para. 22 of UN Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 21: Equality in Marriage and Family Relations’ (1994) UN Doc A/49/38 <www.refworld.org/docid/48abd52c0.html>.

⁷⁷ African Commission on Human and Peoples’ Rights, ‘General Comment No. 2 on Article 14.1(a), (b), (c) and (f) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa’ (2014) adopted at the Fifty-Fifth Ordinary Session, para 26.

⁷⁸ UN Committee on the Elimination of Discrimination against Women, ‘General Recommendation No. 36 (2017) on the rights of girls and women to education’ (16 November 2017) UN Doc CEDAW/C/GC/36, para. 68.

⁷⁹ CESCRC, ‘General Comment 22 (right to sexual and reproductive health)’ (2 May 2016) UN Doc E/C.12/GC/22

⁸⁰ *ibid*, para. 5

*health information, goods and services, including by removing all barriers that particular groups may face.*⁸¹

44. Sexual and reproductive health care information, services and goods⁸² are essential and have a profound nexus to the protection of women and girls' rights to life, equality and non-discrimination, privacy, bodily integrity and freedom from violence and dignity. A failure to guarantee access to these services disproportionately affects women and girls, who are the only ones who experience pregnancy due to their sex, and are most often the primary caregivers for children. Due to its close nexus to the fulfilment of other human rights of women and girls, including their right to life, the CEDAW Committee requires States to "*report on measures taken to eliminate barriers that women face in gaining access to health-care services and what measures they have taken to ensure women timely and affordable access to such services.*"⁸³ A failure to actively and expeditiously address and remove such barriers can constitute discrimination.⁸⁴
45. Article 14 of the Maputo Protocol also calls for access to family planning information about contraceptive health care and safe abortion.⁸⁵ The obligations on States Parties to guarantee women and girls' human rights to access sexual and reproductive health care information, services and goods are set out very clearly in the General Comment 2 of the Maputo Protocol.⁸⁶
46. The CRC requires States Parties to protect girls' human rights, including their rights to non-discrimination, education, privacy and physical integrity. Explicitly, due to the concern at high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, the CRC Committee requires States to "*ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health.*"⁸⁷ Further in its General Comment 4, the CRC Committee explains

⁸¹ *ibid*, para. 34

⁸² *ibid*; CESCR, 'General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12)' (11 August 2000) UN Doc E/C.12/2000/4, paras 21 and 23.

⁸³ UN Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 24: Article 12 of the Convention (Women and Health)' (1999) UN Doc A/54/38/Rev.1 <www.refworld.org/docid/453882a73.html> accessed 10 October 2015, para. 22.

⁸⁴ UN Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 24: Article 12 of the Convention (Women and Health)' (1999) UN Doc A/54/38/Rev.1 <www.refworld.org/docid/453882a73.html> accessed 10 October 2015.

⁸⁵ See Article 14 of the Maputo Protocol. Further, the right set out in Article 14 and the obligations of States Parties to guarantee the same are elaborated on further by the African Commission on Human and Peoples' Rights in its General Comments on Article 14(1)(d) and (e) adopted at its 52nd Ordinary Session held from 9 to 22 October 2012, paras 19-36.

⁸⁶ African Commission on Human and Peoples' Rights, 'General Comment No. 2 on Article 14.1(a), (b), (c) and (f) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2014) adopted at the Fifty-Fifth Ordinary Session.

⁸⁷ See para. 56 of UN Committee on the Rights of the Child, 'General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24)' (17 April 2013) UN Doc CRC/C/GC/15 <www.refworld.org/docid/51ef9e134.html>.

that “in light of articles 3, 17 and 24 of the Convention, States parties should provide adolescents with access to sexual and reproductive information, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs).”⁸⁸

47. The CEDAW Committee has outlined the obligations of States Parties to the Convention in relation to the provision of sexual and reproductive health care services for women and girls. “The Committee recommends that States parties...ensure that sexual and reproductive health care includes access to sexual and reproductive health and rights information; psychosocial support; family planning services, including emergency contraception; maternal health services, including antenatal care, skilled delivery services, prevention of vertical transmission and emergency obstetric care; safe abortion services; post-abortion care; prevention and treatment of HIV/AIDS and other sexually transmitted infections, including post-exposure prophylaxis; and care to treat injuries such as fistula arising from sexual violence, complications of delivery or other reproductive health complications, among others.”⁸⁹

Elimination of harmful and negative gender stereotypes

48. International and regional human rights treaties recognise that gender equality is essential to the realisation of human rights. Article 2 of the Maputo Protocol states: “States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.”⁹⁰
49. Along similar lines, Article 10(c) of CEDAW requires States to ensure “[t]he elimination of any stereotyped concept of the roles of men and women at all levels”, in particular in relation to education.⁹¹ Article 5 of this Convention further requires States to take measures “to modify the social and cultural patterns of conduct of men and women, [...] which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁹²
50. Notably, models of gender equality promoting equal treatment of men and women under the law and in practice (often referred to as “formal equality”) have failed to address

⁸⁸ See para. 24 of UN Committee on the Rights of the Child, UN Committee on the Rights of the Child, ‘General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child’ (adopted on 1 July 2003) UN Doc CRC/GC/2003/4 <www.refworld.org/docid/4538834f0.html> accessed 9 October 2015.

⁸⁹ UN Committee on the Elimination of Discrimination Against Women, ‘General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations’ (1 November 2013) UN Doc CEDAW/C/GC/30 <www.refworld.org/docid/5268d2064.html>, para. 52.

⁹⁰ See Article 2(2) of the Maputo Protocol.

⁹¹ See CEDAW, Article 10(c).

⁹² CEDAW, Article 5(a).

historical gender discrimination, gender stereotypes, and traditional understandings of gender roles that perpetuate discrimination and inequality. UN Treaty Bodies have thus recognised the need to use a substantive equality approach to ensure gender equality in the context of sexual and reproductive rights. The CRC Committee, CEDAW Committee, CESCR, the Committee on the Rights of Persons with Disabilities (CRPD), and HRC have urged States to address both de jure (in law) and de facto (in actuality) discrimination in private and public spheres, adopt measures to eliminate harmful gender stereotypes and address practices that disproportionately impact women.⁹³

51. International human rights bodies have noted that gender discrimination is rooted in social attitudes and perceptions based in prejudices and stereotyped views about the social roles of women and men.⁹⁴ The HRC has long acknowledged that, “[i]nequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes.”⁹⁵ It has called on States to refrain from using references to traditional, historical, religious or cultural attitudes to justify violations of women’s equal enjoyment of all rights under the ICCPR.

52. It is accordingly submitted that the weight of international standards and jurisprudence set out above support the Applicant’s requested reliefs in this case.

DATED this 19th day of June 2019

**Mojirayo Ogunlana-
Nkanga
Lucy Claridge
Counsel for the Amicus Curiae
M.O.N. LEGAL,
SUITE CS 12, K-CITY PLAZA,
WUSE II, OFF AMINU KANO
CRESCENT, ABUJA.
+23408092653116
mojirayonkanga@gmail.com
lucy.claridge@amnesty.org**

⁹³ Human Rights Committee, ‘Concluding Observations: Cape Verde (23 April 2012) UN Doc CCPR/C/CPV/CO/1, para. 8; Human Rights Committee, ‘Concluding Observations: Jordan’ (18 November 2010) UN Doc CCPR/C/JOR/CO/4, para. 7; Human Rights Committee, ‘Concluding Observations: Canada’ (7 April 1999) UN Doc CCPR/C/79/Add.105, para. 20; CEDAW Committee, ‘General Recommendation No. 25’ (2004) UN Doc HRI/GEN/1/Rev.7 at 282, para. 10; CEDAW Committee, ‘General Recommendation No. 36’ (27 November 2017) UN Doc CEDAW/C/GC/36, para. 81(h); CRC Committee, ‘General Comment No. 15’ (17 April 2013) UN Doc CRC/C/GC/15, para. 10; ESCR Committee, ‘General Comment No. 16’ (11 August 2005) UN Doc E/C.12/2005/4, para 19; CPRD Committee, ‘Concluding Observations: United Kingdom’ (3 October 2017) UN Doc CRPD/C/GBR/CO/1.

⁹⁴ See Office of the High Commissioner for Human Rights (OHCHR) Commissioned Report, ‘Gender stereotyping as a human rights violation’ (October 2013) <<https://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>>.

⁹⁵ Human Rights Committee, ‘General Comment No. 28: Equality of rights between men and women (Article 3)’, UN Doc CCPR/C/21/Rev.1/Add.10 (2000), para. 5.

FOR SERVICE ON:

Counsel for Plaintiff:

Gaye Sowe, Esq.
Oludayo Fagbemi, Esq.
Institute for Human Rights and Development in Africa
949 Brusubi Layout, AU Summit Highway
P.O. Box 1896 Banjul, The Gambia
gsowe@ihrda.org

Counsel for Respondent:

Osmani I. Kanu
Law Officers' Department,
Lamina Sankoh Street
Freetown, Sierra Leone