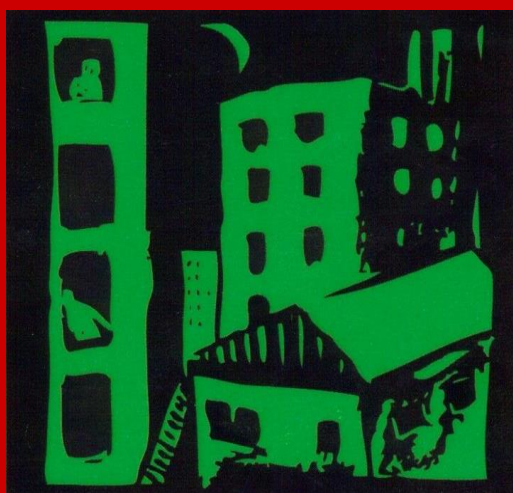
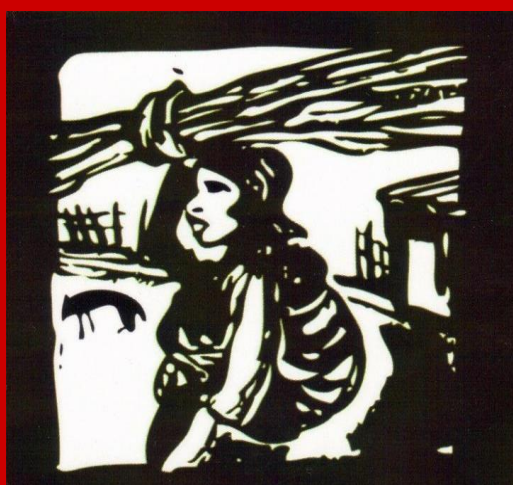


# LAW DEMOCRACY & DEVELOPMENT



VOLUME 27 (2023)

DOI: <http://dx.doi.org/10.17159/2077-4907/2023/idd.v27.i5>

ISSN: 2077-4907  
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## Protecting the human rights of pregnant and parenting adolescents in Lesotho: 'What's culture got to do with it?'

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### ABSTRACT

*Poor health, social exclusion, and stigma are usually associated with adolescent pregnancy and parenting, resulting in girls' suspension and, in some instances, expulsion from school. While most African states, including Lesotho, have laws and policies protecting the rights of all children, including adolescents, to enroll and be retained in school, implementation is lagging behind. Using a socio-legal approach, the article explores the challenges in implementing policies and guidelines on school re-entry following pregnancy and/or parenthood, with particular reference to Lesotho. It argues that, despite the adoption of enabling laws and policies protecting sexual and reproductive health rights, and the right to education of pregnant and parenting adolescent girls, punitive and discriminatory practices continue to serve as barriers that undermine countries' human rights commitments.*

*The barriers are attributable to the influences of family, societal, religious and cultural beliefs and practices. To address these barriers, this article proposes comprehensive, innovative, gender-transformative, targeted and rights-based interventions, and supportive policies and strategies, to facilitate continuous awareness-raising, social and attitudinal change, and social justice.*

**Keywords:** pregnant and parenting adolescents; human rights to sexual and reproductive health and education; culture

## 1 INTRODUCTION

Adolescence is the developmental period that occurs between 10 and 19 years of age. It is characterised by immense opportunities for self-discovery, as adolescents gain greater autonomy, emerging independence, and avenues to make choices about their health. It also exposes them to significant vulnerability as they go through physiological changes, changes in the school environment, and changes in relationships with peers and parents, which may also challenge their sense of identity.<sup>1</sup> This phase is characterised by sexual activity among many young people, resulting in increased vulnerability to sexually transmitted infections including HIV, as well as unplanned pregnancy, and complications related to early pregnancy and childbirth.<sup>2</sup> These challenges are aggravated by girls missing school or dropping out altogether due to pregnancy and motherhood-related responsibilities. Even where girls wish to continue their education, they may be forced out by school authorities, teachers or parents. This leads to social exclusion, stigma, and the reduction in adolescent girls' opportunities for economic and social development, which negatively affects the overall welfare of their children, including the latter's health, nutrition, and education.

Even in countries where readmission of pregnant girls to school following pregnancy and/or childbirth is a legal requirement, not all of those girls go back to school. In 1994, Kenya passed legislation obligating schools to accept pregnant girls, but the implementation has been erratic. Furthermore, in April 2015, just before schools reopened after the Ebola outbreak, the Sierra Leone government issued a countrywide ban on the re-enrolment of pregnant girls.<sup>3</sup>

In some countries, including Lesotho, early and unintended pregnancy may denote a rational life choice for some adolescent girls and young women, due to cultural pressures that prompt some girls to engage in pre-marital sex and childbirth to avoid being called *mafetoa* (older unmarried women or spinsters). This cultural and social shaming labels girls who are not married by the age of 20 years as *mafetoa* – a

<sup>1</sup> Kassa GM et al. "Prevalence and determinants of adolescent pregnancy in Africa: A systematic review and meta-analysis" (2018) 29 (15) *Reproductive Health* 1 at 10.

<sup>2</sup> UNICEF "Addressing the needs of adolescent and young mothers affected by HIV in Eastern and Southern Africa" (2020) available at <https://www.unicef.org/esa/reports/addressing-needs-adolescent-young-mothers-affected-by-hiv> (accessed 21 May 2022).

<sup>3</sup> WHO "School closures and teenage pregnancy" (2021) 99 *World Health Organization Bulletin* at 7.

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derogatory and demeaning term.<sup>4</sup> Even though girls who fall pregnant or become mothers before marriage are usually ridiculed, in some cultures child marriage as a norm adds to the rise of early and unintended pregnancy. In this article, parenting adolescents exclude those who opted to give the child up for adoption but continue to take care of their babies.

Teenage pregnancy rates in Lesotho are estimated at 19 per cent, with 56 per cent of these pregnancies occurring among young women aged 15–19 years, and unplanned.<sup>5</sup> Research attributes this to numerous factors including limited access to, and utilisation of, sexual and reproductive health services and contraceptives among sexually active adolescents. Despite the challenges related to adolescent pregnancy, references to sex before marriage and related discussions on sexuality and contraception are usually considered taboo in Lesotho. This limits adolescents' exposure to information and education on sex education, sexuality and healthy sexual and reproductive health choices, including contraception. Most African states have laws and policies that protect children's rights to enroll and be retained in school,<sup>6</sup> but their implementation is hampered by challenges, including discriminatory practices, mostly against girls. Pregnant adolescents and young mothers' rights to education are frequently violated both at the school and community levels, as socially motivated punitive and discriminatory practices perpetually undermine these human-rights-compliant policies.<sup>7</sup>

Using a socio-legal approach as an integrative analytical technique to comprehend the correlation between the law and wider society, the article explores the implementation challenges of school re-entry policies and guidelines following pregnancy and/or parenthood, with particular reference to Lesotho. It argues that, despite enabling laws and policies that protect the education and sexual and reproductive health rights of pregnant and parenting adolescent girls, punitive and discriminatory practices continue to act as barriers, undermining countries' human rights commitments. The barriers are attributable to the influences of family, society, religion and cultural beliefs and practices. To address the barriers, this article proposes comprehensive, innovative, and gender-transformative targeted and rights-based interventions, as well as supportive policies and strategies for continuous awareness-raising, attitudinal and social change, and social justice.

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<sup>4</sup> Tshehla MS "Wisdom amidst the monkey-talk? Discipline and gender in masculinist discourse" (2006) 12(1) *Journal of Constructive Theology* 7 at 20.

<sup>5</sup> WHO "School closures and teenage pregnancy" (2021) 99 *World Health Organization Bulletin* at 7.

<sup>6</sup> Tuwor T & Sossou M "Gender discrimination and education in West Africa: Strategies for maintaining girls in school" (2008) 12(4) *International Journal of Inclusive Education* 363 at 364.

<sup>7</sup> Ruzibiza Y "They are a shame to the community ... stigma, school attendance, solitude and resilience among pregnant teenagers and teenage mothers in Mahama refugee camp, Rwanda" (2021) 16(5) *Global Public Health* 763 at 765.

The article comprises five sections. The first section is the introduction, followed by a definition of the legal and policy environment on school re-entry in Lesotho. Section 3 highlights challenges in the implementation of school re-entry guidance and related policy in Lesotho, while section 4 examines linkages between human rights, policy, and culture. Section 5 provides recommendations and concluding remarks.

## 2 THE LEGAL AND POLICY ENVIRONMENT ON SCHOOL RE-ENTRY IN LESOTHO

The links between early and unintended pregnancy and school dropout are strong in sub-Saharan Africa. While some policies support pregnant and parenting learners' continuation of and re-entry into school after pregnancy and childbirth, others exclude these learners from school.<sup>8</sup> Lesotho is among the 26 African countries that have some form of law, policy, or strategy<sup>9</sup> that aims to promote and protect the right to education and guarantee girls' rights to education during or after pregnancy.

Human rights epitomise a universal concept of humanity, and are prioritised in the various international and regional human rights instruments that states sign, ratify, and, in some instances, domesticate. The integration of sexual and reproductive health and rights (SRHR) within these instruments demonstrates the universality, inalienability, indivisibility, and interdependence of human rights. In the African region, this integration reached its apotheosis with the adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) by the African Union in 2003.<sup>10</sup> Article 14 of the Maputo Protocol is dedicated to rights that guarantee the protection of women and girls' sexual and reproductive health. Despite adolescents' and young people's myriad issues and challenges, SRHR are critical in their pursuit of a productive life and their realisation of their dreams and aspirations.<sup>11</sup>

Every pregnant schoolgirl faces either expulsion from school, re-entry following delivery, or continuation while pregnant.<sup>12</sup> Re-entry policies allow pregnant girls to go back to school after giving birth, while continuation policies allow pregnant girls to continue at school until they are due to deliver their babies.<sup>13</sup> However, these girls'

<sup>8</sup> Nkosi NN & Pretorius E "The influence of teenage pregnancy on education: Perceptions of educators at a secondary school in Tembisa, Gauteng" (2019) 55(1) *Social Work* 108 at 112.

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

<sup>10</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted 11 July 2003 (entered into force 25 November 2005), 2<sup>nd</sup> Ordinary Session of the Assembly of the African Union, AHG/Res. 240 (XXXI).

<sup>11</sup> Tallarico R, Ozah K & Orievulu KS "Age of consent: A case for harmonizing laws and policies to advance, promote and protect adolescents sexual and reproductive health rights" (2021) 25(2) *African Journal of Reproductive Health* 94 at 95.

<sup>12</sup> Nsalamba G & Simpande A "Effect of re-entry policy implementation on readmitted girls' academic performance in mathematics in selected secondary schools of Mufulira district in Zambia" (2019) 5(5) *International Journal of Data Science and Analysis* 73 at 76.

<sup>13</sup> Nyariro MP "Re-conceptualizing school continuation & re-entry policy for young mothers living in an urban slum context in Nairobi, Kenya: A participatory approach" (2018) 12(2) *Studies in Social Justice* 310 at 315.

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human rights are violated by the widespread expulsion practice, which continues to fully attribute the blame to and lay the burden of pregnancy on the girl, failing to consider and acknowledge factors that lead to girls getting pregnant. This practice is therefore insensitive to their needs. While re-entry policies are an effective way to ensure that girls continue their education, these policies are also deemed discriminatory. They do not affect schoolboys who are fathers-to-be or have fathered children, as they are neither suspended nor expelled from school. On the other hand, continuation policies offer some protection to the girls, despite that they usually overlook other necessities and rights such as the provision of support and/or a conducive comforting environment during pregnancy and after delivery.<sup>14</sup>

There have been some gradual improvements in young people's sexual and reproductive health and rights, such as Lesotho's commitment to provide a protective environment for adolescents within the school to ensure that there is no abuse, humiliating treatment or punishment; to review existing education practices regarding expulsion of pregnant adolescents from schools; and to facilitate reintegration of expectant and parenting adolescents into the formal education system.<sup>15</sup> However, the customary laws, also known as *Laws of Lerotholi*, continue to contradict and undermine statutory laws and constitutional guarantees. The most predominant ambiguities which undermine statutory laws are found among the laws promoting and protecting human rights, those addressing gender-based violence, succession, and those aiming to combat child marriage. These laws are often not adequately understood by girls, women and community leaders, as they are usually overpowered by socio-cultural norms, practices and beliefs.<sup>16</sup> Strong socio-cultural, religious, and institutional norms and practices that still deny women and girls opportunities to become principal chiefs for instance, and continue to treat women and girls as minors regardless of age; likewise, statutory laws, such as the Children's Protection and Welfare Act 7 of 2011<sup>17</sup> and the Legal Capacity of Married Person Act 9 of 2006,<sup>18</sup> consistently act as barriers to education for pregnant and parenting adolescents, further promoting girls' exclusion from school and broadening the gap between boys' and girls' access to education.<sup>19</sup>

### 2.1 International and regional human rights instruments

Lesotho is a signatory to many international instruments as a member of the United Nations, the African Union, and the Southern Africa Development Community (SADC).

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<sup>14</sup> Mwansa A *re-entry to school after giving birth: An evaluation of the process used to design and implement policy in Zambia* (2011) at 3.

<sup>15</sup> Government of Lesotho *National Adolescent Health Policy* 2006.

<sup>16</sup> See Ministry of Health and ICF (2016) at 18.

<sup>17</sup> Children's Protection and Welfare Act 7 of 2011.

<sup>18</sup> Legal Capacity of Married Person Act No. 9 of 2006.

<sup>19</sup> Sieger K, Renk K "Pregnant and parenting adolescents: A study of ethnic identity, emotional and behavioral functioning, child characteristics, and social support" (2007) 36(4) *Journal of Youth and Adolescence* 567 at 575.

However, Lesotho practices dualism. This means that the country treats international law and municipal law as two entirely distinct and separate legal systems, with international law being limited to international decisions, and not enabled to prevail over domestic law, especially in domestic decisions.<sup>20</sup> International treaties have to be specifically adopted by the legislature before they can become part of domestic law, leading to different and parallel systematic considerations and treatment of international and domestic law, to the detriment of human rights' protection. Some policies, such as the Lesotho Adolescent Health Policy (2006), have shown commitment to decreasing early and unintended pregnancies, especially in East and Southern Africa. To complement the Eastern and Southern Africa Ministerial Commitment on sexuality education and sexual and reproductive health services for adolescents (ESA Commitment),<sup>21</sup> which aimed to reduce early and unintended pregnancy among young people in the region by 75 per cent by 2020, there are other regional policy documents, such as the SADC Parliamentary Forum Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (2016),<sup>22</sup> and the Minimum Standards for the Integration of HIV and Sexual & Reproductive Health in the SADC Region (2015).<sup>23</sup> These are accompanied and operationalised by relevant policies and guidelines.

With no stand-alone re-entry policy, Lesotho protects the rights of adolescents in various national legal and policy instruments aligned to national, regional, and international frameworks, such as the Education for All Goals, the Sustainable Development Goals (SDGs), and several international and regional commitments. Article 26 of the United Nations Universal Declaration of Human Rights (Universal Declaration) states that education is a human right,<sup>24</sup> and article 28 of the United Nations Convention on the Rights of the Child (CRC) confirms this right. This right is also affirmed by the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Economic Social and Cultural Rights (ICESCR), and General Comment 20 of the CRC on the implementation of the rights of the child during adolescence.

At the regional level, the human rights of pregnant adolescents are protected by a large number of instruments, with the most pertinent being the African Charter on the Rights

<sup>20</sup> Shale I "Historical perspective on the place of international human rights treaties in the legal system of Lesotho: Moving beyond the monist-dualist dichotomy" (2019) 19 *African Human Rights Law Journal* 193 at 195.

<sup>21</sup> Eastern and Southern Africa Ministerial Commitment on sexuality education and sexual and reproductive health services for adolescents at <https://healtheducationresources.unesco.org/sites/default/files/resources/ESACommitmentFINALAffirmedon7thDecember.pdf> (accessed 23 May 2021).

<sup>22</sup> SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage available at <https://www.sadcpf.org/index.php/en/president-speeches/en-model-law-on-eradicating-child-marriage-and-protecting-children-already-in-marriage> (accessed 11 June 2021).

<sup>23</sup> Minimum Standards for the Integration of HIV and Sexual & Reproductive Health in the SADC Region available at [https://resourcecentre.savethechildren.net/pdf/sadc\\_minimum\\_package\\_of\\_services.pdf/](https://resourcecentre.savethechildren.net/pdf/sadc_minimum_package_of_services.pdf/) (accessed 10 June 2022).

<sup>24</sup> Universal Declaration of Human Rights, 1948.

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and Welfare of the Child (ACRWC),<sup>25</sup> the African Youth Charter, and the Maputo Protocol.<sup>26</sup> Article 11 of the ACRWC, which guarantees the right to education, specifically requires states to adopt measures to ensure the continuation of education of girls who become pregnant prior to the completion of their education.<sup>27</sup> The African Youth Charter focuses on the human rights protection of youth across all social and economic sectors. Like the ACRWC, it specifically enjoins states to guarantee the continuation of education for pregnant girls.<sup>28</sup>

The Maputo Protocol is a supplement to the African Charter on Human and Peoples' Rights (African Charter).<sup>29</sup> The Maputo Protocol is important due to its being a regional charter devoted to the rights of African women and girls.<sup>30</sup> Specifically, the Protocol is committed to the elimination of unfair discrimination and the achievement of substantive equality for women and girls. Article 2 of the Maputo Protocol, which mirrors articles 2 and 5 of CEDAW, emphasises eliminating unfair discrimination and achieving substantive equality. It conceives of non-discrimination as not merely a duty of restraint but also a positive duty that requires the state to take "corrective or positive action".<sup>31</sup>

It has particular significance for countries like Lesotho, which has a legal regime, *Laws of Lerotholi*, for the recognition of customary law and which in some instances contradicts human rights. For instance, women are treated as minors despite progressive laws and human rights commitments. Article 2 of the Maputo Protocol speaks directly to patriarchy by requiring the reform of cultural and traditional practices, which are based on the idea of inferiority or superiority of one sex over another or on gender stereotypes.<sup>32</sup> The duty imposed by article 2(1)(c) to integrate a gender perspective in the state's policies, laws, development plans and programmes highlights that Lesotho should institutionalise inclusive equality, which would break cycles of feminine exclusion and marginalisation through sustained institutional, programmatic and social change.<sup>33</sup>

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<sup>25</sup> Organization of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990 CAB/LEG/24.9/49 (1990) entered into force on 29 November 1999.

<sup>26</sup> African Union, African Youth Charter (2006).

<sup>27</sup> Article 11(6) of the ACRWC.

<sup>28</sup> Article 13(4)(h) of the African Youth Charter.

<sup>29</sup> African Charter on Human and Peoples' Rights, CAB/LEG/67/3 rev 5, 21 I.L.M 58 (1982); entered into force on 21 October 1981.

<sup>30</sup> Theoha ME *Realising the right to education in Lesotho* (unpublished master's dissertation, University of Pretoria, 2011) at 11.

<sup>31</sup> Article 1(d) of the Maputo Protocol.

<sup>32</sup> Article 2(2) of the Maputo Protocol.

<sup>33</sup> Sheppard C *Inclusive equality: The relational dimensions of systemic discrimination in Canada* 1<sup>st</sup> ed Montreal: McGill-Queen's University Press (2010) at 4.

Article 11 of the SADC Protocol on Gender and Development urges states to ensure that girls are protected from harmful cultural attitudes and practices and enjoy the same rights as boys, while ensuring equal access to information, education, services and facilities relating to sexual and reproductive health and rights.<sup>34</sup> It stipulates that state parties shall safeguard the development and protection of girls by eliminating all forms of discrimination against the girl in the family, community, institutions and at state levels through relevant laws, responsive policies and programmes, while also ensuring girls' equal treatment and access to education and health care, to promote a positive self-image.

Despite the SADC Protocol's clear articulation of inequalities that have been previously ignored by others, this has not led to the revolution that was anticipated.<sup>35</sup> Human rights defenders and other activists had anticipated that it would propel states to move beyond formal commitments to actual implementation, as well as to the monitoring of progress and to legal transformation, to ensure that gender equality becomes a reality for all, including for pregnant and parenting adolescents.

## 2.2 National legislation

The right to education is recognised as a "multiplier right in various international conventions, as it enables and facilitates the realisation of other human rights".<sup>36</sup> To safeguard this right and attain the National Strategic Development Plan 2018/19–2022/23 objectives, Lesotho aimed to positively impact the lives of adolescents and their families;<sup>37</sup> hence there is a need for measures to address adolescent pregnancy and parenting. The right to basic quality education is both a constitutional right and a legal obligation for every Mosotho, as it is legally guaranteed for all without any discrimination, meaning that the state has the obligation to protect, respect and fulfil the right to education. However, pregnant and parenting adolescent girls are often denied the prospect of enjoying this right. They are usually barred from attending school or examinations, in some instances either when pregnancy is detected or confirmed by health practitioners during the pregnancy, or following childbirth, leading to a significantly negative impact on their lives and those of their children.

Policies and guidelines to manage learner pregnancy are at various stages in different countries. In Lesotho, school re-entry is guided by other laws and policies, notably the Constitution<sup>38</sup> and Children's Protection and Welfare Act of 2011. The Constitution of Lesotho protects human rights and freedoms mainly in Chapter 2, the Bill of Rights, which guarantees civil and political rights. Section 18, the non-discrimination clause of

<sup>34</sup> Article 11 of the SADC Protocol on Gender and Development, 2008.

<sup>35</sup> Munalula MM "SADC Protocol on gender and development: Road map to equality?" (2011) 1 *SADC Law Journal* 189 at 190.

<sup>36</sup> Kalantry S, Getgen JE & Koh SA "Enhancing enforcement of economic, social, and cultural rights using indicators: A focus on the right to education in the ICESCR" (2010) 32 *Human Rights Quarterly* 253 at 254.

<sup>37</sup> Government of Lesotho *National Strategic Development Plan 2018/19–2022/23* (2018) at 159.

<sup>38</sup> Section 28(a) & (d) of the Constitution of Lesotho.



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the Bill of Rights, is pertinent as it guarantees protection against unfair discrimination, inter alia, on the grounds of “sex” and “other status”. School suspension or expulsion on the basis of pregnancy or motherhood is sex- or gender-based discrimination, which easily falls within the protected grounds.

Although the courts in Lesotho have, thus far, not been asked to specifically determine this protection, they can take a leaf from other African countries with comparable non-discrimination clauses. In *Student Representative Council of Molepolole College of Education v Attorney General*, for example, the Botswana Court of Appeal had to determine the constitutionality of a college regulation that required students to report pregnancy to the authorities and to be suspended if it was the first pregnancy while studying, or be expelled in the instance of a second occurrence.<sup>39</sup> Married students were not subjected to the same regulation. The court held that the regulations were unconstitutional and discriminatory on the basis of marriage and sex, and that the regulation had been designed to punish, rather than to protect, unmarried pregnant women. Courts in Zimbabwe<sup>40</sup> and South Africa<sup>41</sup> have made comparable decisions.

The Lesotho Bill of Rights does not contain socio-economic rights, but provides for principles of state policy to guide public authorities in the performance of their constitutional duties. The principles are in Chapter 3, and include the duty to protect health rights and to provide access to primary and secondary education.<sup>42</sup> They are applicable to protecting the sexual and reproductive health of pregnant and parenting adolescents and their access to education. The Constitution further stresses the provision of free and compulsory primary education and of ensuring the general availability and accessibility of secondary education to all.<sup>43</sup>

The health and education of Basotho are at the centre of Lesotho’s legislative, policy and programmatic environment. The rights of all children to education, adequate diet, shelter, medical attention, clothing, protection, social services, and any service required for the child’s development, without discrimination or exclusion on any basis, are provided for in section 11 of the CPW of 2011. Significantly, section 11(4) of the Act states that “no child shall be expelled or denied the right to education by any educational institute on account of pregnancy, initiation or other cultural rituals”, and

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<sup>39</sup> *Student Representative Council of Molepolole College of Education v Attorney General* [1995] (3) LRC 447).

<sup>40</sup> *Lloyd Chaduka and Morgenster College v Enita Mandizvidza*, Judgment No. SC 114/2001; Civil Appeal No. 298/2000 (Zimbabwe, Supreme Court).

<sup>41</sup> *Mfolo and Others v Minister of Education* [1992] (3) LRC 181, Bophuthatswana (South Africa, Supreme Court, Bophuthatswana and General Division); *Head of Department, Department of Education, Free State Province v Welkom High School & another*; *Head of Department, Department of Education, Free State Province v Harmony High School & another* 2014 (2) SA 228 (CC).

<sup>42</sup> Sections 27 & 28 of the Constitution of Lesotho.

<sup>43</sup> Section 28(a) & (b) of the Constitution of Lesotho.

accentuates children's right to age-appropriate sexual and reproductive health information and education.<sup>44</sup>

The Children's Protection and Welfare Act is a comprehensive decree consolidating all children's protection and welfare policies and regulations. It necessitates applicable implementation guidelines to safeguard pregnant and parenting adolescents' rights, so that they are not incessantly violated with limited or no accountability.<sup>45</sup> Nevertheless, the needs of pregnant and parenting girls do not seem to be addressed in its implementation. Beyond the critical environmental-level influences, including limited policy and legislation guidance protecting and promoting adolescent SRH in Lesotho, there is a lack of youth friendly SRH services, limited comprehensive SRH education in schools, and poverty influences young women's engagement in transactional sexual relationships, especially with older men.<sup>46</sup>

Section 4 of the Education Act of 2010 provides that:

all efforts should be made to ensure that all learners should access education, and all educational opportunities are free from any form of discrimination, with all decisions and actions being in the best interests of the learner and their education at all times.

It asserts that decisions in the management of the education system should be made in a transparent, democratic, and accountable manner.<sup>47</sup> These principles should be considered when making decisions affecting pregnant and parenting adolescents. Despite clear stipulations in the Act prohibiting any learner's suspension or expulsion from school without the school board's approval, most school boards are not aware of the suspensions and expulsions, as these are usually instituted by the school principals and teachers. This is compounded by the minimal involvement of civil society organisations in holding the state accountable, as well as the limited accountability of the school principals to the boards.

The National Youth Council was established through the National Youth Council Regulations (NYCR) in 2009 as an operationalisation of the National Youth Council Act (2008). The Youth Council is tasked with coordinating youth participation in national developmental issues affecting the youth, leading the National Youth Plan implementation, and coordinating programmes contributing to the advancement of the youth in Lesotho,<sup>48</sup> an initiative still not realised. The intention was to empower the Council as an autonomous agency leading all youth-related issues. However, led by the then Ministry of Gender and Youth, Sports and Recreation (MGYSR), the Council's

<sup>44</sup> Section 11(1)–(6) of the Children's Protection and Welfare Act 7 of 2011.

<sup>45</sup> Barberton C, Carter J & Abdoll C *Costing the Children's Protection and Welfare Act, 2011 of Lesotho, Report for the Ministry of Justice and Correctional Service, Maseru, Lesotho* (2014) at 5.

<sup>46</sup> Aventin Á et al. "Adaptation of a gender-transformative sexual and reproductive health intervention for adolescent boys in South Africa and Lesotho using intervention mapping" (2021) 14 *Global Health Action* 1 at 11.

<sup>47</sup> Section 4 of the Lesotho Education Act 3 of 2010.

<sup>48</sup> Matsieli ML *An overview of the challenges faced in the implementation of the national youth policy in Lesotho* (unpublished master's dissertation, University of KwaZulu-Natal, 2014) at 5.

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realisation of its mandate was tainted by political differences, including efforts by political parties to nullify the Council, pending court cases around the Council's political membership.<sup>49</sup>

The National Youth Council Act (2008) failed to address issues faced by adolescents and young people through the Youth Council, as it was led and driven mainly by political parties and politically affiliated youth groups. The state's commitment to promoting young people's right to independently consent to access contraception, HIV testing, treatment and care from 12 years of age<sup>50</sup> was only partially realised, as the Act is silent on sexual and reproductive health and rights. This was a missed opportunity, as relevant policy and implementation guidelines and mechanisms to protect pregnant and parenting adolescents' rights in Lesotho could have been established.

The critical role of civil society organisations and other development and bilateral partners to hold the government accountable may be stipulated, but the modalities and parameters are not always clear, despite Lesotho's progressive laws and policies. With no clear school re-entry policy, there is limited legal recourse in instances of violations such as adolescent girls' suspension, exclusion or expulsion from school, and related activities by the school leadership. Thus, despite commitments and constitutional assurances to promote and protect the right to education,<sup>51</sup> there are usually no practical mechanisms to realise this right.

### 2.3 Policy

The development of relevant sectoral policies, and the building of productive capacities and supportive sectoral frameworks, including for education and health, are commendable efforts by the government of Lesotho. However, more efforts are needed to ensure that policies and plans are implemented, as underfunding and inadequate staffing are constant challenges within the key institutions mandated to support and develop sectoral frameworks. This is exacerbated by the current situation, where most of these institutions are highly centralised.<sup>52</sup> The lack of legislation to facilitate decisive action in supervising schools and their stakeholders, and taking disciplinary action when appropriate, has led to some policies facing efficacy and credibility challenges.

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<sup>49</sup> Thakaso MN *Young adult understanding of citizen rights and responsibilities in the Lesotho context: Implications for civic education* (unpublished PhD thesis, University of Kwazulu-Natal, 2017) at 44.

<sup>50</sup> AIDS and Rights Alliance for Southern Africa (ARASA) *Sexual and reproductive health, HIV, TB and human rights in Southern and East Africa 2018/19* (2020) at 78.

<sup>51</sup> UNESCO "Strengthening sexual and reproductive health and HIV prevention amongst children and young people through promoting comprehensive sexuality education in Eastern and Southern Africa – Lesotho 2013 – 2015" (2016) available at, [https://healtheducationresources.unesco.org/sites/default/files/resources/22596\\_strengthening\\_srh\\_and\\_hiv\\_rough\\_cse\\_in\\_esa\\_end-term\\_evaluation\\_report\\_2013-2015.pdf](https://healtheducationresources.unesco.org/sites/default/files/resources/22596_strengthening_srh_and_hiv_rough_cse_in_esa_end-term_evaluation_report_2013-2015.pdf) (accessed 13 May 2022).

<sup>52</sup> United Nations Conference on Trade and Development (UNCTAD) "Services policy review – Lesotho" (2013) available at [https://unctad.org/system/files/official-document/ditctncd2012d1\\_en.pdf](https://unctad.org/system/files/official-document/ditctncd2012d1_en.pdf) (accessed 3 June 2022).

An example of these policies is the Lesotho School Health and Nutrition Policy. Developed in 2017, the policy recognises that some adolescents have unsafe abortions due to early and unintended pregnancies. The policy has a school health and nutrition package of services, which provides for protective measures against HIV and pregnancy for adolescents and young people aged nine and above. It calls for all schools to have HIV measures, culture and gender-sensitive school health and nutrition plans and recommends the development and implementation of re-entry rules post-pregnancy. Schools are urged to abide by the nationally established guidelines for girls' re-integration into the education system following childbirth.<sup>53</sup> However, this is still rhetoric, as these national guidelines and the related policy guidance are yet to be developed.

The National Youth Policy 2017 provides a framework enabling young people to participate in all spheres of development by developing economic, social, cultural, and political skills to improve their quality of life. Section 6.2 of the Policy focuses on youth health, HIV & AIDS, and substance abuse, and requests the Ministry of Education and Training to set a clear policy directive for the strengthening of community and stakeholder engagement. It also calls for the effective implementation of comprehensive sexuality education (CSE), as well as the CSE minimum standards implementation for pre- and in-service teacher training and continuous professional development.<sup>54</sup> Its implementation is meant to safeguard the human rights of all, especially pregnant and parenting adolescent girls, who are usually denied their rights through unconstitutional practices within schools and communities.

Programmes and services to meet the health and development needs of adolescents in Lesotho are guided by the Adolescent Health Policy 2006.<sup>55</sup> It underscores the government of Lesotho's commitment to address adolescents' modern-day challenges and the need to safeguard adolescents' rights and dignity. Nevertheless, like other policies, its operationalisation has been disrupted by various socio-cultural issues such as limited prioritisation of adolescents' well-being, as their views are usually not considered in decision-making processes. This results in limited access to basic education, sexual and reproductive health services, and to other socio-economic opportunities for Lesotho's adolescents and young people. Similarly, the Gender and Development Policy 2018 is anchored on various international and regional instruments.<sup>56</sup>

In two of the strategic actions in section 4.9 (gender and health), the state commits to "provide a wide affordable range of family planning methods and contraceptive options; and to strengthen advocacy on prevention of incidences of illegal termination of

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<sup>53</sup> Ministry of Education and Training and Ministry of Health Lesotho School Health and Nutrition Policy (2017) at 28.

<sup>54</sup> Government of Lesotho *National Youth Policy 2017–2030* (2017) at 18.

<sup>55</sup> Government of Lesotho *National Adolescent Health Policy* (2006) 6.

<sup>56</sup> National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21 Lesotho (2019).

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pregnancy”.<sup>57</sup> However, there is some misalignment between these broad commitments and their implementation, as well as with international commitments, especially General Comment No. 2 on article 14(1)(a), (b), (c) and (f) and article 14(2)(a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. The Protocol asserts that “[s]tate parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted”.<sup>58</sup> The Gender and Development Policy 2018 seems to have taken a traditionalist view by committing to provide moral foundations for international law,<sup>59</sup> especially regarding the critical issues facing young people in Lesotho.

### 2.4 Customary law

Gender equality is one of the Lesotho Constitution’s key principles, but society remains largely patriarchal,<sup>60</sup> with negative health and education implications. This even manifests itself in workplaces, schools and other institutions, as evidence affirms that patriarchy has been a barrier to women and girls’ freedom and success over the years, since the subordination of women under patriarchy is deeply rooted in Basotho culture and law.<sup>61</sup> The impact of gender and other inequalities on disease burden among young people, lower socio-economic groups, and those with lower education levels is concerning.<sup>62</sup> Despite the legal and policy commitments, the patriarchal system has led to high levels of violence, gender-based violence, including school-related gender-based violence, and the unfair treatment of pregnant and parenting adolescent girls.

The Kingdom of Lesotho uses a dual legal system comprising Roman-Dutch Law and a customary code (*Laws of Lerotholi*) promulgated in 1903.<sup>63</sup> There is broad agreement that the present form of customary law is distorted, as customary law origins are historically and presently accepted as authoritative, although they emanate from social conditions and political motivations. Customary law is mainly influenced by the interaction between African custom and colonial rule,<sup>64</sup> as a result of which most African countries continue to maintain the dual system, or even a pluralistic system in

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<sup>57</sup> Government of Lesotho 64.

<sup>58</sup> Centre for Human Rights, Faculty of Law, University of Pretoria *A guide to the general comments on article 14 of the Protocol to The African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* (2014) at 4.

<sup>59</sup> Lazar S “Just war theory: Revisionists versus traditionalists” (2017) 20(1) *Annual Review of Political Science* 37 at 38.

<sup>60</sup> Molapo ELM *Women and patriarchy: A deconstructive study in Lesotho* Lambert Academic Publishing (2011) 8.

<sup>61</sup> Komiti M & Moorosi P “Career development of women principals in Lesotho: Influences, opportunities and challenges” (2020) 79 *Journal of Education (University of KwaZulu-Natal)* 95 at 97.

<sup>62</sup> See UNESCO (2016) at 16.

<sup>63</sup> Letsika Q “The place of Sesotho customary law marriage within the modern Lesotho legal system” (2005) 2(12) *Botswana Law Journal* 73 at 74.

<sup>64</sup> Ndulo M “African customary law, customs, and women's rights” (2011) 18(1) *Indiana Journal of Global Legal Studies* 87 at 88.

some instances. However, these continue to create challenges in areas of human rights, especially sexual and reproductive health and rights, and youth-related agency and decision-making.

Other countries, like South Africa and the Democratic Republic of the Congo, emphasise issues of equity, equality and equal rights in their constitutions – not only among cross-cutting issues such as human rights, gender, labour, and environmental concerns, but also concerning minorities and indigenous peoples within their constitutions (1996 and 1992, respectively).<sup>65</sup> However, in Lesotho, the *Laws of Lerotholi* have persisted.<sup>66</sup> This is highlighted by the inconsistencies in upholding women and girls' rights, particularly in regard to education, pregnancy, inheritance, parenting, marriage, and chieftainship succession. The socio-legal field highlights the continuous clash of cultures and tension between African law and Western law in dual and plural legal societies.<sup>67</sup> These are a result of the dual legal system, as it hinders the harmonisation of the different facets of the law in African societies, including in Lesotho.

### **3 IMPLEMENTATION CHALLENGES OF SCHOOL RE-ENTRY GUIDANCE AND RELATED POLICIES IN LESOTHO**

People's lives, laws, policies, and community institutions are shaped by various conditions, mostly socio-cultural factors. In most African settings, men's power and dominance over women continue to be expressed by hegemonic masculinities, leading to girls being raised to be submissive to men.<sup>68</sup> The family is the critical primary institution of guidance, authority, and socialisation, as the knowledge, attitudes and practices within the family are central to decisions regarding boys' and girls' well-being and education. As outlined in Bronfenbrenner's "Ecological Systems Theory", the multiple aspects of a developing child's life are not just about individual development but are influenced by the wider factors and context (or ecology) of development.<sup>69</sup> Thus the family's influence is then transferred to the community and institutional levels. These are where girls are usually mistreated and unfairly treated, and influenced by their socialisation, customary law and practices, which have serious impacts on their self-esteem.<sup>70</sup> These gender-discriminatory social norms enable decision-making and

<sup>65</sup> Gagnon J "Post-colonial public law: Are current legal establishments democratically illegitimate?" (2012) 5(1) *African Journal of Legal Studies* 21 at 22.

<sup>66</sup> Juma L "The laws of Lerotholi: Role and status of codified rules of custom in the Kingdom of Lesotho" (2011) 23(1) *Pace International Law Review* 92 at 96.

<sup>67</sup> Juma L "From 'repugnancy' to 'Bill of Rights': African customary law and human rights in Lesotho and South Africa" (2007) 21 *Speculum Juris* 88 at 88.

<sup>68</sup> Sikweyiya Y et al. "Patriarchy and gender-inequitable attitudes as drivers of intimate partner violence against women in the central region of Ghana" (2020) 20(1) *BMC Public Health* at 682.

<sup>69</sup> Guy-Evans O "Bronfenbrenner's ecological systems theory" (2020) *Simply Psychology* available at [www.simplypsychology.org/Bronfenbrenner.html](http://www.simplypsychology.org/Bronfenbrenner.html) (accessed 10 January 2023).

<sup>70</sup> See Mwansa (2011) 6.

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control over women and girls' bodies by others, including communities, institutions, intimate partners, schools and legislatures.<sup>71</sup>

Women constitute two-thirds of the world's non-literate adults, due to the diverse influences of gender inequality, culture, and human rights violations which deny women and girls their right to education.<sup>72</sup> This is despite education being classified as an economic, social, and a cultural right by the Committee on Economic, Social and Cultural Rights (CESCR), and therefore an enabling and transformative right.<sup>73</sup> Although schools are ideally places of safety, sometimes they become spaces of discrimination, abuse, and stigmatisation, as they are "value-laden replicas of community, church and family in terms of imbalanced power relations" due to their non-neutral nature.<sup>74</sup> Lesotho has been defined as "a country that operates under a patriarchal framework, characterised by beliefs in men's power, privileges and superiority. This subordinate and inferior status of women seems to be accepted and supported by their status as minors in traditional law",<sup>75</sup> leading to discrimination against women and girls, notwithstanding Lesotho's ratification of the CEDAW<sup>76</sup> in 1995 and other regional and international human rights instruments.

The CRC calls upon states to "take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse".<sup>77</sup> However, in reality, adolescents' needs and rights are rarely met and protected by education and health service providers and the systems in which they operate. The limited rights-based legislative provisions negatively impact adolescents' SRHR through policy gaps and by shifting the responsibility of protecting adolescents' SRHR to the discretion of service providers and teachers, who are likely to impose their own socio-cultural beliefs on adolescents and young people.<sup>78</sup> Of the pregnancies in sub-

<sup>71</sup> Setty EA "Rights-based approach to youth sexting: Challenging risk, shame, and the denial of rights to bodily and sexual expression within youth digital sexual culture" (2019) 1 *International Journal of Bullying Prevention* 298 at 302.

<sup>72</sup> Tawiah S & Ngmenkpieo F "Adult basic education and training in South Africa: The perspectives of rural women in Khotso" (2018) 9(1) *Mediterranean Journal of Social Sciences* 57 at 57.

<sup>73</sup> Chürr C "Realisation of a child's right to a basic education in the South African school system: Some lessons from Germany" (2015) 18(7) *Potchefstroom Electronic Law Journal* 2405 at 2414.

<sup>74</sup> Mohlakoana-Mokobocho KM *Pregnant at the wrong time: Experiences of being a pregnant young woman while schooling – selected Lesotho cases* (unpublished PhD thesis, University of KwaZulu-Natal, 2005) at 49.

<sup>75</sup> See Mohlakoana-Mokobocho (2005) at 25.

<sup>76</sup> United Nations Human Rights Treaty Bodies: UN Treat Body Database available at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=97&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=97&Lang=EN) (accessed 28 August 2022).

<sup>77</sup> Convention on the Rights of the Child, 1989.

<sup>78</sup> Kangaude GD & Skelton A "(De)criminalizing adolescent sex: A rights-based assessment of age of consent laws in Eastern and Southern Africa" (2018) *Reproductive Health in Sub-Saharan Africa-Original* 1 at 2.

Saharan Africa, 19.3 per cent are among adolescent girls, with about 19.1 per cent of young women aged 15–19 in Lesotho having given birth or being pregnant with their first child. Unintended pregnancy among young women aged 15–19 years is estimated at 56 per cent.<sup>79</sup> This is mainly attributed to inadequate knowledge about pregnancy and contraceptives, misinformation from social media and friends, control over women and girls by intimate partners who are usually much older than them, and impulsive and unplanned sex.<sup>80</sup> Additionally, the unplanned pregnancies are due to moral and faith-related beliefs that discourage and disallow contraceptives, not addressing the consequences of early sex, failed contraception, and sometimes the unpleasant side effects of contraceptives.<sup>81</sup>

Adolescent pregnancy substantially contributes to education, gender and other inequalities, as it usually results in the termination or interruption of girls' schooling, negatively affecting their social and economic development. Unsafe pregnancy terminations account for up to 50 per cent of inpatient deaths among females aged 13 years and older in some Lesotho hospitals, due to abortion being restricted in Lesotho.<sup>82</sup> A pregnancy can only be terminated when performed by a registered medical practitioner and only in instances of preventing significant harm to the health of the pregnant female person. The person performing the act must have obtained a written opinion from another registered medical practitioner necessitating the termination to avoid significant harm to the health of the pregnant female person; or in order to prevent the birth of a child who would be seriously physically or mentally handicapped.<sup>83</sup>

Crucial decisions about adolescent girls' well-being and future are left at the discretion of teachers, principals, and churches regarding their school attendance and continuation of education during and after pregnancy and childbirth, due to the inadequate implementation of laws and policies. Churches are some of the major school proprietors in Lesotho. They sometimes promote practices with drastic life-changing consequences for adolescents, such as school-based pregnancy testing, school suspension, or expulsion in the case of pregnancy.

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<sup>79</sup> See Ministry of Health & ICF (2016) at 83.

<sup>80</sup> Makatjane T "Pre-marital sex and childbearing in Lesotho" (2002) 17(2) *African Population Studies* 99 at 104.

<sup>81</sup> Francis IG *The effect of household characteristics on adolescent childbearing in Lesotho* (unpublished master's dissertation, University of Witwatersrand, 2008) at 57.

<sup>82</sup> See Aventin et al. (2021) at 1.

<sup>83</sup> Section 45 (2) of the Penal Code Act 6 of 2012.



## PROTECTING THE HUMAN RIGHTS OF PREGNANT AND PARENTING ADOLESCENTS

### 4 CHALLENGES IN THE IMPLEMENTATION OF SCHOOL RE-ENTRY GUIDANCE AND RELATED POLICY IN LESOTHO

#### 4.1 Cultural factors

Human rights are legal, moral, and political tools to safeguard people's dignity, well-being, and survival;<sup>84</sup> hence, they act against oppressive powers that destabilise and attack these basic human values. Human rights are to be understood as urgent calls to action in instances of threats, and not mere principles.<sup>85</sup> However, social and cultural issues sometimes affect the application of human rights, hence the need to concede the linkages between culture and human rights. States should be held accountable for their commitment to school re-entry and continuation. Despite the affirmation of the Lesotho Education Act 3 of 2000 that no learner shall be suspended or expelled from school without the consent of the school board,<sup>86</sup> and the repeal of the Education Act 10 of 1995 which called for temporary expulsion of pregnant girls from school, school going pregnant and parenting adolescents continue to be suspended, expelled, and rejected by their teachers, who believe that pre-marital childbirth is against Basotho culture. This rejection is based on the premise that schools are not for "mothers", with teachers indicating that they are only trained in education and not maternal health.<sup>87</sup> This continues to highlight cultural influences undermining the legal and policy gains made to ensure that pregnant and parenting adolescents remain in school and complete their education.

#### 4.2 Educational factors

Early and unintended pregnancies usually end most girls' academic aspirations and schooling.<sup>88</sup> Adolescents who fall pregnant or are parenting and fortunate enough to continue schooling are challenged by numerous issues that make the school environment unreceptive and uncondusive for learning. The dual and increased responsibility of being a learner and a parent lessens their prospects of educational accomplishment.<sup>89</sup> Pregnant and parenting adolescents are sometimes harassed and humiliated. They face hostility, rejection, condemnation and insensitivity from both learners and teachers within the school setting. They rarely receive any focused

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<sup>84</sup> Katiuzhinsky A & Okech D "Human rights, cultural practices, and state policies: Implications for global social work practice and policy" (2014) 23(1) *International Journal of Social Welfare* 80 at 82.

<sup>85</sup> Kirmayer LJ "Culture and context in human rights" in Dudley M, Silove D & Gale F (eds) *Mental health and human rights* Oxford: Oxford University Press (2012) 96.

<sup>86</sup> Section 3 (a) of the Education Act 3 of 2010.

<sup>87</sup> Molapo CM et al. "Schooling-going mothers' experiences in relation to teachers: A case of high schools in Leribe district, Lesotho" (2014) 5(20) *Mediterranean Journal of Social Sciences* 1269 at 1270.

<sup>88</sup> Kasen S, Cohen P, Brook JS. "Adolescent school experiences and dropout, adolescent pregnancy, and young adult deviant behavior" (1998) 13(1) *Journal of Adolescent Research* 49 at 51.

<sup>89</sup> Shirao B, Momanyi M & Anyona JB "Implementation of life skills education towards curbing teenage pregnancy in public secondary schools in Makadara Sub County, Nairobi, Kenya" (2020) 4(10-12) *Journal of Popular Education in Africa* 92 at 96.

attention and receive regular threats of suspension or dismissal, with limited or no motivation, limited encouragement, and an overall lack of support.<sup>90</sup> Some of these challenges include deprivation of attention, hostility, rejection and condemnation. In some instances, teachers have reportedly said things that give a bad impression of pregnant and parenting learners, either in the classroom or in school public spaces like assemblies.<sup>91</sup>

Girls are discouraged from returning to school due to the strong stigma, discrimination, and shame they face upon their return, as explained above, so ending their aspirations to continue and complete their learning. Adolescent mothers are often labelled and treated as bad influence on their peers, and teachers are rarely skilled or willing to support adolescent mothers who may require extra educational support due to the additional pressure of either pregnancy or parenting.<sup>92</sup> Girls often drop out of school due to irregular attendance and sometimes poor academic performance during and after pregnancy, leading to limited prospects for future work opportunities and careers, so contributing to already high youth unemployment rates.<sup>93</sup>

### 4.3 Economic factors

Pregnancy among adolescents under the age of 20 usually results in their obtaining lower education, with limited career options and lower income. They are likely to live in poverty, and are more susceptible to separation or divorce.<sup>94</sup> The chances of their children attending school and attaining financial stability in subsequent years are lower, implying that adolescent pregnancy and parenting feed into a cycle of poverty.<sup>95</sup> Adolescent pregnancy, parenting and poverty are closely intertwined, as poorer adolescents are more likely to get pregnant than those not living in poverty;<sup>96</sup> hence the need to protect and promote their rights so that their economic status and those of their children and families are improved.

<sup>90</sup> See Molapo et al. (2014) at 1269.

<sup>91</sup> See Molapo et al. (2014) at 1272.

<sup>92</sup> UNESCO "Situational analysis on early and unintended pregnancy in Eastern and Southern Africa" (2018) available at <https://healtheducationresources.unesco.org/library/documents/situational-analysis-early-and-unintended-pregnancy-eastern-and-southern-africa> (accessed 3 June 2022).

<sup>93</sup> See Nkosi & Pretorius (2009) at 116.

<sup>94</sup> Mturi AJ & Moerane W "Premarital childbearing among adolescents in Lesotho" (2001) 27(2) *Journal of Southern African Studies* 259 at 260.

<sup>95</sup> Inter Press Service News Agency "To prevent teenage pregnancies in Sub Saharan Africa, it takes a whole village to raise a child" available at [http://www.ipsnews.net/2021/07/prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child&mc\\_cid=a299a30263&mc\\_eid=1620fbbda](http://www.ipsnews.net/2021/07/prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child/?utm_source=rss&utm_medium=rss&utm_campaign=prevent-teenage-pregnancies-sub-saharan-africa-takes-whole-village-raise-child&mc_cid=a299a30263&mc_eid=1620fbbda) (accessed 4 August 2021).

<sup>96</sup> Banda E et al. "Acceptability of an economic support component to reduce early pregnancy and school dropout in Zambia: A qualitative case study" (2019) 12(1) *Global Health Action* 1 at 2.

#### 4.4 Psychological factors

In Lesotho, categorising children born to unmarried women as illegitimate leads to such children being named to demonstrate condemnation of their mothers' behaviour of having pre-marital children. Names such as *Moramang*, implying that the father is not known, are common among boys of unmarried women, while the girls are named *lithonako* or *matlakala* (meaning someone taken from an unknown place) or *makhokolotso* (meaning refuse or something not useful), or similar. The cultural assumption of regarding children born out of wedlock as belonging to the adolescent's or woman's father or family further strains both the parenting adolescent and the child.<sup>97</sup> The pejorative naming of children born out of wedlock is intended to punish parenting adolescent girls,<sup>98</sup> though also defaming the children and sometimes resulting in other psychological pressures and consequences, such as substance and narcotics abuse.

The emotional impact of early and unintended pregnancy and parenting on adolescents is substantial, especially following rejection by either family, partner, school, community, or other institutions like the church. This increases the risk of depression, substance abuse, possible truancy, non-completion of school, or poor academic performance. All of these factors, compounded by poverty, further plunge adolescents into the intergenerational poverty cycle and mental health challenges later in their lives.<sup>99</sup> These punishments are commonly rationalised as efforts to curb adolescent pregnancy, though their psychological impact and rights violations are rarely acknowledged, despite the legal and human rights commitments made by states to treat everyone equally.

#### 4.5 Socio-cultural factors

Adolescents' risky behaviours and early sexual debut usually result in pregnancy and parenting, which are regarded as a social virus at the basic education level.<sup>100</sup> Most Basotho parents' socio-cultural upbringing and religion lead to discomfort about discussing issues of sex and sexuality with their children, resulting in inadequate credible information discussed and shared within the home. The cultural classification of females as minors, placed in a lower category than males, limits adolescent girls' agency and decision-making regarding sex and related issues. This happens even when they clearly comprehend the dangers of unprotected sex, and leads to risky behaviour, practices and unprotected sex. Their partners may manipulate and overpower them and refuse to engage in safer sex. Pre-marital sex is condemned for religious reasons and regarded as immoral. Therefore, most Basotho households, parents and caregivers regard discussions about sex, sexuality and contraception as a way of encouraging pre-

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<sup>97</sup> See Mturi & Moerane (2001) at 267.

<sup>98</sup> See Mturi & Moerane (2001) at 269.

<sup>99</sup> See UNESCO (2018) at xiii.

<sup>100</sup> See Molapo et al. (2014) at 1269.

marital or early sexual debut.<sup>101</sup> This exposes adolescents to misinformation from older sexual partners, social and other media, and their peers, who may also be misinformed.

## 5 HUMAN RIGHTS, POLICY, AND CULTURE

States commit to safeguarding the rights of all people through various regional and international commitments. However, women typically enjoy just 75 per cent of the legal rights of men globally, regardless of gender equality promises and pledges.<sup>102</sup> Girls and women enjoy limited participation and engagement in political and other decision-making platforms due to their lack of power to challenge these inequities. This is aggravated by persistent marginalisation and economic inequalities, which result in economic dependence. This then lessens women's agency and power to autonomously decide on their sexual health, health care, contraception, and other issues. These inequalities and related challenges have been exacerbated by the COVID-19 pandemic.<sup>103</sup>

Evidence shows that, with more than 1 billion children and youth having been out of school, those from low-income families have suffered learning impairments, with the Covid-19 pandemic and its economic ramifications having had a regressive influence on gender equality.<sup>104</sup> Literature from various African contexts<sup>105</sup> highlights the impact of gender and cultures on varied health outcomes,<sup>106</sup> especially during pandemics. It is worth noting that obstacles peculiar to women are not always physical barriers, but also gender-related cultural barriers, including unequal power relations and the masculinity-femininity tension, which usually discourages women from seeking access to health care or acts as a barrier. These cultural barriers worsened access to health care during the pandemic, especially in populations where traditional practices are deeply rooted in people's daily lives.<sup>107</sup> Having signed several international agreements committing to promote and protect all children's rights to quality education without discrimination, Lesotho is legally obligated to ensure a conducive environment for adolescents' continuation and completion of their education.

<sup>101</sup> Yako EM & Yako JM "A descriptive study of the reasons and consequences of pregnancy among single adolescent mothers in Lesotho" (2007) 30(3) *Curationis* 74 at 79.

<sup>102</sup> International Bank for Reconstruction and Development & The World Bank *Women, business and the law 2019* (2019) at 3.

<sup>103</sup> UNFPA "State of world population 2021" (2021) available at <https://www.unfpa.org/sowp-2021> (accessed 21 May 2022).

<sup>104</sup> Enaifoghe A "The emergence of COVID-19 presents the need to address the exacerbated structural gender inequalities beyond the pandemic" (2022) 29(3) *Humanities and Social Sciences Research Journal* 35 at 36.

<sup>105</sup> Tesha J et al. "The role of gender inequities in women's access to reproductive health services: A population-level study of Simiyu Region Tanzania" (2023) 23 *BMC Public Health* 1 at 2.

<sup>106</sup> Habib M et al. "The challenges for women's health in sub-Saharan Africa: Lessons learned from an integrative multistakeholder workshop in Gabon" (2021) 11 *Journal of Global Health* 1 at 6.

<sup>107</sup> Ahinkorah BO et al. "COVID-19 pandemic worsening gender inequalities for women and girls in Sub-Saharan Africa" (2021) *Frontiers in Global Women's Health* (2)1 at 2.

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### 5.1 National legislation and culture

Women and girls' enjoyment of their rights is often hindered by cultural and gender imbalances, as well as power struggles over economic resources,<sup>108</sup> particularly in developing countries like Lesotho. As in other African states with authoritarian patriarchal contexts, universal human rights are sometimes identified as a "Western imperialism" initiative, and deemed to unjustifiably impose values that are not necessarily universal.<sup>109</sup> Culture is used to assert and promote human rights through taking part in one's cultural life and participating in and enjoying one's culture, cultural heritage and cultural expressions. On the other hand, culture is also used to rationalise rights violations, such as where cultural imperialism is used to create and maintain unequal relationships between cultures or communities in ways that unfairly benefit the more powerful society or group.<sup>110</sup>

Various scholarly groupings and global political connections and affiliations have still not resolved the tension between human rights and cultural values. Some undermine the claim to the universality of human rights by appealing to a kind of cultural relativism. They continue the above-mentioned accusation of human rights' unjustifiable imposition of not-so-universal values that may be peculiar or favourable to a particular culture or group. These disputes among rights theorists on the appropriate approaches to human rights are such that some rights theorists accentuate the universality of human rights standards, while others insist that no one has the right to dictate the application and operationalisation of human rights to another culture, implying that each culture has the right and autonomy to devise its own human rights standards.<sup>111</sup>

The domestication of human rights instruments and standards is critical for them to be effective, accepted and implemented by states; hence self-regulation that is distinctive of international human rights law at the national level is key.<sup>112</sup> This long-standing dispute between culture and human rights also involves the well-known universalism versus relativism debate.<sup>113</sup> Despite being based upon universally agreed standards, the international human rights movement has been criticised for "the homogenisation of different traditions according to Western values that are insensitive to the multiplicity

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<sup>108</sup> Michau L et al. "Prevention of violence against women and girls: Lessons from practice" (2015) *Lancet* 385(9978) 1672 at 1673.

<sup>109</sup> Muyskens K "Avoiding cultural imperialism in the human right to health" (2022) 14(1) *Asian Bioethics Review* 87 at 87.

<sup>110</sup> Asomah J "Cultural rights versus human rights: A critical analysis of the trokosi practice in Ghana and the role of civil society" (2015) 15 *African Human Rights Law Journal* 129 at 130.

<sup>111</sup> See Katiuzhinsky & Okech (2014) at 80.

<sup>112</sup> Ayala A & Meier BM "A human rights approach to the health implications of food and nutrition insecurity" (2017) 38(10) *Public Health Review* 1 at 2.

<sup>113</sup> Lenzerini F "Rethinking the debate on universalism and cultural relativism in the light of the culturalization of human rights law" in Lenzerini F *The Culturalization of Human Rights Law* Oxford: Oxford Academic Press (2014) 214.

of cultures".<sup>114</sup> Hence, the dilution and watering down of international and regional human rights instruments often happens during the domestication process to accommodate social and cultural practices and the beliefs of those in power. This is evidenced by the adoption of international and/or regional treaties and numerous legal mechanisms to safeguard the right to education, with some states neither integrating nor domesticating the corresponding provisions into their national laws.<sup>115</sup> Lesotho is no exception, as this right is not a reality for pregnant and parenting adolescent girls because of the inadequate implementation and accountability of the state's commitments, mainly influenced by the predominant influence of culture and religion over the legal instruments.

As one of the most translated documents globally, the Universal Declaration of Human Rights (UDHR)<sup>116</sup> is a doctrine of international values outlining a set of standards for United Nations member states through its promotion of peace, justice, and freedom. However, some states and local leaders resist its implementation when it threatens to restrain traditional norms deeply entrenched in their socio-cultural identity.<sup>117</sup> Human rights are about power, which is distributed and maintained by cultural traditions within societies and communities. Those who are privileged or in positions of power usually oppose the implementation of human rights treaties that seem to benefit their marginalised citizens and those left behind, often using convenient moral manipulation and notions of national sovereignty and cultural autonomy.<sup>118</sup>

The inconsistent handling and management of school re-entry issues by the Government of Lesotho through the Ministry of Education and Training and other stakeholders, especially civil society organisations and the church, is testimony to the resistance to using human rights instruments to address critical issues and challenges and safeguard the rights of all, including pregnant and parenting adolescents. The importance of acknowledging the significant influence of community leaders and communities' culture and social norms on the implementation of human rights instruments cannot be overemphasised, as these leaders are gatekeepers who can ascertain that these socio-cultural beliefs, practices and norms do not undermine human rights commitments. This can be attained if their involvement is incorporated into the state's domestication and implementation of its commitments.

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<sup>114</sup> Kroetz FS "Between global consensus and local deviation: A critical approach on the universality of human rights, regional human rights systems and cultural diversity" (2016) 3(1) *Revista de Investigações Constitucionais* 43 at 44.

<sup>115</sup> Pranevičienė B & Pūraitė A "Right to education in international legal documents" (2010) 3 *Jurisprudencija/Jurisprudence* 133 at 134.

<sup>116</sup> Brown G (ed) *The universal declaration of human rights in the 21st Century: A living document in a changing world – A report by the Global Citizenship Commission* Cambridge: Lightning Source for Open Book Publishers (2016) 13.

<sup>117</sup> Kühn B "Universal human rights vs. traditional rights" (2009) *Topical Review Digest: Human Rights in Sub-Saharan Africa* 59 at 59.

<sup>118</sup> Arat Z "Forging a global culture of human rights: Origins and prospects of the International Bill of Rights" (2006) 28(2) *Human Rights Quarterly* 416 at 437.

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The links between socio-legal studies, culture, and education are an avenue to critically explore the interlinkages and complexities of consciousness, power, identity, inter-legality, conformity and contestation in our daily lives. This calls for the need to clearly comprehend guidance documents, policies and national laws as clear socio-cultural and political processes that should be recognised and propagated through socio-culturally specific modalities and approaches.<sup>119</sup> The description of education as “a socially negotiated contract between society and the individual, influenced by various contextual factors” unmasks the mystification and the links between culture, laws, and policies, especially for pregnant and parenting adolescent girls.<sup>120</sup>

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

Socio-legal studies help us to understand the nature of law as ideas, while concurrently concentrating on the behaviour of people in legal contexts and backgrounds. This article therefore applies the socio-legal approach to accentuating the significant role of social theory in acknowledging the social dimensions of law, and subsequently informing legal inquiries.<sup>121</sup> As “an underlying principle for peaceful and prosperous coexistence within and among nations”, it is through promoting gender equality and the rights of all people, regardless of social status, that the tenets of social justice are upheld. The attainment of social justice is only realised with the eradication of obstacles perpetuated by people’s gender, culture, age, religion, race, ethnicity, disability and other social-group categorisations.<sup>122</sup> Human rights are as much a social construct as they are a legal issue, and one prominent difficulty is around making these rights a reality for everyone, as the interrelatedness of rights, their universality, interdependence and indivisibility are usually challenged in many contexts. Understanding the impact of violating any one right on all other rights should be present in the minds of all people, and within schools, institutions, states, and communities,<sup>123</sup> in the quest to safeguard the rights of pregnant and parenting adolescents, and to avert the negative impact of human rights violations on the lives of adolescents and their quality of life.

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<sup>119</sup> Branco P & Izzo VN “Intersections in law, culture and the humanities” (2017) 112 *Revista Crítica de Ciências Sociais* 45 at 54.

<sup>120</sup> Morotti A “Integrating culture into education: Self-concept formation in Alaska native youth” (2006) 1 *Forum on Public Policy* at 4.

<sup>121</sup> Cotterrell R “Socio-legal studies, Law schools, and legal and social theory” (2018) 2 *Journal of the Oxford Centre for Socio-Legal Studies* 19 at 19.

<sup>122</sup> United Nations Department of Economic and Social Affairs “Social Inclusion: World Day of Social Justice 2017” available at <https://www.un.org/development/desa/dspd/international-days/world-day-of-social-justice/world-day-of-social-justice-2017.html> (accessed 6 August 2021).

<sup>123</sup> Icaza EA “Human rights as an effective way to produce social change” (2014) 11(20) *International Journal on Human Rights* 76 at 77.

Social change is any change in social institutions and their natural history, and social conduct and societal or community relations.<sup>124</sup> For them to progress and develop, societies and communities need education, human rights and social change. Therefore, hindrances to adolescents' rights limit their constructive participation in social transformation. Due to its dynamic nature and ability to influence behaviour, beliefs, and values,<sup>125</sup> legislation is one of the stimulating forces facilitating societal change, as it forms a critical enabler to ensuring that pregnant and parenting adolescents are retained in and complete school, and contribute to social transformation. This calls for continuous interrogation of how social justice aspirations, like empathy, justice, and equality, are being utilised to enable continued and stable rights' protection for pregnant and parenting adolescents through the social change pillars, especially guidelines, policies, and legislation.

## 6 RECOMMENDATIONS AND CONCLUDING REMARKS

Countries' socio-economic and political development is facilitated by the provision of quality education to all citizens. The article aimed at illuminating the obstructions to school re-entry guidance and related legislation and execution of policies in Lesotho. It also highlights some of the human rights violations that pregnant and parenting adolescent girls are exposed to within the school environment, and provides a critical analysis of how culture and some socio-demographic factors affect school re-entry guidance implementation and the upholding of human rights and legislation. The article deliberates on human rights and policy and culture interlinkages in the context of the education sector's legislative and policy oversight mandate. It highlights how the health, education and social outcomes of pregnant and parenting girls of schoolgoing age are restricted by the inadequate implementation of guidance documents and supportive legislation, as a result of limited access and participation in education-related and other national decision-making platforms. It takes an investigative interdisciplinary approach to laws and their socio-demographic interlinkages with society.

There is an urgent need for targeted and population-focused life skills-based interventions to enhance gender-transformative responses to the challenges facing adolescents, as well as for awareness creation, and social and attitudinal change to provide for the specific needs of adolescents in Lesotho and elsewhere. This is much needed due to the strong societal, cultural, and religious influences on laws, policies and strategies, especially those related to education and SRHR. States are therefore obligated to provide non-judgmental, adolescent-friendly education, health, social and

<sup>124</sup> Elder GH Jr "The life course paradigm: Social change and individual development" in Moen P, Elder GH Jr & Lüscher K (eds) *Examining lives in context: Perspectives on the ecology of human development* Washington, DC: APA (1995) 102.

<sup>125</sup> Chakraborty S et al. "Education as an instrument of social change and enhancing teaching-learning process with the help of technological development" (2018) available at [https://www.researchgate.net/publication/325143953\\_Education\\_as\\_an\\_instrument\\_of\\_social\\_change\\_and\\_enhancing\\_teachinglearning\\_process\\_with\\_the\\_help\\_of\\_technological\\_development](https://www.researchgate.net/publication/325143953_Education_as_an_instrument_of_social_change_and_enhancing_teachinglearning_process_with_the_help_of_technological_development) (accessed 6 August 2021).



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other services without the influence of stereotypical social and cultural beliefs, practices and behaviours against adolescents, as affirmed by several human rights instruments.

There should be proper and functional accountability mechanisms to safeguard pregnant and parenting adolescents' rights, through institutionalised human-rights-based and gender-transformative comprehensive sexuality education and related SRHR information to all adolescents. Active youth leadership and engagement by schools, community leaders and other stakeholders are essential for the empowerment and agency of adolescents and young people towards inclusive, comprehensive, and quality education for them in Lesotho. The National Reforms process was a critical opportunity in Lesotho for non-state actors to task the state to strengthen legislative implementation modalities. The National Strategic Development Plan (NSDP) 2018/19–2022/23 prioritised adolescents and youth development, and as this blueprint guides development partners and civil society organisations' contributions to national development, clear indicators and milestones for protecting adolescents' rights are critical for its success.

The implementation of school re-entry and continuation laws, and policy provisions for pregnant and parenting adolescents can be made through enforcing clear guidelines with actionable and results-based indicators, enabling the tracking of early and unintended pregnancies and subsequent actions taken by schools and communities to support pregnant and parenting adolescents. These can be monitored through school-based modalities and systems like the Education Management Information System (EMIS), and community-led monitoring (CLM), which is a mechanism, process or practice through which service users or local communities regularly gather, analyse and use information to improve access, quality and impact of services. CLM is usually led and implemented by local community-based organisations, civil society groups, and other stakeholders to gather data about the quality of services.<sup>126</sup> The ESA Commitment roadmap and others should provide clear guidance for implementing comprehensive sexuality education, with guidance from the Gender and Culture Transformative Implementation (GCTI) Framework<sup>127</sup> to strategically position school health, HIV and sexuality education programmes within the socio-cultural realm.

Toxic and harmful socio-cultural beliefs and practices should be eradicated through multisectoral participatory cooperation mechanisms in which all stakeholders hold each other accountable using the above-mentioned tools. These include community-led monitoring, the GCTI Framework guidance, and government-led initiatives like stakeholders' and development partners' programme review meetings and national dialogues. These will enable the smooth implementation and application of laws,

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<sup>126</sup> Okafor C "To empower clients in improving their own health services, Pact turns to community-led monitoring" (2022) available at <https://www.pactworld.org/blog/empower-clients-improving-their-own-health-services-pact-turns-community-led-monitoring> (accessed 5 July 2023).

<sup>127</sup> Letsie PR *Sociodemographic factors and their influence on school health and HIV programmes: The case of Lesotho* (unpublished PhD thesis, University of the Free State, 2020) at 155.

policies, and guidelines, as the reporting, coordination, and monitoring mechanisms will be jointly implemented and documented through existing platforms like parliamentary communities, community-led monitoring forums, and other multimedia avenues to enhance accountability. The Kingdom of Lesotho's ratification and acceptance of the optional UN Human Rights Conventions Protocols give the Basotho (people of Lesotho) the right to claim and exercise their human rights through the various bodies; hence the need for transformative and catalytic implementation mechanisms for laws, policies, and other national guidance documents in Lesotho.

Finally, this article affirms that the legislative provisions enabling pregnant and parenting adolescents to continue their education and return to school after pregnancy and childbirth are not complemented by supportive policies and instruments that empower teachers, schools, and families to support school going pregnant and parenting adolescents. Thus, more research is needed to clearly comprehend the current socio-cultural context of Lesotho and how the various socio-demographic factors can be positively exploited to overcome policy implementation barriers. This will also inform laws and policy implementation, including the upcoming school re-entry policy for Lesotho, within the current socio-economic environment of dwindling domestic resources, disparate beliefs and expectations, as well as politically motivated national commitments and policies, which are usually influenced by populist and socio-cultural agendas.

#### **AUTHORS' CONTRIBUTIONS**

The lead author conceptualised the study and wrote the article. The co-author contributed to some sections of the article and provided overall guidance and supervision to the lead author. Both authors contributed to the editing of the manuscript.

*The views or opinions expressed in this paper are those of the authors and not of UNAIDS.*

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