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African Committee of Experts on
the Rights and Welfare of the Child

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African Committee of Experts on the Rights and Welfare of the Child

**General Comment No. 9 on Article 11 of the African Charter on
the Rights and Welfare of the Child on the Right to Education**

TABLE OF CONTENTS

List of abbreviations and acronyms	3
Glossary.....	4
I. Introduction	5
II. Scope and legal basis	6
III. Purpose and objectives of the General Comment	6
IV. Underlying principles of interpretation.....	7
V. The elements and substantive content of Article 11	10
VI. The nature and extent of State Parties' obligations relating to Article 11	27
VII. Auxiliary Components of the Right to Education under Article 11 of the Charter	29
VIII. The Role of Other Stakeholders in upholding the Right to Education.....	30
IX. Accountability regarding the promotion and protection of the right to Education	31

LIST OF ABBREVIATIONS AND ACRONYMS

African Charter	African Charter on Human and Peoples' Rights
ACRWC/The Charter	African Charter on the Rights and Welfare of the Child
ACERWC/The Committee	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
African Disability Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa
AI	Artificial Intelligence
AU	African Union
AUC	African Union Commission
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESA	Continental Education Strategy for Africa
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
ECD	Early Childhood Development
ECDE	Early Childhood Development and Education
ICESCR	International Covenant on Economic, Social and Cultural Rights
Kampala Convention	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
Maputo Protocol	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
NGOs	Non-Governmental Organisations
NHRIs	National Human Rights Institutions
RECs	Regional Economic Communities
SDG	Sustainable Development Goals
UN	United Nations
CRC Committee	United Nations Committee on the Rights of the Child
CRC	Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund

GLOSSARY

‘Child’	Means a human being aged below 18 years.
‘Corporal punishment’	Any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.
‘Displaced children’	These are children who are forced to leave their homes within their own country due to conflict, violence, or other crises, including the adverse effects of climate change.
‘Home schooling’	Refers to the education of school-aged children at home or a variety of places other than a formal school – it is usually conducted by a parent, tutor, or online teacher.
‘Indigenous children’	These are children who belong to indigenous communities or ethnic groups and have a profound understanding of their indigenous identity and cultural heritage.
‘Indigenous education’	Indigenous education, is a unique form of education confined to a particular culture, society or community. It is also known as local education or cultural education, traditional wisdom or traditional science.
‘Marginalised children’	These are children who are confined to the lower or peripheral edge of society. Such a group is denied involvement in mainstream economic, political, cultural and social activities.
‘Migrant children’	These are children who move across borders, either with their families or unaccompanied, due to various reasons such as conflict, poverty, or the pursuit of a better life.
‘Child headed household’	A family setting in which a child has become the head of the household due to separation from parents for various reasons, such as, the death of the children’s parents as a result of conflict, disease or any other means.
‘School and institutions of learning’	These are used interchangeably and refer to private, public schools and faith-based schools.
‘Stateless children’	are children who are not considered as a national by any State under the operation of its law.
‘Virtual schooling’	Refers to online (internet) method of schooling.

I. INTRODUCTION

1. The right to education is protected under various instruments in addition to the African Charter on the Rights and Welfare of the Child (The Charter/ACRWC). Article 17(1) of the African Charter on Human and Peoples' Rights, (African Charter) presents a brief outlook of the right to education. Over the years, other African treaties, adopted after the African Charter have significantly expanded on the context, scope and objective of the right to education. The Charter is the first African Union (AU) treaty which identifies children as beneficiaries of the right to education and expands on its normative content in Africa, under Article 11.

2. The right to education is also protected in other African treaties, also considered in this General Comment to the extent that they are applicable to specific group of children - these include, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (Maputo Protocol) under Article 12,¹ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, (African Disability Protocol) under Article 16,² the African Youth Charter, under Article 13,³ and African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) under Article 9(2)(b).⁴

3. Many African countries are States Parties to various UN treaties considered in this General Comment. Key amongst these treaties is the International Covenant on Economic, Social and Cultural Rights, (ICESCR),⁵ the Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW),⁶ the Convention on the Rights of the Child, (CRC),⁷ and the Convention on the Rights of Persons with Disabilities, (CRPD).⁸ The monitoring bodies of these treaties, have also, generated plausible General Comments that clarify the content of the various provisions on the right to education or related provisions to the right to education. Therefore, the adoption of this General Comment does not and should not relegate African States Parties' commitment, under, for example, the UN Committee on the CRC (CRC Committee), the UN Committee on Economic Social and Cultural Rights (CESCR), the UN Committee on the CRPD and the broader UN and AU structures and programmes on the right to education. Rather, this General Comment supplements and compliments the standard set by various UN and AU organs adopted as viable means of attaining meaningful and purposeful education for all children.

4. Despite these legal guarantees, access to the right to education remains a challenge in Africa with a large percentage of its children still without any form of proper education. Some of the challenges that have convoluted the proper implementation of free basic and secondary education fit for purpose in Africa, which this General Comment seeks to address, include:

- Early Childhood Development and Education (ECDE),
- Positive African values,
- Privatisation of education,
- School-related sexual and gender-based violence,
- Corporal punishment,

1 Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, Mozambique 11 July 2003. Entered into Force on 25 November, 2005.

2 Adopted by the 13th Ordinary Session of the Assembly of the Union Addis Ababa, Ethiopia 29 January 2018.

3 Adopted by the 7th Ordinary Session of the Assembly of Heads of State and Government of the African Union, Banjul, The Gambia – 2 July 2006. Entered into force on 8 August 2009.

4 Adopted by the Special Summit of the Union Kampala, Uganda 23rd October 2009. Entered into force on 6 December 2012.

5 Article 13.

6 Article 10.

7 Articles 28 and 29.

8 Article 24.

- Discrimination in accessing education, particularly for girls, children with disabilities, indigenous children, and children in nomadic communities
- Quality education
- Conflict and particularly the recruitment of children by armed forces and armed groups, and the destruction of schools during civil wars and upheavals,
- Emergencies and humanitarian situations
- Harmful practices such as child marriage, female genital mutilation
- Exploitation of children, including child labour, forced begging, sexual exploitation
- The vandalisation of educational institutions.

5. Agenda 2040 for an Africa Fit for Children sets out clear targets for the attainment of the implementation of the Charter, as it aspires that every child shall benefit fully from quality education by 2040. According to the Agenda and particularly Aspiration 6, this is critical because ‘many children are at risk of not developing to their full potential due to the lack of early stimulation and exposure at an early age. Improved nutrition and stimulation in the early years increases the efficiency of investments in health and education, thus improving the economic opportunities of children and youth in later life.’

II. SCOPE AND LEGAL BASIS

6. The primary legal basis for this general comment is Article 11 of the Charter. The General Comment aims to explain Article 11, which is divided into 7 sub-provisions. These are:

- The right to education for all children,
- The purpose of education,
- Measures that State Parties must undertake to realise the right to education,
- Parental duties towards choosing a school for a child,
- School and parental discipline,
- Education of pregnant girls
- Liberty to establish educational institutions

7. This General Comment draws inspiration from several sources in line with Article 46 of the Charter, including the treaties, strategies, agendas and monitoring organs. Particularly the General Comment draws inspiration from the African Commission on Human and Peoples’ Rights’ General Comment 7 on State obligations under the African Charter with regard to social services in the context of private provision. It also considers, General Comments 11 and 13 of the CESCR, on plans of action for primary education and on the right to education, which details States Parties’ obligations to respect, protect and fulfil the right to education. It further, draws inspiration from, the CRC Committee’s General Comment 1 on the aims of education amongst others.

III. PURPOSE AND OBJECTIVES OF THE GENERAL COMMENT

8. The overall purpose of this General Comment is to guide States Parties on how to promote, protect and fulfil the right to education as provided under Article 11. Essentially, the General Comment is aimed at accentuating an African position on the right to education and to clarify ambiguities and terminologies apparent in the content of Article 11. It further seeks to establish a causal link between a child’s right to education, a child’s wellbeing and development and the guiding principle of children’s rights protected under the ACRWC.

9. This General Comment, specifically:

- Elaborates on the nature and extent of obligations of State Parties to respect, protect and fulfil the right to education.
- Strengthens State Parties' understanding of the meaning and scope of the right to education as enunciated under Article 11.
- Expands on the meaning of basic education to include Early Childhood Development and Education
- Requires State Parties to the Charter to progressively make secondary education free and compulsory.
- Completely prohibits, under all circumstances, the suspension of education for an entire academic year.
- Forbids the use of institutions of learning for any military use and targeted attacks during conflicts;⁹
- Explores the role of non-state actors, including community leaders, business and family members in the fulfilment of the right to education.
- Interrogates remedies that may be offered for violations of the right to education by States Parties as well as through the Committee's processes, and
- Provides recommendations on how States Parties can effectively discharge their obligation to respect, protect and fulfil the right to education for all children in Africa.

10. This General Comment applies to the right to education for all African children including children who are traditionally marginalised or disadvantaged such as girls; children with disabilities; children at risk of child marriage; trafficked children and children at risk of being trafficked; children on the move; children who are refugees; stateless children; children in child headed households; street children; nomadic children; children in care homes and children without parental care, among others. The right to education must be observed in all educational settings, including private, public and faith-based schools. The General Comment takes cognisance of the lived realities of the child in Africa, and importantly, the need to constantly feed, strengthen and support the evolving capacity of a child in Africa through adequate and purposeful education.

IV. UNDERLYING PRINCIPLES OF INTERPRETATION

11. Generally, the Committee applies four interlinked general principles as the lens through which it interprets, promotes and monitors the implementation of all provisions of the Charter. These include non-discrimination, the best interest of the child, child participation, and the right to life, survival and development. While adopting these principles as the underlying principles of the General Comment, an additional principle is identified considering its relevance in the implementation of the right to education, which is the evolving capacity of a child. These principles are discussed in detail below.

⁹ See for example, Guideline 1 of the Guidelines for Protecting Schools and Universities from military use during Armed Conflict, available at https://protectingeducation.org/wp-content/uploads/documents/documents_guidelines_en.pdf (accessed 01/03/2024).

a) *Freedom from discrimination*

12. Article 3 defines discrimination as any distinction, exclusion, or limitation based on factors such as race, colour, sex, language, religion, political opinion, national or social origin, socio-economic condition, health status, geographical location, gender, or birth. The right to non-discrimination is relevant to the right to education because Article 11 mandates State Parties to put measures in place to ensure that every child enjoys the right to education. Education must be seen as a critical instrument that can bring an end to discrimination by empowering children, bridging gaps and changing discriminatory attitudes. The reading of both Articles provides that the right to education should be provided to all children without discrimination of any kind on the grounds of any status of the child/or their parent(s), guardian(s) or caregivers. States should enact national inclusive education laws and undertake measures to ensure that no child is left behind in accessing education.

13. State Parties must ensure that any form of social, cultural or religious practices that unjustifiably discriminate against children's access to education should be prohibited by law. Discriminatory practices and attitudes against girls, children with disabilities, and arbitrary school rules that may discriminate against children from specific cultures, religions or social groups must be prohibited by law. States should identify the various factors and grounds that lead to the discrimination and exclusion of children from education and develop targeted measures to prohibit and address discriminatory practices. States should remove barriers and conditions in laws and practice that make accessing education difficult, such as the requirement of presenting various documentation to access education. States bear the onus of ensuring that children have the required documentation to access education, such as birth certificates. Hence, the failure to produce these documents and conditions should not bar children from accessing education. Particularly, States should, among others:

- Prohibit the exclusion of pregnant and or married pupils in education as stated in the Joint General Comment on child marriage adopted by the Committee and the African Commission.¹⁰
- Ensure reasonable accommodations such as ramps, sign language, the provision of materials in accessible formats such as braille, Easy to Read format and large font and the implementation of accessibility measures such as ramps and accessible desks in schools to ensure the inclusion of children with disabilities,
- Include, adopt and implement, in academic curricula, the prohibition of any stigma and misinformation on albinism, disabilities, nationality, religion and health status,¹¹
- Provide free access to adequate, acceptable and affordable menstrual materials to children who are on their period during school and ensure institutions of learning adopt appropriate sanitary approaches and establish facilities of care and support to all children who are menstruating during school hours,
- Undertake specific measures to ensure the inclusion and non-discrimination of children in conflict with the law, children on the move, children in street situations, children in conflict and emergency situations, children without parental care, children in rural and marginalised communities, undocumented and stateless children from attaining their right to education.

10 See for example the ACERWC's recommendations in, Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania.

11 NR Purmah, 'Inclusive Education for Learners with Disabilities in Mauritius: The 'Rights' Way Forward,' (2021) 9 African Disability Rights Yearbook 160-188. See also, CG Bowman, E Brundige, 'Sexism, Sexual Violence, Sexuality, and the Schooling of Girls in Africa: A Case Study from Lusaka Province, Zambia,' (2013) 23(1) Texas Journal of Women and the Law 37-76.

b) Best interest of the child

14. The Charter provides in Article 4(1) that the best interest of the child shall be the primary consideration in all actions undertaken by any person or authority concerning the child.¹² Legislative, administrative, judicial and other measures adopted by States Parties to govern and administer education must correspond adequately to the best interests of children as required in the Charter. States should ensure that rules and education processes adopted in school policies and methods of learning include the structure and design of curricula and syllabi that intentionally target a child's wellbeing, holistic development and empowerment. School environments and facilities should be designed in a way that allows children to develop holistically, stimulates their intellect and skills, and ensures their safety. In this regard, States must undertake an assessment of education legislation, practices, curricula and pedagogy that are in the best interest of the child. States should uphold the right to education as a right in itself but also as a means to ensure the development of children mentally, intellectually, and physically in line with the aims of education provided under Article 11(2). Moreover, the right to education of children should form among the pillars in determining the best interest of the child in other areas. Therefore, a State's assessment of the best interests of the child should be informed by the impact of any measures taken on the education of the child.

c) Child participation

15. Under Article 4(2) of the Charter, a child has the right to express and communicate their views and opinions on all matters concerning the child. Article 4(2), read together with Article 11 and the Guidelines on Child Participation,¹³ ensures that institutions of learning provide an opportunity or platform for pupils to express their opinion either directly or through an impartial representative, and their views must be taken into consideration by the relevant authority by the laws governing the institution before a final decision is made on any matter of the school governing structure. Children's views must be heard on academic curricula development (including extracurricular activities or recreational activities), school governance, teaching methods, school safety and safeguarding measures, and discipline. Access to any decision-making platform in schools should be inclusive and must adhere to the Committee's Guidelines on child participation and the principles and doctrines of the CRC Committee's General Comment 12 on the right of the child to be heard.

d) Right to life, survival and development

16. A child's right to survival and development as protected under Article 5(2), read together with Article 11 of the Charter, underlines the need for specific measures to guarantee that all institutions of learning create and sustain a learning environment and curricula that is safe, conducive and enhances the physical and mental development of a child.¹⁴ Further, Article 5(2) requires States to ensure that institutions of learning include in their curricula and syllabi, practical lessons on first aid, map reading, lessons on pregnancy prevention, lessons on prevention of communicable diseases, and swimming. These skills are crucial for the survival and development of every child, particularly those who attend schools in rural settings and must walk and sometimes cross rivers to get to school.

17. Education should contribute to strengthening a child's mental development, including healthy development, language development, and social-emotional development. States should adopt laws and policies to ensure that the education curricula contributes to language development, including public speaking, vocal tone, phonetics and listening and responding

¹² A Moyo, 'Reconceptualising the Paramountcy: Beyond the Individualistic Construction of the Best Interests of the Child,' (2012) 12(1) African Human Rights Law Journal 142-177.

¹³ ACERWC, Guidelines on Child participation, available at https://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation_English.pdf (accessed 29/10/2023).

¹⁴ M Matadi and D Iyer, 'The Realisation of Children's Survival Rights in South Africa, Kenya and the Democratic Republic of the Congo: A Comparative,' (2019) 52(3) Comparative and International Law Journal of Southern Africa 352-388.

from ECDE and through primary/pre-secondary education. Lessons on personal hygiene should be included, and schools should provide a hygienic environment that can foster the survival and development of children. Water, soap, latrines, and sanitary pads for girls are among some of the sanitary facilities that should be provided by States in schools. School feeding schemes should be implemented in schools by prioritising marginalised and economically disadvantaged communities and areas, and States should ensure the provision of healthy meals in schools where feeding schemes are applicable.¹⁵ Access to education increases the potential of children to thrive and survive if the appropriate measures are adopted towards the survival and development of children in education facilities.

e) *Evolving capacity of a child*

18. A child's evolving capacity acknowledges that every child, based on their unique environment, culture, religion, gender and life experience, holds certain competencies at different ages and stages of childhood. Implementing the right to education with due regard to the evolving capacity of a child enables education to be inclusive, relevant, and meaningful to all children. The evolving capacity of children calls for age appropriate and flexible curricula and differentiated teaching methods that can be adjusted based on age, cognitive development, abilities, and other factors. Measures should be taken to respond to the needs of children with disabilities in line with their evolving capacity by paying attention to all forms of disabilities. States should ensure the continuous training of teachers on the evolving capacities of children and adaptive teaching and learning methods.

V. THE ELEMENTS AND SUBSTANTIVE CONTENT OF ARTICLE 11

19. Article 11 provides for the right of every child to education.¹⁶ The unequivocal choice of words under Article 11(1) is a strong demonstration of the seriousness that the Charter assigns to the right to education in Africa. The phrase '**every child**' is an inclusive phrase which aligns with Article 3 (non-discrimination) and thus is an affirmation that no child, irrespective of their or their parents/guardians; age, [dis]ability, gender, race, ethnic group, colour, sex, language, religion, political or other opinion, national, social origin, fortune, birth or other status should be prohibited from accessing education. It also envisages an obligation on States to identify children who are out of school, assess the factors that lead to non-enrolment or dropout, and adopt special measures to ensure that they access education. Particular attention should be accorded to children in vulnerable situations, such as children with disabilities, children in street situations, children on the move, children in the labour force, children in conflict with the law, and children in conflict situations, among others. Article 11(1) also includes the phrase '**shall have**'. This phrase makes the right to education superlatively mandatory. It enforces the fact that access to education is an absolute right of every child, and it further ascertains the justiciability of the right to education, positioning children as the rights holders and States as the ultimate duty bearers. There are four critical elements of the right to education, that if not properly implemented, would amount to a violation of the right, namely, accessibility, affordability, quality and adaptability.

20. These elements and their application have been analysed in detail in General Comment 13 of the CESCR Committee.¹⁷ However, States shall apply these elements in a manner that is relevant to the lived realities of children in Africa and their respective countries. To ensure accessibility, States are required to construct schools, roads and bridges (where needed) to ensure that children have access to schools. Moreover, specific measures should be tailored to ensure that education is accessible to communities with different lifestyles on the continent, such as children in nomadic and pastoralist communities. The principle of affordability should

¹⁵ J Haines et al, 'Nurturing Children's Healthy Eating: Position statement' 137, *Appetite*, 124-133.

¹⁶ The Charter is among the few international instruments that accords children with the right to education in an emphatic manner such as the UDHR which states under, Article 26 that 'Everyone has the right to education'

¹⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Article 13 of the Covenant)*, E/C.12/1999/10, 8 December 1999 paras 6 (a-c)

be interpreted contextually considering the economic capacity of children and their parents and should be implemented in a way that children from economically disadvantaged families obtain education. This requires integrating social security schemes into education to ensure affordability to all. States should provide quality education for all children that is relevant to achieve the purpose of education discussed below and relevant to their communities and the continent's needs. To ensure adaptability, States should adopt flexible education systems which can respond to emerging needs and changes in society. States should consider their respective mother tongue as a medium of teaching and learning, alongside, the official AU languages, such as English, French, Arabic, Portuguese, Spanish, and Kiswahili. The inclusion of the mother tongue as a medium of teaching and learning will also make education as required under Article 11(1) acceptable, especially in Indigenous communities and encourage most Indigenous children to attend school.

i. The purpose of education under Article 11

21. A key aspect of the right to education relates to the content of education. Beyond ensuring access to education, there is a need to ensure that the education that is being provided conforms with the aims of education provided under Article 11. The Committee recognises that the aim of education should be seen in the context of State Parties' broader political, social, and cultural development needs. Particularly, purposeful and inclusive education should be driven at the national level by the systematic and progressive transformation of education in congruence with Constitutional values and the spirit of the Committee. In general terms, purposeful and inclusive education must correspond with the objectives and rationale of basic education as set out in the Charter and the World Declaration on Education for All,¹⁸ which provides that education should 'comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by [children] to be able to survive, and to develop their full capacities...'. The aim of education should be integrated both into school curricula and school environments and practices. The Committee notes that children learn in schools from both the formal education and their interaction in the school environment with their peers, teachers and others. Hence, the following aims of education can be achieved through formal education as well as establishing and maintaining a school environment that cultivates these aims. The following sections explain the aims of education provided under Article 11.

a) *The promotion and development of a child's personality, talents, mental and physical abilities – Article 11(2)(a)*

22. Article 11(2)(a) anchors the right to education in a broader human rights framework, recognising education not merely as access to formal schooling but as a lifelong process of personal development and social empowerment. Education at all levels should sturdily embrace a holistic approach covering aspects related to developing every child's personality, talents and strengthening their mental and physical abilities to enable every child to grow optimally. The Committee has already affirmed this holistic view in its General Comment on Article 31 by stating that "education is an important tool for empowering children to take up responsibilities and appreciate doing so as a positive value to imbibe." The Committee further endorsed the interpretation of the CRC Committee, which, in its General Comment No. 1 (2001) on the aims of education, emphasised that education "goes beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society."

¹⁸ The World Declaration on Education for All was a historic demonstration of the will and commitment of countries to establish in the area of child, adult and family education a new basis for overcoming inequality and generating new opportunities for eradicating poverty. Emphasis was placed not only on access to basic education, but also on the quality of education and actual learning outcomes. More on the Declaration is available at, <https://www.ohchr.org/en/resources/educators/human-rights-education-training/9-world-declaration-education-all-1990>.

23. Article 11(2)(a) requires State Parties to develop and implement educational syllabi and curricula that intentionally promote children's development, personality, talent, mental and physical abilities from early to late childhood. States must ensure that education policies, curricula, and pedagogical practices are inclusive, equitable, and responsive to the diverse needs, abilities, and aspirations of children. Furthermore, the focus on the "fullest potential" obliges State Parties to provide enabling environments both within and outside the educational settings that stimulate creativity, encourage critical thinking, and support physical and mental wellbeing. Institutions of learning should include disciplines such as science experiments, civic education and a variety of physical education, as well as extra-curricular activities to enhance children's talents, should be integrated into syllabi and curricula in line with children's evolving capacities. The proper and effective implementation of Article 11(2)(a) requires State Parties to ensure adequate investment in the quality of education, including the training of teachers, the establishment of psychosocial support systems, and the development of child-friendly infrastructure with special attention to the inclusion of marginalised children including those with disabilities, those living in rural or conflict-affected areas, and girls. Teacher trainings should incorporate identification and nurturing of talents, problem solving and thought-provoking exercises, and adapting teaching style that suits the learning style of the child. There is also a need to ensure that children's education is suited for the contemporary world they live in; hence, information system and technology should be incorporated in the education system in a contextualised manner and for innovation with equitable distribution for all children.

b) Foster respect for human rights and fundamental freedoms – Article 11(2)(b)

24. Article 11(2)(b) compels State Parties to ensure that education is directed toward fostering respect for human rights and fundamental freedoms. It is both a human right and an indispensable means to the full and effective realisation of other rights,¹⁹ and thus underscores the intrinsic linkages between the indivisibility and interdependence of all human rights. In this respect, education must serve as a transformative tool to instil in children a profound understanding of and commitment to the inherent dignity and inalienable rights of all individuals. This requires that national education systems incorporate human rights and fundamental freedoms education in syllabi and curricula and pedagogical practices at all levels of education. Whereas Article 11(2)(b) includes a reference to human rights and freedoms in "international human rights declarations and conventions," the clause "with particular reference to those set out in the provisions of various African instruments on human and peoples' rights" underscores the obligation of State Parties to incorporate human rights and freedoms set out in regional human rights frameworks such as the ACRWC, the African Charter on Human and Peoples' Rights, and other relevant instruments into educational content to ensure that children not only learn universal human rights principles but also appreciate the specific cultural, legal, and historical contexts of rights in Africa. This emphasis is a reflection of the need to contextualise human rights education to African countries' situations, values and commonalities. This entails not only the inclusion of human rights content within curricula, but also the adoption of pedagogical approaches that promote critical thinking, civic responsibility, and respect for diversity. The obligation extends beyond formal education, encompassing informal and non-formal educational settings, and requires that the educational environment itself reflects and models respect for human rights standards. It also requires that teachers be adequately trained in human rights education or possess specialised expertise in these areas to effectively transmit these values to children.

¹⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Article 13 of the Covenant)*, E/C.12/1999/10, 8 December 1999

25. In addition, education should be directed towards teaching and empowering every child on their rights and the rights of others, and importantly, instilling in them the knowledge to safeguard themselves from all forms of harm.²⁰ Incorporating the respect for human rights and fundamental freedoms in basic education syllabi and curricula is a powerful and foundational way through which human rights, democracy, good governance, sustainable development and social progress could be attained in Africa.

c) *Strengthening and preserving African morals and positive traditional values and culture – Article 11(2)(c)*

26. Article 11(2)(c) read jointly with the provisions of the Preamble of the Charter, which takes into consideration “the virtues of cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child” affirms that State Parties must take the necessary measures to ensure that education fosters respect for and the preservation of Africa’s diverse cultures, traditions, and values.

27. Article 11(2)(c) requires State Parties to incorporate in pedagogy, syllabi and curricula for teaching, methods, language medium and modules that permeate positive African morals and values. Profound cross-cutting values and traditions that promote and preserve key African ethos, such as tolerance,²¹ resilience,²² inclusive hospitality,²³ respect,²⁴ community cohesion,²⁵ and oral tradition,²⁶ including the introduction of mother tongue education.²⁷ This includes the integration of positive traditional values in the content of education to ensure that children understand and appreciate their cultural heritage, historical background, and the values that define African civilisation. Referring to “positive African morals, traditional values and cultures” underscores the scope of States obligation to ensure that education promote a culture that does not legitimise harmful practices such as child marriage, female genital mutilation, and all forms of inequality, marginalisation, or discrimination particularly against girls, children with disabilities, children from minority or indigenous communities, and other vulnerable groups while promoting positive cultural values and traditions.

28. The teaching of these values in curricula would play a vital role in bridging the gap between generations and ensuring the transmission of positive cultural knowledge and practices while enforcing the importance of socio-political, religious and traditional institutions in effective intergenerational communication. Integrating the teaching of these values into educational curricula and fostering intergenerational dialogue will strengthen and ensure the preservation of entrenched African cultural heritage that constitutes the uniqueness of being African.

d) *Preparing a child for a responsible life in a free society – Article 11(2)(d)*

29. Article 11(2)(d) obliges State Parties to provide education directed to empower the child to take responsibilities and prepare him/her to contribute positively to the society as a civic participant. For this purpose, States must enact laws that would ensure pedagogy, syllabi and curricula for schools are designed and implemented to educate every child on civic

20 T Chome, ‘Mainstreaming Gender Equality and Socio-Economic Rights in Law Curricula: Lessons from the Faculty of Law, University of Malawi,’ (2018) East African Law Journal 99-122.

21 Tolerance is a highly valued trait in African culture. Scholars have argued that tolerance is essential to free political and cultural exchange.

22 Most African cultures have a rich history of overcoming adversity and maintaining strength in the face of challenges.

23 Welcoming to all, generosity, kindness, protection of the weak, honour for the elderly, justice, truth, and rectitude as essential virtues of Africanness.

24 African societies value honouring and respecting, especially to older members of a household and community.

25 Positive African value that emphasizes communal living and cooperation.

26 Storytelling and oral history are cross-cutting integral African values with a strong potential to preserving cultural heritage.

27 GM Quan, R Fambasayi & T Ferreira ‘Transforming education through mother tongue language as a language of instruction in South Africa’ (2024) 24 African Human Rights Law Journal 264-291.

responsibilities to exercise their freedom of thought, expression, and association in a way that upholds mutual respect and social harmony as well as on their duties and responsibilities within society. In particular, education systems must be designed to foster understanding, tolerance, and dialogue across cultural, ethnic, and religious differences. This includes the explicit promotion of intercultural and interreligious education to help children embrace diversity, reject stereotypes, and build peaceful coexistence to prevent conflicts, radicalisation, xenophobia, and extremism. It also requires curricula that aim at equipping children with the necessary knowledge and skills for a peaceful, inclusive, and democratic society by educating children about life skills such as the ability to make balanced decisions; the ability to anticipate risk, to resolve conflicts in a nonviolent manner, to develop a healthy lifestyle and leadership skills. The essentials of such levels of responsibility must include promoting understanding, respect, peace, tolerance, equality of sexes, and fostering friendships across diverse backgrounds and cultures.

30. Achieving these levels of understanding through education is also key in ensuring that children understand and adhere to their responsibilities towards their peers, their parents, the elderly and the community as provided under Article 31 of the Charter.²⁸ Article 11(2)(d) read together with, for example, Article 31, mandates States to ensure that institutions of learning also include in curricula and syllabi to educate children about their duties to their families and community, especially to the extent that such education preserves and ‘strengthens African cultural values in [the child’s] relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society’.

e) *Preserving national independence and territorial integrity – Article 11(2)(e)*

31. Article 11(2)(e) obligates State Parties to enact laws that would permit the incorporation in pedagogy, syllabi and curricula, teaching methods, and critical aspects of regional, sub regional and national history. Education curricula should enable children to appreciate and understand the African Countries’ civilisation, achievements, and relationships among each other in various eras. History that traces African independence from colonialism, traits of neo-colonialism and fortifies national independence, neo-liberalism, territorial integrity and, importantly, African regional integrity towards development and economic growth.²⁹ Article 11(2)(e) affirms that education should foster the need to strengthen both national and regional (pan-African) integrity in line with the AU strategic plan and Agenda 2063.

32. The features “Preserving national independence” and “territorial integrity” of Article 11(2)(c) also show that education can achieve these purposes if tailored to prevent conflicts, develop resilience, and preserve national cohesion and unity. Education systems must be directed to build children’s understanding of their country’s historical cohesion, the value of self-determination, and the principles of sovereignty. This includes nurturing children’s responsibility to act proactively towards the achievement of the independence and integrity of the country and to refrain from committing acts that disturb, destroy or negatively impact the prevalence of peace and the continued independence and integrity of the country in which they are citizens or residents.³⁰ “Territorial integrity” further implies the importance of instilling respect for the inviolability of national borders and promoting the rejection of separatist ideologies or actions that may jeopardise national unity. To this end, State Parties must develop comprehensive education systems that not only embrace human rights values and intercultural understanding but also integrate peace education, conflict prevention³¹ and non-violence into all curricula

²⁸ For details, see General Comment on Article 31 of ACERWC - ‘Responsibilities and duties of the child’

²⁹ VM Chiatoh ‘Self-Determination and Territorial Integrity: Southern Cameroons and the Republic of Cameroun,’ *African Journal of International and Comparative Law* (2019) 27(4) 629-653.

³⁰ ACERWC, General Comment No. 5 : Responsibilities of the Child (Article 31 of the Charter), ACERWC/GC/05, 2022, para 82.

³¹ African Union, *Continental Framework for Youth, Peace and Security*, 2020, p. 7,

f) Promoting African unity and solidarity – Article 11(2)(f)

33. Akin to Article 11(2)(e), Article 11(2)(f) necessitates State Parties to legislate laws that would promote the teaching of African unity and solidarity at all levels of education. This reflects a broader pan African vision of education that goes beyond national identity to contribute to the promotion and achievements of continental integration, solidarity and unity among African States and citizens. It aligns with the African Union’s vision of an “integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in global arena”. The ultimate objective is to ensure that children are trained to take part in the development of a politically and socio economically viable continent that can hold its own among the other continents of the world.”³²

34. According to the history of the AU, the idea of African Unity, is traceable to the notion of the pan-Africa movement.³³ The African Union asserts that pan Africanism should enable and pace solidarity between all Africans,³⁴ including children. The proper implementation of Article 11(2)(f) evokes the need for African pedagogy and curricula for education and teaching based on African history and civilisation, shared cultural heritage, and the values of unity and integration to inspire and motivate development based on self-reliance and self-determination in African children, with democratic and people-centred governance ideologies and standards.³⁵ Article 11(2)(f) read with Aspiration 5: “An Africa with a strong cultural identity, common heritage, shared values and ethics” and Aspiration 2, goal 1 of Agenda 2063, education must incorporate in syllabi and curricula, subjects that accelerate progress towards continental unity and integration for sustained growth, trade, exchanges of goods, services, free movement of people and capital through establishing a United Africa and fast-tracking economic integration. Education should integrate the values, history, and aspirations of the African countries and the continent to cultivate in children a deep sense of belongingness to Africa.

g) Developing respect for the environment and natural resources – Article 11(2)(g)

35. Article 11(2)(g) mandates State Parties to enact laws that would instruct schools to incorporate lessons from the basic education level on how to care for and protect the environment and natural resources. The lessons should aim to strengthen and accelerate locally relevant initiatives that are proactive, responsive and adaptive to address climate change risks and environmental shocks.³⁶ Article 11(2)(g), necessitates the reform of the school curricula to incorporate comprehensive climate change and environmental education. Such reforms should aim to capacitate and increase children’s literacy on environmental and climate related issues by fostering an understanding of the interdependence between human life, ecosystems, and biodiversity. This includes the integration of environmental health education into school programmes to raise children’s awareness of the impact of environmental factors on health and wellbeing,³⁷ and that climate change education should focus on country-specific climate impacts and necessary climate action.³⁸ States must also ensure that children are equipped with the knowledge, values, and skills needed to promote the respect and preservation of the environment and natural resources and thereby to act as responsible of current and future generations.

32 ACERWC , General Comment No. 5 : Responsibilities of the Child (Article 31 of the Charter), ACERWC/GC/05, 2022, p. 27.

33 C Heyns, E Baimu, M Killander, ‘The African Union,’ (2003) (46) German Yearbook of International Law 252-283.

34 African Union, Agenda 2063, aspiration 7.

35 See also ACERWC’s 2040 which aspires under aspiration 6 that that pedagogy and curriculum should, embody a rights-based method of teaching wherein ‘common features and standards are developed across the continent, aimed at critical thinking and leadership, and espousing the values of integrity, accountability and transformative citizenship’.

36 M Robinson-Dorn, ‘Teaching Environmental Law in the Era of Climate Change: A Few Whats, Whys, and Hows,’ Washington Law Review (2007) 82(3) 619-650.

37 ACERWC, Study on Climate Change and Children’s Rights: In Africa – A Continental Overview, p. 37.

38 Ibid., p.70

h) Promoting the child's understanding of primary health care – Article 11(2)(h)

36. Article 11(2)(h) provides that State Parties incorporate, through law, health education in schools to enable and strengthen children's knowledge and ability to develop positive attitudes and beliefs needed to adopt and maintain healthy lifestyles and behaviours, including proper sanitation, adequate nutrition, prevent pregnancy, and improve their sexual reproductive health. Primary health care education in schools should also address matters including immunisation and access to health care. State Parties must also take measures to ensure that some health care services are provided to children in schools, including emergency health care and immunisation in the context of public health outbreaks.

ii. Components of the right to education – Article 11(3)

a) Free and compulsory basic education – Article 11(3)(a)

37. Article 11(3)(a) imposes free and compulsory basic education. State Parties have an immediate obligation to fulfil this right as there are no qualifying phrases such as 'progressive realisation' and 'subject to available resources.' 'Free' basic education is an obligation on State Parties to enact laws and other measures at the national level to ensure that basic education is substantially free, especially for economically disadvantaged families who would otherwise be excluded, without collateral costs being required. These include but are not limited to direct and indirect fees such as tuition, exam fees, and activity fees; levies; donations and additional payments to teachers; hidden costs that prevent access to education, such as uniforms, school supplies, and transportation; denial of examination results due to non-payment of fees; and expulsion or suspension from school due to inability to pay fees.

38. States must ensure that the concept of free education extends to all necessary school-related costs. This includes the provision of essential school materials such as textbooks, readers, pens, pencils, erasers, writing pads, compasses, and other stationery, as well as school uniforms, which, if required, must be provided free of charge. Additionally, school infrastructure and facilities must be adequately resourced to prevent financial burdens from being passed onto parents and guardians, ensuring that learning environments are equipped with proper sanitation, safe classrooms, writing boards, desks, and other necessary amenities.

39. States are further obligated to ensure that free basic education is inclusive and accessible to children with disabilities. This requires the provision of reasonable accommodation in mainstream schools to ensure accessibility, including ramps, assistive devices, adapted learning materials, and other necessary materials, all of which must be provided free of charge. Additionally, where necessary, States must establish free special schools for children who require special education settings, ensuring that financial barriers do not prevent access. In line with Article 3 of the Charter, States must adopt and enforce inclusive education policies that eliminate barriers to enrolment, retention, and participation.

40. Compulsory education, on the other hand, is an obligation on States to ensure that parents and guardians fulfil their duty to enrol every child in their care in an institution of learning. This element of compulsion reinforces that neither parents, guardians, nor States can treat a child's access to basic education as optional. To implement this obligation effectively, States must take active measures to facilitate compliance by ensuring the availability of adequate and accessible schools. This includes constructing sufficient learning institutions, providing essential resources such as desks, writing boards, and qualified teachers, and adopting policies that eliminate barriers to basic education. Additionally, the requirement of compulsory education must be implemented in a manner that upholds the right to non-discrimination, as guaranteed under Article 3 of the Charter. States must ensure that all children, regardless of gender, disability, socio-economic status, or any other status, have equal access to education.

41. To compel parents and guardians to ensure school attendance, States must implement and enforce laws that mandate school enrollment. This includes introducing penalties for deliberate non-enrolment, such as fines or other legal sanctions, while ensuring that poverty or socio-economic challenges do not lead to punitive measures against struggling families. Additionally, any enforcement mechanisms must be designed in a way that does not result in the separation of children from their caregivers, prioritising interventions that support families in overcoming barriers to education rather than punitive approaches that could disrupt the child's wellbeing and family environment.

42. Additionally, school attendance monitoring mechanisms such as school inspectors, attendance officers, and parental support interventions should be implemented to track absenteeism, investigate underlying causes, and provide necessary support. Sensitisation about the impact on children's future should be undertaken among parents and communities, focusing on the elimination of harmful practices and discriminatory attitudes that exclude various children, such as girls and children with disabilities from accessing education.

43. To further ascertain that there is a reasonable attempt from State Parties to, at least, meet the minimum core of realising free and compulsory education, States Parties must,

- Enact laws that mandate and hold parents or guardians accountable for impeding a child from attaining their right to education.
- Take legislative measures to prohibit schools from expelling or suspending children for failing to pay fees and related costs. Additionally, schools must be prohibited from withholding examination results and school fees from learners with outstanding fees.
- Take appropriate steps to ensure that every child enrolled in school is provided with a school uniform, textbooks, and transport, free of any charge.
- Take both legislative and administrative steps to limit, reduce and completely eradicate the commercialisation of private education,
- Increase, annually, the budget allocated to education to ensure it can cover fees, pay educators and administrators, maintain current infrastructure, build new ones, recruit competent educators, train new educators and host refresher courses for educators and all involved in the administration of schools.

b) *Early Childhood Development and Pre-Primary Education*

44. Early Childhood Development (ECD) forms an integral part of the right to education. While it is not explicitly provided for under Article 11 of the Charter, the Committee has consistently emphasised its importance in its concluding observations and recommendations to State Parties. Further, Sustainable Development Goals (SDG) target 4.2 calls for access to quality early childhood development, care and pre-primary education so that children can be ready for primary education. ECD, particularly pre-primary education, is foundational for a child's cognitive, emotional, and social development, equipping them with essential skills for future learning. It is particularly critical for vulnerable children, including those without parental care, children with disabilities, and those from disadvantaged backgrounds.

45. Despite its importance, public pre-primary education remains underdeveloped, with low enrolment rates and a heavy reliance on private institutions, which creates disparities in access and quality. Many rural and underserved areas lack ECD facilities, preventing children from receiving early education. Furthermore, the absence of clear legislative and policy frameworks on ECD has led to unregulated, unregistered, and inconsistent ECD services.

46. Investment in ECD positively influences school performance, reduces dropout rates, and increases primary education completion without repetition. Children who have access to quality pre-primary education transition more smoothly into primary school, are more likely to succeed academically and less likely to repeat grades or drop out. Additionally, scientific research shows that ECD enhances brain development, improving problem-solving skills, literacy, and social-emotional competence. To achieve this, as recommended by UNESCO, it is important that all children have access to quality holistic early childhood development, care and education for all ages. The provision of at least one year of free and compulsory quality pre-primary education is encouraged to be delivered by well-trained educators. This should be put in place considering different national realities, capacities, levels of development, resources and infrastructure.

47. In ensuring that all children have access to ECD services, State Parties should:

- Put in place integrated and inclusive policies and legislation that guarantee the provision of at least one year of free and compulsory quality pre-primary education, paying special attention to reaching the poorest and most disadvantaged children.
- Invest in ECD infrastructure and expand access, particularly in rural and underserved areas, by ensuring that public schools offer ECD programs as part of basic education.
- Allocate adequate funding for ECD, increasing budget allocations to make ECD more accessible, particularly for disadvantaged children.
- Ensure trained ECD teachers are available in all learning institutions with adequate support and fair compensation.
- Make ECD inclusive, providing reasonable accommodation for children with disabilities, ensuring assistive devices, adapted curricula, and trained teachers are available free of charge.
- Regulate and monitor private ECD institutions to prevent excessive fees, ensure quality standards, and promote equitable access. Additionally, given the prevalence of non-state providers, State Parties should consider introducing a limit to the level of tuition and other fees charged by private institutions.
- Conduct regular quality assessments in all ECD centres to monitor compliance with national and regional standards.
- Support ECD for children in humanitarian settings, including mobile early learning centres and community-based models to reach displaced and vulnerable children.

c) ***Progressively make secondary education in its different forms free and accessible – Article 11(3)(b)***

48. Article 11(3)(b) enjoins States Parties to take positive steps, such as the adoption of laws, policies and budget allocations towards progressively making secondary education free and accessible to all children. Unlike basic education, which must be made immediately free and compulsory, secondary education may be realised progressively. However, this does not lessen the obligation of States to take deliberate and concrete steps toward that goal. The progressive implementation of free secondary education must be measurable, time-bound, and evidence-based, with a clear focus on eliminating financial barriers over time. States must demonstrate sustained efforts, including the gradual reduction of school fees and associated costs, alongside annual or biannual increases in education budgets dedicated to secondary education. These efforts should be guided by clear, realistic timelines, regularly monitored through national education sector plans, and subject to public accountability.

49. On the other hand, the obligation to ensure that secondary education is accessible requires State Parties to eliminate all forms of discrimination that may hinder any child's access to education, with particular attention to disadvantaged and marginalised groups. This includes girls, children with disabilities, children in rural areas, children on the move, and those from low-income households. Accessibility demands that States proactively address structural, social, and economic barriers that impede enrolment, retention, and completion.

50. To meet this obligation, States must invest in the continuous expansion and maintenance of inclusive secondary schools. This includes a diversity of institutions such as academic, technical, and vocational schools, geographically distributed to meet the needs of all communities. States must also ensure the development of reliable transport infrastructure, including roads that lead to schools, and provide safe and regular transport options for learners who live far from school facilities.

51. Furthermore, accessibility entails that children are not only able to enrol but are also supported to remain in school and complete their education. To this end, States must provide financial assistance, including scholarships, school feeding programmes, transport subsidies, and other social protection measures targeted at learners from economically disadvantaged backgrounds. All indirect costs—such as those related to school uniforms, textbooks, examination fees, and learning materials—must be progressively identified and eliminated to prevent exclusion.

52. Special attention must also be given to gender-responsive interventions. States must adopt and implement policies that support girls' education, including protection from school-related gender-based violence, access to menstrual hygiene management facilities, and re-entry policies for adolescent mothers.

d) *Higher education accessible to all based on capacity and ability by every appropriate means – Article 11(3)(c)*

53. Article 11(3)(c) obligates State Parties to make higher education accessible to all children on the basis of capacity and ability by every appropriate means. While the Charter does not mandate free or compulsory higher education, it recognises the importance of ensuring fair and equitable access for every child who qualifies, irrespective of background or circumstance. States Parties must make higher education accessible to all children, regardless of their or their parents/legal guardian's, race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status. The concept of accessibility to higher education requires the complete elimination of any kind of discrimination when seeking higher education; legal and administrative hurdles, differentiation based on gender, social status, and economic status, and disabilities.³⁹

54. The 'basis of capacity' is a continuous process applicable to both the State and the child. For the State, the basis of capacity is based on the availability of resources to build and purposefully equip higher education structures. For children, the basis of their capacity entails the successful completion of secondary education with the required qualifying grades to access higher education. However, the phrase 'on the basis of capacity' should not only focus on success in examinations and acquiring qualifying grades, as this may lead to a distortion in favour of high-income families and private education. Instead, it should also include other measures of capacities, such as continuous assessment results, as well as technical and practical skills, among other capacities.

³⁹ A Puraite, 'Accessibility of Higher Education: The Right to Higher Education in Comparative Approach,' (2011) 4(1) Baltic Journal of Law and Politics 27-51.

55. Furthermore, the requirement that access to higher education be based on capacity must be understood in consideration that higher education may not be the chosen or most suitable path for every child who completes secondary education. The decision to pursue higher education should rest with the individual, who may instead opt for alternative post-secondary options such as technical or vocational education, apprenticeships, or direct entry into the workforce, depending on their interests, abilities, and aspirations. It is the responsibility of the State to ensure that all these pathways are of equal quality, equally valued, and made accessible to all learners without discrimination, thereby supporting every child's opportunity to develop their full potential.

56. On the other hand, the basis of 'ability' is also applicable to both the State and the child. For the State, it also entails the availability of resources, while for children, it entails the ability to, for example, pay fees. In taking appropriate steps to ensure access to higher education, States must implement supportive mechanisms that enable children who meet the academic criteria to enrol and succeed in higher education institutions, regardless of their socio-economic background. This includes establishing transparent and fair admission procedures, and removing legal, administrative, and documentation-related obstacles that may impede access. Furthermore, States should put in place financial assistance schemes, such as scholarships, bursaries, student loans, and fee reductions, targeted especially at disadvantaged groups to ensure economic obstacles do not lead to exclusion. States must also invest in inclusive infrastructure and ensure that higher education institutions are accessible to persons with disabilities, both physically and in terms of teaching methods and learning materials.

57. States must have clear criteria and processes to determine capacity and ability which is known to all children and the public. Moreover, the criteria and processes should take into account the need to diversify the skills at higher education, the need to bridge the gender disparity in higher education, and the need to ensure that children in vulnerable situations, such as children with disabilities, can access higher education. States should adopt special considerations to achieve the same.

e) *Regular attendance and reduction of dropout rates – Article 11(3)(d)*

58. Article 11(3)(d) places two correlating obligations on States; to take measures to encourage regular attendance of children in school and to take measures to reduce school dropout rates. It mandates State Parties to take legislative, administrative and other measures to these ends. The measures taken by States should be based on context specific evidence which requires undertaking periodic assessments of causes for school dropout and irregularity of attendance. The reasons for school dropout are not homogeneous in Africa. Causes of irregular attendance and dropout in Africa include the following:

- Socio-economic factors such as poverty and child labour.
- School related factors such as distance to school, poor school infrastructure, lack of safety and safeguards in schools, corporal punishment, bullying, lack of teachers, poorly trained teachers, poor quality of education, teacher absenteeism and language barriers.
- Factors anchored on gender-based discrimination, such as harmful practices like child marriage, Female Genital Mutilation, teenage pregnancy and sexual Violence against girls in and around schools.
- Curricula relevance related to mismatch of content of subjects with local context and disconnect between education and job opportunities.

- Health related issues such as malnutrition which affects educational attainment, morbidity and in particular contracting illnesses such as malaria, coupled with lack of access to healthcare services.⁴⁰
- Emerging and context specific issues, mainly conflict, climate change and related hazards such as floods, heatwaves, droughts and typhoons that disrupt the education of millions of children in Africa.
- Drug abuse by students

59. To ensure regular attendance and reduce school dropouts, States must take a myriad of measures depending on the specific context. These measures include the following

- Consistent monitoring or record-keeping of pupils' attendance: this can be done by mandating schools to generate a mechanism, such as a toolkit or policy on school dropout prevention, that must track absenteeism, continually collect and analyse attendance data and provide early warnings.⁴¹
- Adopt comprehensive school retention policies
- Periodically review school curricula to ensure its relevance for local context, its ability to prepare a child for a successful life as an adult.
- Establish, expand and strengthen school feeding programs and other support schemes for children from disadvantaged families.
- Provide and enable psychosocial support systems in schools for children vulnerable to dropping out due to several reasons.
- Establish strong and sustainable partnerships with key stakeholders, such as community and religious leaders to educate parents and guardians on the adverse effects of school dropouts
- Take legal, administrative and other measures to eradicate any harmful practices that discriminate against any child from accessing or continuing education,⁴² including targeted measures for girls affected or at risk of harmful practices such as child marriage and FGM.
- Take measures to protect schools from attacks by armed groups or use for military purposes.
- Expand alternative and flexible learning options such as mobile schools, radio-based education and digital learning platforms.
- Ensure the continuity of education during and after climate disasters by ensuring the implementation of child-sensitive climate policies with a focus on adaptation, strengthening climate resilient school infrastructure, and strengthening child sensitive early warning and emergency response systems.
- Ensure the safety of school spaces, adopt child safeguarding and school safety measures, and eradicate violence in schools, including bullying, etc
- Prevent the use of drugs by children as well as the selling and accessibility of drugs around the school environment.

40 UNESCO "New estimation confirms out-of-school population is growing in sub-Saharan Africa" FACTSHEET 62 / POLICY PAPER 48 (2022); Amani Africa. 'Inclusive Education in Conflict Situations' (2024)

41 M Graham, 'Blood, Sweat, and Tears: Keeping Senegalese Women and Girls in School,' (2022) 12 *Journal of Global Rights and Organizations* 67-87. See also B Fuller, JD Singer, M Keiley, 'Why Do Daughters Leave School in Southern Africa - Family Economy and Mothers' Commitments,' (1995) 74(2) *Social Forces* 657-682. see also, F Veriava, 'Teen Pregnancy and the Right to Education in South Africa' (2015) 24 (3) *Human Rights Defender* 12-14.

42 LE Chamblee, 'Rhetoric or Rights: When Culture and Religion Bar Girls' Right to Education,' (2004) 44(4) *Virginia Journal of International Law* 44, 1073-1144. See also, C Buchmann, 'Family Structure, Parental Perceptions and Child Labor in Kenya: What Factors Determine Who is Enrolled in School,' (2000) 78(4) *Social Forces* 1349-1378.

60. The Committee recognises the role of school attendance and retention in protecting children from violence and abuse, as well as other factors that lead to dropout. To break the cycle of increasing dropout rates, which is more prevalent at secondary education level in Africa, resilient retention policies are required.

f) Special measures for female, gifted and disadvantaged children – Article 11(3)(e)

61. Article 11(3)(e) enjoins State Parties to legislate special measures to protect and promote the right to education of female, gifted and disadvantaged children. The protection of female gifted and disadvantaged children should be aligned with the principles of the best interest of the child and non-discrimination, as outlined above in this document. Special measures for these groups should include funding and equal access to education for all sections of the community, including females, gifted, disadvantaged and marginalised children.⁴³ This Article reinforces the mandate on States to ensure that no one is discriminated against and prevented from accessing education. Therefore, State Parties need to take special measures to ensure that all children, especially female, gifted and disadvantaged children, have equal opportunities in education as other children. Children from disadvantaged households who might be struggling in school should be given extra lessons free of charge to enable them to catch up with their peers.⁴⁴ In this General Comment, ‘Disadvantaged children’ are children who are socially or culturally deprived to such a degree that without supplemental facilities and services, they cannot profit in the regular school program to the same extent as children with normal backgrounds.

62. While Article 11 provides further detail for measures targeted at girls and children in disadvantaged situations such as children with disabilities, as can be seen from other sections of this document, it does not outline measures for gifted children. There is no internationally agreed definition of ‘Gifted children’, but various countries have adopted their own definitions of the term,⁴⁵ exhibited through distinct cognitive and social features. A reading of the various existing definitions suggests that the term ‘Gifted children’ is used to signify children with exceptional intelligence that are exhibited through distinct cognitive and social features. The identification of gifted children varies across countries, with the most common approach being a standardised intelligence test. However, standardised tests fail to capture the wide spectrum of intellectual, physical, and psychomotor abilities that should be factored into the identification of gifted children.⁴⁶

63. Gifted children require the relevant support for their educational attainment; this includes a curricula that is mindful of the diversity of learners, including gifted students, with teachers sensitised and capacitated to identify and cater for the needs of gifted learners and educational equipment that can enable gifted learners to attain their full potential. This is in line with section 2(a) of Article 11, which states that the education of a child should be directed to ‘the promotion and development of the child’s personality, talents and mental and physical abilities to their fullest potential.’ Additionally, States should be mindful of the intersectionality of children’s identities as giftedness can coexist with various forms of disabilities, including learning disabilities. Addressing the gaps in definition, identification and response to gifted children requires explicit and targeted policy. However, most African countries do not have an explicit policy on the education of gifted children.⁴⁷ Various policy options can be taken to respond to the educational needs of gifted children. A relatively more common approach

43 L Arendse, ‘The School Funding System and Its Discriminatory Impact on Marginalised Learners,’ (2011) 15 *Law, Democracy and Development* 339-360.

44 BA Colgan, D Mayer, JM Savage, LH Breit, ‘Street Children in Tanzania: Effects of Economy and Education,’ (2000-2001) 20 (4) *Children’s Legal Rights Journal* 2-16.

45 Kuznetsova, O., Liashenko, V., Zhzhikashvili, L., & Arsalidou, M. ‘Giftedness identification and cognitive, physiological and psychological characteristics of gifted children: a systematic review. *Australasian Journal of Gifted Education*’ (2024) 31–49.

46 MADESOLA, S OBI and F RABIU ‘Identification of Intellectually Gifted School Children in Nigeria: Implications for Counselling And Special Education Practices’ *AJPSSI Vol 27 No 3* (2024).

47 Ghana is the first African country to explicitly adopt a policy on the education of gifted children in 2024.

is incorporating the needs of gifted children in inclusive education policies, as is the case in South Africa, albeit the lack of explicit mention. Even if inclusive education policies recognise the diverse learning needs of children with varying levels of learning needs, it is crucial to explicitly mention and address the specific needs of gifted children within inclusive education policies. Alternatively, specific policy responses can be taken to address gifted learners, as pioneered by Ghana. Policy responses should be followed by institutional capacity building and awareness creation. It is important that school management and teaching, develop teaching and learning sequence methodologies that would give these children an opportunity to further develop as well as sustain and share their knowledge with their peers.⁴⁸

iii. **Respect the rights and duties of parents and legal guardians – Article 11(4)**

64. Article 11(4) mandates State Parties to recognise and respect the rights and duties of parents or guardians, to choose a preferred school for their child that adheres to the minimum standards of education approved by the State and elucidated in this General Comment. Parents and guardians are central contributors to a child's education. Therefore, it is incumbent on States to adopt and implement laws, policies, and administrative measures that explicitly recognise and facilitate the responsibilities of parents and guardians to promote and protect a child's right to education. This includes ensuring that the parental and legal guardian's right to school selection is integrated within the broader national education framework. To achieve this, States have the obligation to provide conducive legislative and administrative procedures for the operation of non-public education institutions. In addition, States must ensure that these schools meet the minimum standards set by national education rules and regulations.

65. In interpreting Article 11(4), the primary right that parents and legal guardians have in relation to a child's education is the right to choose an institution of learning suitable for their child to access education. However, read together with Article 4(2) of the Charter and the Committee's Guidelines on Child Participation, this right must be exercised with due consideration to the views of the child in the decision-making process. Hence, State Parties are also obligated to ensure that national laws and policies require parents and legal guardians to involve children and meaningfully consider the views of the child in the process of choosing the school.

66. In addition to the right to choose a school, State Parties must also ensure that national legislation reflects the corresponding obligations that parents and legal guardians have under Article 11(4), which include:

- The duty to choose a school that is duly registered as per the standard and requirements set forth by the State and ensure that the education of the child is consistent with the education curricula established and the child's evolving capacities. The inclusion of 'evolving capacity' is cautionary to parents and legal guardians to ensure that they always consider what is appropriate education for their child. States have a correlating duty to provide information and guidance to parents to enable them to make informed decisions, including by periodically regulating and publicising the registration and performance status of schools, as well as increasing awareness about the education curricula.
- The duty to ensure that their child attends school. This is deduced from the fact that choosing a school is not enough to ensure that a child has access to education. However, ensuring that the child attends school on time and is ready to learn is paramount for a child's satisfaction and enjoyment of their right to education. In that regard, States should conduct sensitisation measures to raise awareness among families and communities, establish community-based monitoring mechanisms, and provide support to parents to enable them to discharge their duties.

⁴⁸ E Duchamre, 'Statistically Speaking: Gifted Children Slipping through the Cracks under No Child Left Behind,' (2011) 31(1) *Children's Legal Rights Journal* 75-76.

- The duty to actively participate in school-related meetings and engagements. That includes attending parent-teacher meetings, annual general meetings, and other required meetings that the school requires parents and legal guardians to attend. That is important because the parent or legal guardian needs to be informed of the changes a school might make to its governance structure, budget or method of teaching. These factors could impact the decision on whether the child should continue with schooling at the chosen institution or transfer to another institution. States should instruct education institutions to adopt modalities of engaging teachers and consider implementing interactive and flexible communication modalities to ensure that all parents are engaged.

iv. School or parental discipline – Article 11(5)

67. Article 11(5) obliges States to ‘take all appropriate measures to ensure that a child who is subjected to school or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the Charter’. The reference, in this provision, to discipline at home is necessitated by the inclusion of ‘parental discipline’. Parental discipline is a form of discipline carried out by parents on a child at home or in other settings. The obligation under Article 11(5) for parental discipline to be carried out with humanity and respect is based on the adverse effect of harmful discipline at home, which could affect a child’s educational attainment.

68. The obligation to ensure that school and parental discipline is conducted with humanity and respect for the inherent dignity of the child translates to the prohibition of all types of punishments that are likely to cause psychological and physical harm to the child. Such harmful punishments include the use of demeaning or degrading verbal and non-verbal language, as well as corporal punishment in schools, at home, and in all other settings. That is an obligation to end corporal punishment and prohibition of any verbal and psychological violence, such as insults, degrading gestures and other forms of non-physical abuse against children. Additionally, it carries a positive obligation that disciplining a child should benefit a child’s holistic development by teaching him/her life lessons and instilling values of peaceful co-existence, tolerance and appreciation of diversity, positively contributing to the wellbeing of one’s family, community, country and continent at large, in a manner consistent with the evolving capacities of a child and the responsibilities of children under Article 31 of the Charter.

69. Corporal punishment is the most common form of violence children face across the continent and broadly across the world. Several research studies have shown the multifaceted harm of corporal punishment on the growth and development of children.⁴⁹ It has an adverse impact on the physical and mental health of children as it impairs cognitive and socio-emotional development, leading to poor educational outcomes such as school dropout, increased aggression in children, as well as increased perpetration of violence, increase in antisocial behaviour and violent criminal behaviours from childhood throughout adulthood.⁵⁰ Despite the harmful effects of corporal punishment, it remains a common practice at home, in schools and other settings. It is estimated that the lifetime prevalence of school corporal punishment in Africa is at 70%.⁵¹ By 2024, only 12 African countries had explicitly prohibited the practice in all settings.⁵²

70. A wide range of measures are needed to reduce and eliminate the practice of corporal punishment and instil a discipline culture that treats children with humanity and respect for their dignity. These include adopting legislation that explicitly prohibits corporal punishment

49 According to End Corporal Punishment more than 300 studies over 50 years involving 100,000s of children show associations between corporal punishment and a wide range of negative outcomes, while no studies have found evidence of any benefits. <https://endcorporalpunishment.org/resources/research/>

50 World Health Organization ‘Corporal Punishment and Health’ (2021).

51 WHO ‘Corporal punishment and health’ (2021) <https://www.who.int/news-room/fact-sheets/detail/corporal-punishment-and-health>

52 The following are countries that have prohibited the practice in all settings; [Zambia](#), [Mauritius](#), [Seychelles](#), [Guinea](#), [South Africa](#), [Benin](#), [Cabo Verde](#), [South Sudan](#), [Congo \(Republic of\)](#), [Kenya](#), [Tunisia](#), [Togo](#) Source, End Corporal Punishment ‘Progress in Africa’ <https://endcorporalpunishment.org/africa/>

in all settings, particularly at school and at home, and establishing necessary structures to effectively enforce the prohibition at institutional, local and national levels. It is important to increase awareness in communities and schools, through mass media and other avenues, on the harms of corporal punishment and on alternative positive disciplining methods. Legislation prohibiting corporal punishment should clarify the roles and responsibilities of parents and other caregivers in adopting non-violent child rearing practices. It should underline the duties of parents, teachers and other caregivers in treating the child with respect and dignity and prohibit the use of any form of physical or verbal violence against the child.

71. Furthermore, the adoption of boundary-based methods of discipline in schools and at home is essential. Boundary-based methods of discipline present positive discipline options that are not harmful to a child's wellbeing. These could include, reading a few pages in an age-appropriate book, making up his/her bed or staying off their gadget and the internet (especially for leisure and social usage) for a few hours or days.⁵³ States should support parents and caregivers through information and skill-building sessions to develop nurturing, non-violent parenting and caregiving. Furthermore, States should train teachers on positive discipline strategies and ensure that schools establish punitive sanctions on teachers who opt for corporal punishment, as well as to establish response and support services for early recognition and care of child victims to help reduce the reoccurrence of violent discipline.

v. Children who become pregnant – Article 11(6)

72. Article 11(6) obliges States to take all appropriate measures to ensure that girls who become pregnant before completing their education are enabled to continue and complete their education. Various countries in Africa have laws and/or practices that negatively affect the education of pregnant girls. The legal, practical, socio-cultural barriers in several African countries that jeopardise the education of girls who become pregnant while enrolled in education facilities include expulsion laws and policies and lack of protective legislation; re-entry restrictions; financial constraints; restriction to attend regular education, childcare responsibilities; stigmatisation and discrimination; gender norms that discourage return to school and unsupportive school environment. Therefore, ensuring that pregnant girls complete education requires a range of measures at the state, community and school levels that tackle the various obstacles.

73. State Parties should take legislative measures to prohibit the expulsion of pregnant girls from school, to protect pregnant girls from discrimination, and ensure the availability of conducive procedures and a school environment to enable them to complete their education. Legislation that prohibits expulsion due to pregnancy should also prohibit other associated practices such as mandatory pregnancy testing at schools, prohibition of school re-entry, restriction of education options of pregnant girls to private, extension or other non-regular education institutions. States must ensure that pregnant girls are not subjected to any form of punitive measures based on falling pregnant while in school. State Parties must further mandate all institutions of learning and schools to adopt school policies that would ensure that children who become pregnant continue their education by availing support, including flexible scheduling of alternative options of continuing education, lifting unnecessary bureaucracies for re-entry after childbirth, and where possible by facilitating examination and care for pregnant students according to their needs.⁵⁴ Such policies should also include methods of learning that would accommodate young mothers in school, enable or facilitate access to quality childcare, and admit their children into early childhood programmes at the same school.

53 LA Rodriguez and RO Welsh 'The Dimensions of School Discipline: Toward a Comprehensive Framework for Measuring Discipline Patterns and Outcomes in Schools' (2022) 8(1) AERA Open 1 – 23. See also, JE Lansford 'Discipline and Punishment in Child Development'. In: Morris AS, Mendez Smith J, eds. *The Cambridge Handbook of Parenting: Interdisciplinary Research and Application*. Cambridge Handbooks in Psychology. Cambridge University Press; (2022)120-143.

54 IM Sefoka and KO Odeku, 'Critical Analysis of the Right to Education for Pregnant School-going Teenage Girls in South Africa' (2021) 10 (3) *African Journal of Gender, Society and Development* 73 -85.

74. States should instruct schools to give guidance and counselling to girls who fall pregnant, and report the cause of pregnancy. If it is caused by sexual abuse, relevant procedures should be undertaken to ensure perpetrators are prosecuted and the pregnant girl is given access to one-stop services. In addition to responsive measures, school systems should actively play a role in the prevention of teenage pregnancy by addressing the underlying factors. Among others, States should incorporate age-appropriate sex education, and provide safe spaces for peer-to-peer learning and avail psychosocial support. In addition, States should popularise and expand the provision of sexual and reproductive health services to adolescents and must ensure that such services are accessible and child friendly. States should also enhance their efforts to prevent and redress gender based sexual abuse, violence and exploitation against girls and to provide child friendly reporting and referral mechanisms where medical, physical, psychosocial, and other support services are provided. State Parties must also undertake extensive sensitisation of community stakeholders, teachers and other school staff, and parents on the rights of pregnant girls and young mothers to continue and complete their education and on their right to protection from discrimination and abuse.

75. The Committee is of the view that Article 11(6) of the Charter should *mutatis mutandis* apply to children who get married while in school.

vi. Liberty of individuals and bodies to establish and direct educational institutions – Article 11(7)

76. Article 11(7) obligates State Parties to develop and adopt laws and policies at the national level to allow individuals and bodies to establish and direct educational institutions that adhere to the principles established under Article 11(1) and the minimum standards of education approved by the State Party. While individuals and bodies have the right to establish educational institutions, State Parties bear the duty to regulate these institutions and safeguard the right to education. The regulatory measures must not only facilitate the establishment of such educational institutions but also monitor their operations. To this end, States must:

- Establish oversight mechanisms to regulate and monitor these institutions to ensure that they conform to existing legal and policy frameworks
- Conduct regular assessments to ensure compliance with national standards and intervention mechanisms where institutions fail to uphold children's right to education

77. Educational institutions established by individuals or bodies, including faith-based, religious, indigenous, or private schools, may adopt different curricula and syllabi. While it may not be feasible to require that these non-governmental institutions comply with national expectations,⁵⁵ State Parties remain responsible to ensure that all forms of education, other than public schools, adhere to existing safeguarding mechanisms outlined in this General Comment. Drawing inspiration from paragraph 50 of the Abidjan Principles of Education, this General Comment affirms that all private and alternative educational institutions must implement policies that ensure, at a minimum:

- Adopt and implement inclusive curricula and syllabi,
- Adopt and implement quality inclusive early childhood development programmes,
- No child is refused admission because they do not have any form of identity documentation, such as a birth certificate,
- Prohibit the expulsion of a pregnant child from school, and ensure that they are allowed to return to school after giving birth,

⁵⁵ This is because in most cases, the DNA of private schools is around profit making – and school fee is central to that ambition.

- Prohibit all forms of bullying and establish mechanisms to address bullying,
- Prohibit any form of discrimination against any child because of their race, religion, status, disability, sex and gender, or any other status in both the admission process and during enrolment at the institution,
- Prohibit all forms of corporal punishment and or hazardous child labour, and
- Provide sanitary lessons, hygiene education, and menstrual materials to pupils on their period.

78. Article 11(7) also extends to home schooling, recognising that individuals and bodies may establish home schooling for a child or children. However, State Parties have an obligation to regulate and ensure that home schooling meets the minimum standard of education. To this end, States must develop and adopt laws and policies that require:

- Home schools to develop curricula and syllabi that are approved by the State based on the national principles and ethos of basic education,
- Due consideration is given to the child's consent to be home schooled, ensuring they are provided with adequate information to make an informed decision and fully consent to being home schooled. The attainment of a homeschooled child's consent and access to information regarding being home schooled, should be based on the evolving capacity, age and maturity of the child. Appointment of education supervisors to regularly monitor and assess the progression of the child or children being home schooled.
- Compliance with the educational procedures that safeguard the right of a child to education outlined in the above paragraph

VI. THE NATURE AND EXTENT OF STATE PARTIES' OBLIGATIONS RELATING TO ARTICLE 11

79. The basis for the nature and extent of State Obligation in realising the right to education is found under Article 11 itself as well as Article 1, which lays down the general obligation of States. Article 11(3) indicates that States are required to take all the necessary measures to fully realise the right to education, and Article 1 and its General Comment outline indicative measures that may be undertaken in fulfilling the obligation. The joint reading of Article 1, its General Comment, and Article 11 of the Charter provide that the nature of State Obligation includes, among others, legislative measures, institutional measures, administrative measures, budgetary measures, and judicial measures. These measures are important in implementing the obligation to respect, protect, and fulfil the right to education.

a) *Legislative measures*

80. States should adopt laws, policies, regulations, and strategies on education which are in line with the standards laid down under Article 11 and the General Principles. States should also undertake continuous and regular reviews of laws and policies to ensure their harmonisation with regional and international standards. In developing and harmonising legislation on education, States ought to legislate on Early Childhood Education, free and compulsory primary education, outlawing corporal punishment in all settings and regulatory frameworks, for the registration and operation of private education. Legislative framework should be put in place for inclusive education and the education of children in vulnerable situations, including children in the street situation, children in conflict with the law, children on the move, among others. Special measures such as bursaries, special classes and other forms of affirmative action should have a legal basis to ensure their equitable distribution. Legislative measures further include the revision of existing legislation that *de jure* or *de facto* discriminates against any child. This requires a regular assessment of education legislation to

examine its compliance with the Charter and other more favourable regional and international instruments. States should proactively review their laws to rectify inconsistencies as well as fill existing gaps. Laws and regulations that discriminate against girls, married girls, and pregnant girls should be repealed and replaced with laws and regulations that provide special measures of protection for such group of children.

b) *Institutional and administrative measures*

81. Implementing and realising the right to education requires various institutional and administrative measures to be undertaken by States. States should establish an institution that is tasked with coordinating the implementation of the right to education. These institution/s should be adequately resourced and coordinate with other sectors to provide education for all children. States must provide regular training and capacity building programs for the staff working in the field of education. Moreover, institutional and administrative measures also translate to the establishment of educational facilities which adhere to the aims and principles of education discussed above. States should build and renovate public education facilities which are child and disability friendly, which have the necessary hygiene and sanitation facilities as well as playgrounds and sports courts, and which are equipped with education facilities. States should provide training to teachers to ensure quality assurance and provide special needs education and training for teachers. Moreover, curricula should be developed inclusively and continuously reviewed to ensure the latest updates in the field and ensure contextual relevance of the curricula. Administrative interventions are further required to identify teaching and learning gaps and identify intervention areas. Prevalent challenges include high dropout rates, teenage pregnancy, corporal punishment, and sexual exploitation in schools, among others. States are, therefore, required to undertake measures to address the challenges, including the introduction of school feeding programs, prevention of teenage pregnancy through sexual reproductive health rights education, ensuring that schools are free from violence and sexual abuse, providing sanitary pads for girls, among others. States shall undertake measures to on-board children out of school through the provision of extra support and complementary sessions, as well as the provision of education in flexible and alternative hours. Institutional, and administrative measures should aim at integrating digital education tools in the education system.

c) *Budgetary measures*

82. The realisation of the right to education requires a child sensitive budgeting and resource use mechanisms.⁵⁶ States should allocate an adequate education budget aimed at increasing access to quality education and continuously increase the budget each year to move towards free education for all. In this regard, States should comply with commitments on education financing. Globally, there is a commitment to allocate 4-6% of GDP and at least 15-20% of public expenditure to education⁵⁷ and Member States of the Global Partnership for Education have committed to spend at least 20% of their public expenditures on education as well as 10% of the education budget on childhood education, learning and development. To meet and increase budgetary commitments, States ought to mobilise domestic funds and foster international cooperation for education.⁵⁸ Budget allocations should consider the population growth of children as well as the equitable distribution of resources to children across each country. States should also ensure the effective management of education funds, increase investment in education programs as opposed to administrative budget, and ensure monitoring and accountability with regard to education budget to ensure efficient and result oriented expenditure.

⁵⁶ ACERWC General Comment No 1, page 38

⁵⁷ Education 2030: Incheon Declaration and Framework for Action for the implementation of SDG4, para 105, available at https://uis.unesco.org/sites/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en_2.pdf

⁵⁸ As above, para 106

d) *Judiciary measures*

83. Education as a right of children should be fulfilled, respected, and protected. In cases where various claims arise on the right to education or the right is being violated, States have the obligation to avail judicial remedies. States have to ensure that the right to education is provided as a justiciable right to which remedies should be provided in the event of a violation through their constitutional processes and education legislation. States should provide for a child-sensitive justice system in which children themselves or their representatives can seek judicial remedies for violations of the right to education and ensure that courts have training and knowledge about the right to education as stipulated in the Charter.

VII. AUXILIARY COMPONENTS OF THE RIGHT TO EDUCATION UNDER ARTICLE 11 OF THE CHARTER

a) *Fostering the right to education in the context of emergencies*

84. State Parties must ensure that a child's right to education, as guaranteed under Article 11(1), is upheld at all times, including during crises or emergencies. Caused by, for example, armed conflict, political instability, disasters, climate change and environmental shocks, hazards, and health pandemics.⁵⁹ To this end, the State is obligated to enact laws and policies that would provide alternative, inclusive, and accessible measures for continued education. Ensuring the right to continue education in emergencies helps to build children's resilience in the face of crises or emergencies. However, in instances where children are unable to continue schooling due to the destruction of facilities, whether by flooding, arson, lightning, or wildfires, the State must identify alternative facilities to enable the continuation of schooling. In cases where no temporary facility is available, States must explore virtual methods of learning and other flexible teaching methods while the school infrastructure is being restored.

85. The importance of virtual schooling became apparent to most African States during the COVID-19 pandemic. In light of the lessons learned during the pandemic, States Parties are required to adopt policies and laws to safeguard children's interaction with the internet when they are accessing their right to education online. These laws and policies must ensure that online learning environments are safe, free from cyberbullying, online sexual exploitation and abuse, and ultimately protect and sustain a child's right to privacy (Article 10 of the Charter).⁶⁰ To ensure congruence with the spirit of the Charter, policies and laws on virtual learning and teaching must allow institutions of learning to:

- Constantly perform technical due diligence on technology used for education to ensure optimal functioning and protect children's privacy;
- Ensure that agreements with technology service providers have strict child friendly clauses on data protection;
- Involve children in all decision-making platforms on the choice and use of technology for education.

⁵⁹ A Anderson, J Hofmann, P Hyll-Larsen, 'The Right to Education for Children in Emergencies,' (2011) 2(1) *Journal of International Humanitarian Legal Studies* 84-126. see also, SD Kamga, 'COVID-19 and the Inclusion of Learners with Disabilities in Basic Education in South Africa: A Critical Analysis,' (2020) 20(2) *African Human Rights Law Journal* 558-583.

⁶⁰ As the Committee remarked in its General Comment on Article 27, for much of the continent, entry into the digital world was relatively fast without the time for countries to develop and evolve their educational and support services online.

b) *Ensuring quality and purposeful education in the context of growing Artificial Intelligence and technological advancement*

86. Artificial Intelligence (AI) has the potential to revolutionise education to promote innovative teaching and learning practices, and accelerate progress towards Aspiration 6 of Agenda 2040, Aspiration 1 of Agenda 2063, and SGD 4. However, as several countries in Africa embrace AI in education, States must caution institutions of learning against imminent risks and challenges, such as those mentioned under virtual schooling. Drawing inspiration from the African Union's Continental Artificial Intelligence Strategy, State Parties must ensure that regulatory safeguards are developed to ensure ethical AI implementation and protect learners, as well as ensure that AI serves as a complement to, rather than a replacement for, human-led education.

87. States must ensure equity and inclusion, taking into consideration that AI in education does not create or exacerbate barriers that could impede children from enjoying their right to education. States should guide schools to progressively include programmes such as coding and robotics in curricula and syllabi from the primary school level to tertiary education to enable children to understand the implications of AI in education. Moreover, the integration of AI as an educational tool should also be inclusive and disability friendly. States Parties must put measures in place to further guide schools to ensure that AI is used inclusively, addressing inequalities related to gender, ethnicity, sex, status and disability, or any other status

VIII. THE ROLE OF OTHER STAKEHOLDERS IN UPHOLDING THE RIGHT TO EDUCATION

a) *Business and the Private Sector*

88. State Parties are encouraged to establish partnership agreements with businesses and the private sector with the central objective of enhancing the quality, accessibility, and inclusivity of education, especially for disadvantaged and marginalised groups of children. The private sector is already investing in higher and tertiary education in most parts of Africa through the ownership of universities and other specialised institutions of learning. A similar investment and partnership with the State to promote and support early childhood development and education, primary education, secondary and high school education is highly encouraged. For example, the private sector could assist governments to build and equip schools with proper facilities and enhanced teaching and learning tools.

b) *National Human Rights Institutions*

89. All National Human Rights Institutions (NHRIs), especially those with Affiliate Status at the Committee, should continuously monitor State actions toward implementing the right to education at the national level. NHRIs are encouraged to familiarise themselves with this General Comment to facilitate adequate monitoring of the implementation of the right to education at all levels of schooling. NHRIs are also encouraged to assist the State to reproduce and disseminate this General Comment in various languages and accessible formats at the national level.

c) *The Regional Economic Communities*

90. Regional Economic Communities (RECs) are strongly encouraged to localise the content of this General Comment to specific issues relating to a child's right to education within their respective sub-regions. The incorporation of this General Comment into sub-regional laws will further strengthen and guarantee a child's right to education across all sub-regions.

d) *The Media*

91. The media is recommended to use the content of this General Comment during educational programmes for children on all its media outlets, including social media, radio, television and podcasts, to ensure that all children, regardless of their background, sex, gender, race, religion, disability, or any other status, can also access educational programmes through their preferred media channel and in child-friendly formats

e) *Non-Governmental Organisations and Civil Society Organisations*

92. Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) play a significant role in the provision of public goods and services, including providing adequate education to children, but also in monitoring both State and non-state actions that could deprive children of accessing quality education. The involvement of NGOs and CSOs in education would generate and widen other opportunities that will further ensure the right of all children to quality and affordable education. In addition, NGOs and CSOs may produce Complementary Reports to the State Party reporting procedure before the Committee for enhanced accountability on the right to education.

f) *The Community Leaders*

93. The role of community leaders in upholding the right to education is of paramount importance. Community leaders, as influential figures within their communities and in most cases are also parents, have the potential to drive positive change and ensure that every individual has access to quality education. Specifically, community leaders can contribute to upholding the right to education by:

- Raise awareness about the importance of education and advocate for policies that respond to local contexts and promote equal access to quality education for all children,
- Mobilise resources through their networks and connections with NGOs, CSOs, the private sector and government agencies to support educational initiatives, including, scholarships, and educational materials for disadvantaged and marginalised pupils',
- Facilitate parent-child-teacher relationships and collaboration with the aim to inspire positive discipline and enable a conducive learning and teaching environment.

IX. ACCOUNTABILITY REGARDING THE PROMOTION AND PROTECTION OF THE RIGHT TO EDUCATION

94. State Parties must include in their reports to the Committee under the cluster of education, the extent to which it is implementing Article 11, this General Comment, and Aspiration 6 of (Every child benefits fully from quality education) Agenda 2040. The report among other should indicate legislative and policy measures, implementation mechanisms put in place, the status of the right to education in line with the elements explained in this General Comment supported by statistical data. The report should include progress and achievements, success factors, indicators, and implementation challenges, among others.
