



SHE SOARS

Sexual and reproductive Health & Economic empowerment
Supporting Out of school Adolescent girls' Rights and Skills



COMPARATIVE STUDY OF THE 2020 NATIONAL GUIDELINES FOR SCHOOL RE-ENTRY IN EARLY LEARNING AND BASIC EDUCATION AGAINST NATIONAL, REGIONAL AND GLOBAL LEGAL AND POLICY FRAMEWORKS.

Study Report



Upholding the fundamental right to Education for pregnant learners and adolescent mothers in Kenya.

1	ACKNOWLEDGEMENT	1
2	OUR PROFILES	2
	Zamara Foundation	2
	Nyanza Initiative for Girls' Education and Empowerment (NIGEE)	3
3	EXECUTIVE SUMMARY	4
4	INTRODUCTION	5
5	BACKGROUND	6
6	PROBLEM STATEMENT	7
7	RESEARCH OBJECTIVES AND QUESTIONS	9
8	LEGAL AND POLICY FRAMEWORKS	10
9	METHODOLOGY	25
10	FINDINGS ON GAPS	28
	Gaps in dissemination of the guidelines	37
	Gaps in implementation of the guideline	40
	Opportunities for Enhanced Clarity in the Guidelines	39
	Guidance and Counselling in schools	41
	Compensation for learning period	42
	Implementation of the policy in discriminatory ways	43
11	RECOMMENDATIONS	46
12	CONCLUSION	49
13	BIBLIOGRAPHY	50

TABLE OF CONTENTS

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The collaboration with the Center for Reproductive Rights has been instrumental in providing the necessary resources, guidance, and expertise to undertake this comprehensive study. Their commitment to addressing the unique challenges adolescent girls face outside the formal education system has significantly enhanced the depth and breadth of our research. The support extended by the SHE SOARS project has played a pivotal role in ensuring that our investigation goes beyond surface-level analysis, delving into the core of the issues these vulnerable groups face.

We appreciate the Center for Reproductive Rights for their dedication to advocating for the rights of adolescent mothers, aligning with the overarching goal of promoting equitable access to education for all. Their contribution to shaping this research paper has been invaluable. The collaborative efforts have enriched the content of this report and strengthened our collective commitment to effecting positive change in the lives of adolescent mothers and out-of-school adolescents.



ZAMARA FOUNDATION

Zamara Foundation is deeply rooted in African feminist principles and values. It raises young women's political consciousness and leads to a strong sense of self-awareness, self-esteem, solidarity, and consequently questioning power that continues to oppress women and girls. We believe and work to ensure that young women and girls are conscientious and have a voice to challenge inequalities, a choice on their bodily autonomy and integrity, and agency to influence change in the communities and policies at the national level. Our work is centered around voice, choice, and agency, and we build constituents of young women and girls that are politically conscious to challenge any power, oppression, and inequality.

About Us

Zamara Foundation (ZamaraFdn) is a feminist homegrown organisation founded in 2016 and registered in Kenya in 2019. Zamara is anchored on radical, bold perspectives on bodily autonomy and integrity, intersectional feminist transformational leadership within young women, and a strong voice that speaks to the sexual and reproductive health and rights (SRHR) of young women, girls, and those that are differently challenged. Zamara Foundation's focus counties are Nairobi, Kwale, and Kilifi.

Nyanza Initiative for Girls' Education and Empowerment (NIGEE)



About Us

Given the year-in, year-out depressing statistics placing Nyanza at the bottom of almost all public health indicators including human immunodeficiency virus (HIV), teen pregnancy and subsequent school dropout, gender-based violence (GBV), and Female Genital Mutilation (FGM), NIGEE was conceived as a one-stop intervention to address these plagues.

The guiding vision of NIGEE is to localize resource mobilization. We believe we should not always look to the West to fund every project Kenyans initiate; indeed, we believe Kenyans should address most of the problems facing fellow Kenyans because we know resources are available to do so, but we have normalized reliance on the West.

Our interventions target vulnerable adolescent girls and young women (AGYW) between 12 – 24 years and their children, where applicable, in four counties of the Nyanza region: Kisumu, Migori, Siaya, and Homabay.

We implement in these counties because several national surveys have consistently reported them as having some of the worst indicators that negatively impact AGYW. For example, in the region, Homabay and Migori recorded 23% teen pregnancy (KDHS 2022) and the highest HIV prevalence with Homabay taking the lead with 25.7% (Kenya HIV County Profile, 2014). NIGEE envisions a society and a future of self-determining and self-reliant girls and women



EXECUTIVE SUMMARY

Education is a fundamental human right that serves as a powerful tool for breaking cycles of poverty, advancing gender equality, and ensuring social justice. For pregnant and parenting learners, access to education is about acquiring knowledge and also a pathway to autonomy, economic independence, and a future of expanded opportunities. However, many pregnant and parenting learners in and out of school face systemic barriers that hinder their right to continue learning, including stigma, economic hardship, and institutional shortcomings. While legal frameworks uphold the right to education for all, gaps in implementation and enforcement often leave them vulnerable to exclusion.

This study assesses the legal and policy environment governing school re-entry and retention for pregnant and parenting learners, focusing on how existing frameworks uphold their right to education. The Ministry of Education has a legal duty to enforce these provisions and ensure compliance with constitutional and human rights commitments. Strengthening enforcement, aligning policies with legal mandates, and addressing systemic barriers through legislative and administrative reforms are critical. Collaboration with the Ministry of Health must follow legal safeguards to ensure ethical, consent-based pregnancy testing and access to reproductive health services. Without legal accountability and policy realignment, the right to education for pregnant and parenting learners remains unprotected.

1.0. INTRODUCTION

1.1. Background

Access to education is a fundamental human right, enshrined in various international and domestic legal frameworks, and must be upheld for all children, including pregnant adolescents and teenage mothers. [1] Excluding them from learning spaces violates their dignity, undermines gender equality, and entrenches cycles of poverty, marginalization, and inequality. Upholding the right to education for all children, including adolescent mothers, is therefore not just a moral obligation but a legal imperative and a right, one that demands immediate policy action and accountability from governments, institutions, and society at large.

Globally, school re-entry policies for adolescent mothers vary significantly, with some countries enforcing punitive measures while others adopt progressive, supportive frameworks. Approximately 21 million girls aged 15–19 become pregnant each year, with about 12 million giving birth. This issue is particularly pronounced in low- and middle-income countries, where more than 90% of these births occur. [2] In 2023, an estimated 13% of adolescent girls and young women globally gave birth before the age of 18. This percentage varies significantly across regions, with approximately 25% of adolescent girls in both Western and Central Africa, as well as Eastern and Southern Africa, becoming mothers before 18.[3] Conversely, regions like South Asia and Latin America report lower rates, around 10%. Factors contributing to these regional disparities include socioeconomic status, education levels, and access to reproductive health services.

In sub-Saharan Africa, over six million pregnant and parenting girls aged 10–19 are out of school. [4] The region also has the highest regional rate of adolescent pregnancy in the world with more than twice the global average of 42 births per 1,000 adolescents. [5,6] Despite 38 out of 54 African countries having laws, policies, or measures that protect adolescent girls' education during pregnancy and motherhood, they often face multiple barriers to continue their education and (or) re-enroll after giving birth.

1 Erica Murphy, 'Legal and Policy Framework: Early and Unintended Pregnancy and the Right to Education in Kenya'.

2 'The Magnitude of Teenage Pregnancy and Its Associated Factors among Teenagers in Dodoma Tanzania: A Community-Based Analytical Cross-Sectional Study - PMC' <https://pmc.ncbi.nlm.nih.gov/articles/PMC9896796/?utm_source=chatgpt.com> accessed 21 February 2025.

3 'Early Childbearing and Teenage Pregnancy Rates by Country - UNICEF DATA' <https://data.unicef.org/topic/child-health/adolescent-health/?utm_source=chatgpt.com> accessed 21 February 2025.

Discriminatory policies, gaps in implementation of laws, lack of family support, childcare, school fees, negative social norms, and stigma are barriers that deter their continuation in and re-entry to formal education. [7] Countries such as Tanzania, Uganda, and Zambia have implemented school re-entry policies with varying degrees of success. Uganda's policy, for example, mandates that schools allow adolescent mothers to return to class after childbirth, while Tanzania has historically had restrictive policies that hinder school re-entry. However, challenges persist, particularly in refugee settlements in Uganda where economic and sociocultural barriers impede the education of young mothers. In 2017, the Tanzanian Government banned pregnant adolescents from attending school, and reintegration after childbirth. This was however overturned in a 2021 decision by The African Committee on the Rights and Welfare of the Child (Legal and Human Rights Centre and Centre for Reproductive Rights (on behalf of Tanzanian girls) v United Republic of Tanzania)

In Kenya, persistent challenges hinder adolescents' access to education, particularly among adolescent mothers. Teenage pregnancy remains a major driver of school dropout, disproportionately affecting adolescent girls and young women. According to the Kenya Demographic and Health Survey (2022), 15% of girls aged 15 to 19 have ever been pregnant, with 3% currently pregnant. Contributing factors include poverty, gender disparities in access to opportunities, early marriages, conflict, and limited access to quality sexual and reproductive health and rights (SRHR) information. While progress has been made in increasing school enrollment, a significant number of adolescent mothers remain out of school due to stigma, financial constraints, and inadequate school support systems. Schools are often ill-equipped with the necessary resources to accommodate pregnant learners and young mothers, further exacerbating dropout rates.

4 'School Re-Entry Policies Must Be Effective for Teenage Mothers in Africa | Blog | Global Partnership for Education' <<https://www.globalpartnership.org/blog/school-re-entry-policies-must-be-effective-teenage-mothers-africa>> accessed 21 February 2025.

5 Nisha Thomas | Jan 22 and 2025 | Girls' Education. 'The Right to Education for Pregnant Girls and Adolescent Mothers: Breaking Barriers and Biases' (The Education and Development Forum (UKFIET), 22 January 2025) <<https://www.ukfiет.org/2025/the-right-to-education-for-pregnant-girls-and-adolescent-mothers-breaking-barriers-and-biases/>> accessed 21 February 2025.

6 'The Social and Educational Consequences of Adolescent Childbearing - World Bank Gender Data Portal' (World Bank Gender Data Portal) <<https://genderdata.worldbank.org/en/data-stories/adolescent-fertility>>

Kenya's commitment to education and gender equality is firmly rooted in its 2010 Constitution, which guarantees the right to education for all citizens, upholds non-discrimination principles, and reflects its dedication to international standards, and other policy documents such as the National Guidelines on School-Re-entry. As a signatory to the Convention on the Rights of the Child (CRC), Kenya recognizes every child's right to education, emphasizing equality and non-discrimination. [8] This commitment extends to adolescent mothers, addressing their entitlement to dignified and equal education. Further, Kenya's adherence to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) underlines its dedication to gender equality in education. CEDAW's Article 10 emphasizes equal access to education, acknowledging the unique barriers faced by marginalized groups like adolescent mothers. It further combats stereotypes and discriminatory practices, which is essential for challenging societal norms that hinder these mothers' educational pursuits. [9]

Kenya's ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol, reinforces its commitment to women and girls' rights, including the right to education. Article 12 of this protocol highlights the importance of women's and girls' equal access to education and advocates for measures to eliminate discrimination [10], echoing Kenya's dedication to promoting gender-sensitive education policies.

7 Jan 22 and Education (n 5).

8 'Convention on the Rights of the Child | OHCHR' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 21 February 2025.

9 'Convention on the Elimination of All Forms of Discrimination Against Women | Refworld'



1.2. Problem Statement

The right to education is a fundamental human right. In Kenya, teenage pregnancy leading to school dropout constitutes a grave violation of this right. The high rate of 15 percent of adolescent girls being pregnant or already teen mothers, with over 13,000 girls dropping out of school annually due to pregnancy, [11] highlights the urgency of this human rights crisis. This situation directly contravenes Article 43 of the Kenyan Constitution, guaranteeing the right to education, and violates Kenya's obligations under international human rights treaties, including Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), all of which affirm the right of all children, including pregnant adolescents and young mothers, to access and complete their education without discrimination. These instruments create a binding obligation on the Kenyan government to ensure the realization of this right for every girl, irrespective of pregnancy.

Despite these legal safeguards and the existence of re-entry guidelines, policies, and frameworks intended to facilitate the return of these girls to school, their continued exclusion from education demonstrates a serious implementation gap. The disconnect between policy and practice is a major obstacle. While the legal and policy frameworks exist, their implementation and enforcement are demonstrably weak. Several interconnected factors contribute to this. Stigma and discrimination, pervasive and deeply entrenched, present significant barriers. Pregnant girls and young mothers often face severe stigma and discrimination from their families, communities, and within the education system itself. This creates a hostile and exclusionary environment that effectively denies them their right to education.

10 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa | African Union' <<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>> accessed 21 February 2025.

11 'Kenya-Demographic-and-Health-Survey-KDHS-2022-Summary-Report.Pdf' <<https://www.knbs.or.ke/content/uploads/2023/08/Kenya-Demographic-and-Health-Survey-KDHS-2022-Summary-Report.pdf>> accessed 21 February 2025.



A significant proportion of adolescent mother's experience internalized stigma, leading to diminished self-esteem and mental health challenges like depression, further impeding their ability to reintegrate into school. [12] The external stigma, often manifested in judgmental attitudes and discriminatory practices by teachers, peers, and community members, compounds this violation of their dignity and right to non-discrimination.

The inadequate support systems further exacerbate the situation. Many girls lack the essential support, including childcare, financial assistance, and psychosocial support, necessary to manage both motherhood and schooling. Without these crucial supports, returning to education becomes an insurmountable challenge, effectively denying them equal opportunities. Implementation gaps within the education system also contribute to the problem. Even when re-entry policies exist, their implementation is often deficient. This can involve bureaucratic obstacles, limited awareness among school staff about their obligations, or a limit of resources allocated to support pregnant and parenting students. Financial constraints, often linked to poverty, further restrict access to education. [13] Many families cannot afford the costs associated with schooling, even when re-entry is theoretically possible. This includes school fees, uniforms, and childcare, creating a discriminatory economic barrier to education.

12 Stacy Hodgkinson and others, 'Addressing the Mental Health Needs of Pregnant and Parenting Adolescents' (2014) 133 *Pediatrics* 114.

13 'Understanding How Poverty Is the Main Barrier to Education' <<https://www.globalcitizen.org/en/content/poverty-education-statistics-facts/>> accessed 21 February 2025

A critical human rights concern is the lack of awareness among girls, their families, and even school administrators about their rights to education and the existence of the National Re-entry guidelines of 2020. Furthermore, the right to access Comprehensive Sexuality Education (CSE), as enshrined in the Kenya Health Policy (2014–2030), which is crucial for preventing teenage pregnancy and empowering adolescents to make informed decisions about their sexual and reproductive health, is frequently denied. The implementation of Comprehensive Sexuality Education (CSE) is often hindered by cultural sensitivities, religious beliefs, and a lack of adequately trained personnel to deliver age-appropriate and culturally sensitive education. This denial of information and education violates their right to health, including access to sexual and reproductive health information and services.

Harmful cultural practices, such as child marriage and female genital mutilation, also contribute significantly to the violation of girls' rights. These practices, often rooted in discriminatory gender norms, force girls into early marriage, abruptly ending their education and increasing their vulnerability to teenage pregnancy. While these practices are illegal under Kenyan law (e.g., the Children Act and the Prohibition of Female Genital Mutilation Act), they persist in some communities, demonstrating a clear conflict between customary practices and national and international human rights standards. These practices represent a direct violation of girls' rights to education, health, and freedom from harmful practices.



The pervasive lack of awareness about their rights prevents girls from accessing the limited support that may be available. Addressing this multifaceted human rights crisis requires more than just policies. It demands a comprehensive and concerted effort to combat stigma and discrimination, provide comprehensive education, including robust and accessible CSE, eliminate harmful cultural practices, establish comprehensive and accessible support systems, strengthen implementation of existing policies and frameworks, and ensure that all stakeholders are fully aware of the rights of pregnant and parenting learners. Closing the gap between the progressive legal and policy framework and the lived realities of pregnant and parenting adolescents is essential for ensuring that all girls in Kenya can fully realize their fundamental human right to education.

A critical human rights concern is the lack of awareness among girls, their families, and even school administrators about their rights to education and the existence of the National Re-entry guidelines of 2020. Furthermore, the right to access Comprehensive Sexuality Education (CSE), as enshrined in the Kenya Health Policy (2014-2030), which is crucial for preventing teenage pregnancy and empowering adolescents to make informed decisions about their sexual and reproductive health, is frequently denied. The implementation of Comprehensive Sexuality Education (CSE) is often hindered by cultural sensitivities, religious beliefs, and a lack of adequately trained personnel to deliver age-appropriate and culturally sensitive education. This denial of information and education violates their right to health, including access to sexual and reproductive health information and services.



1.3. RESEARCH OBJECTIVE

- 1.To determine the existing gaps in implementation and dissemination of the National Guidelines for School Re-Entry in Early Learning and Basic Education 2020.
- 2.Assessing the legal and policy environment in regards to school re-entry and retention for Adolescent mothers and the pregnant learners.

1.4. RESEARCH QUESTIONS

- 1.What are the existing gaps in the implementation and dissemination of the National Guidelines for School Re-Entry in Early Learning and Basic Education 2020? against the legal frameworks
- 2.How do legal and policy frameworks influence the persistent dropout rates of pregnant learners and adolescent mothers despite their progressive provisions?



1.5 LEGAL AND POLICY FRAMEWORK

Kenya is committed to ensuring the right to education for all, particularly adolescent mothers, through binding international treaties that focus on eliminating gender-based discrimination. Key instruments like the UDHR, CRC, ICESCR, and CEDAW mandate support for pregnant adolescents to continue their education.

INTERNATIONAL LEGAL FRAMEWORKS

Universal Declaration of Human Rights (UDHR, 1948) Adopted in 1948, the UDHR establishes education as an inherent right for all individuals. Article 26 ensures that primary education is free and compulsory while higher education remains accessible based on merit. This foundational commitment not only paves the way for later treaties but also underpins inclusive policies that eliminate discrimination, ensuring every person, including vulnerable groups like adolescent mothers, has the opportunity to learn and develop. [14]

Convention on the Rights of the Child (CRC, 1989) Kenya ratified the CRC in 1990, reinforcing the UDHR's principles by focusing specifically on children's rights. Article 28 ensures every child has the right to education, with a mandate to progressively expand access to secondary education. Article 29 requires that education promote gender equality, non-discrimination, and respect for human rights, while Article 2 prohibits discrimination based on gender, pregnancy, or social status. [15]

14 United Nations General Assembly, 'The Universal Declaration of Human Rights (UDHR), New York, 1948'

15 'Convention on the Rights of the Child | OHCHR' (n8).

International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) Kenya's ratification of the ICESCR in 1972 underscores the important role of education in achieving social and economic empowerment. Article 13 of the ICESCR firmly establishes education as essential for the full realization of human rights. General Comment No. 13 (1999) urges states to dismantle barriers that hinder marginalized groups, including pregnant adolescents, from accessing education, while General Comment No. 14 (2000) explicitly asserts that adolescent pregnancy should never serve as a justification for educational exclusion. [16]

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) Ratified by Kenya in 1984, the CEDAW is a key treaty promoting gender equality in education. Article 10 mandates equal access to education for girls and calls for policies that support pregnant adolescents and young mothers in continuing their studies. Article 16(2) further requires measures to prevent child marriage and early pregnancies, which often disrupt education. General Recommendation No. 36 (2017) reinforces the need for barrier-free educational access for adolescent mothers, linking these efforts to broader goals of gender equality and social development. [17]

16 'International Covenant on Economic, Social and Cultural Rights | OHCHR' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> accessed 21 February 2025.
17 'Convention on the Elimination of All Forms of Discrimination Against Women | Refworld' (n 9)

International Covenant on Civil and Political Rights (ICCPR, 1966) Ratified by Kenya in 1972, the ICCPR upholds equality and non-discrimination in education. Article 26 ensures equal protection under the law, preventing discrimination against adolescent mothers in schools. Article 17 safeguards their privacy, prohibiting practices like forced pregnancy testing that lead to stigma and exclusion. [18]

UN Convention on the Rights of Persons with Disabilities (CRPD, 2006) Ratified by Kenya in 2008, the UN CRPD affirms the right to inclusive education. Article 24 mandates equal access to education for girls with disabilities, including adolescent mothers, ensuring they are not excluded from learning opportunities due to disability or pregnancy. [19]

Beijing Declaration and Platform for Action (1995) Adolescent pregnancy is recognized as a barrier to education, with a call for governments to implement policies that support school re-entry for young mothers, ensuring they are not excluded from learning opportunities. [20]

Sustainable Development Goals (SDGs, 2015) The SDGs emphasize the importance of education and gender equality in global development. Goal 4 advocates for inclusive and equitable education, ensuring that all girls, including adolescent mothers, can complete secondary education. Goal 5 underscores the need for gender-responsive education systems as a catalyst for economic and social progress. [21]

18 'International Covenant on Civil and Political Rights (Adopted 19 December 1966, Entered into Force 23 March 1976) 999 UNTS 171 Art 31(1)'

19 'Convention on the Rights of Persons with Disabilities | Refworld' <<https://www.refworld.org/legal/agreements/unga/2006/en/90142>> accessed 21 February 2025.

20 'Beijing Declaration and Platform of Action, Adopted at the Fourth World Conference on Women' (Refworld) <<https://www.refworld.org/legal/resolution/un/1995/en/73680>> accessed 21 February 2025.

21 'THE 17 GOALS | Sustainable Development' <<https://sdgs.un.org/goals>> accessed 21 February 2025.

REGIONAL LEGAL AND POLICY FRAMEWORKS

Kenya has ratified robust regional frameworks and mechanisms that obligate the state to protect the right to education for adolescent mothers.

The African Charter on Human and Peoples' Rights (ACHPR, 1981) The ACHPR, ratified by Kenya in 1992, upholds the right to education for all under Article 17. Article 18(3) further mandates special protections for women and girls, urging states to eliminate harmful cultural practices that obstruct their access to education. [22]

The African Charter on the Rights and Welfare of the Child (ACRWC, 1990) The ACRWC, ratified by Kenya in 2000, safeguards every child's right to education under Article 11. Article 21 further prohibits harmful traditional practices like child marriage, which hinder adolescent girls' school retention and educational progress. [23]

The Maputo Protocol (2003) (Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa) The Maputo Protocol mandates gender-responsive education policies under Article 12, ensuring adolescent mothers are not discriminated against. Article 14(2)(c) further obligates states to provide sexual and reproductive health education to protect girls from unintended pregnancies. [24]

22 'African Charter on Human and Peoples' Rights | African Union' <<https://au.int/en/treaties/african-charter-human-and-peoples-rights>> accessed 21 February 2025.

23 'The African Charter on the Rights and Welfare of the Child (ACRWC) | African Union' <<https://au.int/en/documents-45>> accessed 21 February 2025.

24 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa | African Union' (n 10).

African Union Agenda 2063 The African Union's Agenda 2063, specifically Aspiration 6, emphasizes the need for increased investment in girls' education and the implementation of policies that support adolescent mothers in completing their education.

East African Community Gender Policy (2018) It promotes gender-sensitive education policies and advocates for school re-entry programs that support young mothers in continuing their education. [25]

The Abuja Declaration on Education (2000) Emphasizes eliminating gender disparities in education and ensuring access to education for vulnerable populations, including adolescent mothers.

25 "East African Community Gender Policy,2018"
<<https://repository.eac.int/handle/11671/24328>> accessed 21 February 2025.

REGIONAL LEGAL AND POLICY FRAMEWORKS

African Union Agenda 2063 The African Union's Agenda 2063, specifically Aspiration 6, emphasizes the need for increased investment in girls' education and the implementation of policies that support adolescent mothers in completing their education.

East African Community Gender Policy (2018) It promotes gender-sensitive education policies and advocates for school re-entry programs that support young mothers in continuing their education.²⁵

Legal Instrument	Key Article	Implications for School Re-entry
CRC (1989)	Article 28	Guarantees free and compulsory education for all children, including adolescent mothers.
	Article 29	Mandates that education should promote gender equality and prevent discrimination.
CEDAW (1979)	Article 10	Prohibits the expulsion of pregnant girls from school and mandates re-entry programs.
ICESCR (1966)	Article 13	States must ensure equal access to secondary education and remove school re-entry barriers.
ICCPR (1966)	Article 26	Protects adolescent mothers from discrimination in education.

Legal Instrument	Key Article	Implications for School Re-entry
Maputo Protocol (2003)	Article 12	Calls for policies that facilitate re-entry of adolescent mothers into school.
ACRWC (1990)	Article 11	Guarantees the right to education and prohibits exclusion based on pregnancy or motherhood.

NATIONAL LEGAL AND POLICY FRAMEWORK

This section outlines the overarching legal and regulatory frameworks that protect and promote the right to education for all children, including adolescent mothers facing school re-entry challenges in Kenya. These include education laws, gender laws, child protection laws, health laws, and policies on reproductive rights that collectively ensure adolescent mothers are protected from discrimination and have opportunities to resume schooling after childbirth.

THE CONSTITUTION OF KENYA (2010)

- The Constitution of Kenya (2010) guarantees the right to education and gender equality through several key provisions. Article 43(1)(f) guarantees the right to education for every person, and Article 53(1)(b) ensures free and compulsory basic education for all children. Article 55(a) obligates the State to ensure that youth, including adolescent mothers, have access to education and training. Article 27(1) guarantees equality before the law, Article 27(3) mandates equal opportunities for men and women in education, and Article 27(4) prohibits discrimination on the grounds of sex, pregnancy, and marital status, ensuring that adolescent mothers are not excluded from education based on these factors.

- The Constitution also protects the rights of children and adolescent mothers by **Article 53(1)(d)**, which shields them from abuse, neglect, and harmful practices, and **Article 53(2)**, which prioritizes the best interests of children. Regarding reproductive health, **Article 43(1)(a)** guarantees the right to the highest attainable standard of health, including reproductive healthcare, while **Article 26(1)** ensures the right to life, including access to maternal healthcare. **Article 21(3)** places an obligation on all State organs and public officers to address the needs of vulnerable groups, including adolescent mothers and girls affected by early pregnancy, promoting gender equity and inclusion.

OTHER KEY NATIONAL LAWS SUPPORTING SCHOOL RE-ENTRY

Several national laws support the right to education and school re-entry for adolescent mothers, ensuring that pregnancy is not a barrier to educational attainment.

- **The Basic Education Act, 2013** establishes a legal framework for free and compulsory education in Kenya, with key provisions supporting the rights of adolescent mothers. **Section 28** ensures every child's right to free education, while **Section 34(2)(b)** directs schools to eliminate gender discrimination and promote equity. Section 39(1) prohibits the expulsion of pregnant learners, ensuring their re-admission after childbirth, providing a legal basis for school re-entry policies.
- **The Children Act, 2022** strengthens the protection of children's rights, including those of adolescent mothers, ensuring they have access to education. **Section 10** protects children from harmful practices that prevent their education, and **Section 39(1)** mandates non-discriminatory access to education for all children. Section 80 emphasises both parental and state responsibility to prevent disruptions in education due to pregnancy.

- **The Kenya Education Sector Policy on Re-entry (2020)** strengthens the rights of adolescent mothers by explicitly prohibiting forced pregnancy testing in schools, which has often been used to shame and exclude pregnant learners. It mandates the creation of a supportive and non-discriminatory school environment, ensuring that adolescent mothers are welcomed back into the education system without stigma.
- **The Sexual Offences Act (2006)** provides crucial legal protection for adolescent mothers by criminalising defilement under **Section 14**, ensuring that perpetrators of sexual violence against minors face prosecution. **Section 15** further mandates that fathers take financial responsibility for the child’s upbringing, preventing young mothers from being left to bear the burden alone.
- **School Health Policy (2018)** serves as a crucial framework in promoting the health and well-being of learners, including adolescent mothers, by integrating sexual and reproductive health education into the school environment. It emphasises the need for comprehensive healthcare services within learning institutions to ensure that pregnant and parenting learners receive the necessary medical and psychosocial support. This policy complements school re-entry efforts by addressing the stigma and discrimination that often prevent young mothers from continuing their education.
- **Youth-Friendly Services (YFS) Guidelines (2016)** reinforce this by advocating for accessible, non-judgmental, and responsive healthcare services for adolescents, ensuring that pregnant and parenting learners can access reproductive health services without fear of discrimination, the guidelines work in line with re-entry policies to support adolescent mothers in navigating both their educational and maternal responsibilities.

- **The HIV Prevention Act** plays a pivotal role in safeguarding the rights of adolescent mothers, particularly those living with HIV, by prohibiting discrimination in access to education and healthcare. This aligns with broader school re-entry initiatives by ensuring that young mothers, regardless of their HIV status, receive the support they need to remain in school.
- **Health Act (2017)** guarantees access to comprehensive healthcare services, including maternal health, which directly impacts adolescent mothers' ability to return to school and balance their educational and parenting responsibilities.
- **The Prohibition of Female Genital Mutilation (FGM) Act (2017)** is another critical law supporting adolescent girls' education by criminalising practices that contribute to early marriage and school dropouts. Many adolescent pregnancies in Kenya are linked to harmful cultural practices such as FGM and child marriage, making the enforcement of this act essential in keeping girls in school.
- **National Reproductive Health Strategy** provides an overarching framework that integrates maternal health, adolescent health, and education, reinforcing the need for stronger linkages between the education and health sectors to create an enabling environment for school re-entry.
- **The National Education Sector Strategic Plan (2023-2027)** outlines the government's commitment to gender equality and inclusive education, explicitly addressing the barriers faced by adolescent mothers. It prioritises resource allocation, policy enforcement, and cross-sector collaboration to ensure that school re-entry programs are not just theoretical commitments but actionable frameworks that translate into meaningful access to education for young mothers.



COMPARATIVE ANALYSIS OF THE NATIONAL GUIDELINES FOR SCHOOL RE-ENTRY IN EARLY LEARNING AND BASIC EDUCATION 2020 WITH OTHER KEY NATIONAL HEALTH POLICY FRAMEWORKS

Comparative Analysis of the National Reproductive Health Policy (2007) and the School Re-Entry Guidelines (2020)

Legal Instrument	Key Provisions	Implications for School Re-Entry
National Reproductive Health Policy (2007)	Section 4.2.3: Advocates for adolescent reproductive health services and gender equity.	Reinforces the need for accessible reproductive healthcare to support adolescent mothers' return to school.
	Section 3.4.1: Calls for improved maternal healthcare, Section 3.4.3: Advocates for pregnancy prevention education.	Aligns with the School Re-Entry Guidelines (2020) by ensuring that adolescent mothers receive necessary healthcare to continue schooling.
	Section 2.3.4: Prohibits gender- based discrimination in access to healthcare and reproductive rights.	Supports the 2020 guidelines' requirement that pregnant learners and adolescent mothers must not face discrimination in school.
	Section 7.1.5: Encourages national and community- level monitoring of reproductive health services.	Strengthens the enforcement of school re- entry policies by requiring schools to track and report re- admission cases.
	Section 7.2.1: Calls for collaboration between the health and education sectors to support adolescent mothers.	Aligns with school re- entry guidelines by ensuring that schools provide health services and referrals for adolescent mothers.

Comparative Analysis of the National Adolescent Sexual and Reproductive Health Policy (2015) and the National Guidelines for School Re-Entry in Early Learning and Basic Education (2020)

Legal Instrument	Key Provisions	Implications for School Re-Entry
National Adolescent Sexual and Reproductive Health Policy (2015)	Section 6.2.2: Mandates that adolescents have access to youth-friendly reproductive health services, including contraceptives, antenatal, and postnatal care..	Aligns with the 2020 Re-Entry Guidelines, which ensure that pregnant learners receive medical support and counselling to continue education
	Policy Objective 3: Promotes education as a tool for FGM prevention and rehabilitation.	Ensures that affected girls have structured re-entry pathways and legal protection.
	Section 4.1: Prohibits gender- based discrimination in accessing sexual and reproductive health services.	Reinforces the 2020 Guidelines’ provision that pregnant learners and adolescent mothers must not face stigma or discrimination in school.
	Section 6.3.1: Encourages collaboration between education and health sectors to provide reproductive health services to adolescents.	Aligns with Chapter 4.2 of the 2020 Guidelines, which requires a multi- sectoral approach involving the Ministries of Health and Education in implementing school re-entry programs

Comparative Analysis of the National Guidelines for the Provision of Adolescent Sexual and Reproductive Health Services in Kenya (2016) and the National Guidelines for School Re-Entry in Early Learning and Basic Education (2020)

Legal Instrument	Key Provisions	Implications for School Re-Entry
National Guidelines for the Provision of Adolescent Youth Friendly Services (2016)	Section 3.1.1: Defines youth- friendly health services, ensuring that adolescents have access to sexual and reproductive health services without stigma or discrimination.	Supports the 2020 School Re-Entry Guidelines’ provision that pregnant learners and adolescent mothers must not face stigma or discrimination in school.
	Section 4.2.3: Calls for adolescent-friendly HIV/AIDS prevention programs, including school-based interventions.	Aligns with the 2020 Guidelines’ emphasis on integrating HIV/AIDS awareness and prevention within school programs.
	Section 5.1.2: Prioritises comprehensive sexuality education in schools as a way to prevent early pregnancies.	Strengthens the 2020 Guidelines’ directive that schools must provide sexuality education to prevent repeat pregnancies among adolescent mothers.
	Section 6.3.4: Mandates collaboration between health and education sectors to provide reproductive health services for adolescents.	Aligns with Chapter 4.2 of the 2020 School Re-Entry Guidelines, which requires a multi-sectoral approach in implementing school re-entry policies.
	Chapter 3.3, Point 4: Requires that schools provide access to treatment and care services, including referrals.	Reinforces Section 19 of the HIV Act, ensuring that learners can access medical support while continuing their education.

Comparative Analysis of the Kenya School Health Policy (2018) and the National Guidelines for School Re-Entry in Early Learning and Basic Education (2020)

Legal Instrument	Key Provisions	Implications for School Re-Entry
Kenya School Health Policy (2018)	Chapter 3: Values and Life Skills: Stresses the importance of life skills education in schools, including health education, sexuality education, and personal development programs.	Aligns with the 2020 School Re-Entry Guidelines' focus on equipping learners with knowledge on reproductive health and rights to reduce school dropouts due to pregnancy.
	Chapter 4: Gender, Growth, and Development: Calls for comprehensive adolescent reproductive health services, including access to contraceptives, antenatal care, and prevention of early pregnancies.	Aligns with the 2020 Guidelines' emphasis on integrating HIV/AIDS awareness and prevention within school programs.
	Chapter 5: Child Rights and Responsibilities: Recognizes the right to quality education, healthcare, and protection from abuse and neglect.	Supports the 2020 Guidelines' principle that schools must ensure a safe environment for re-admitted learners.
	Chapter 6: Water, Sanitation, and Hygiene (WASH): Calls for adequate sanitation and menstrual hygiene management (MHM) facilities in schools.	Aligns with the 2020 Guidelines' requirement that schools must provide MHM facilities to ensure adolescent mothers can comfortably resume learning.

Legal Instrument	Key Provisions	Implications for School Re-Entry
Kenya School Health Policy (2018)	Chapter 7: Gender-Based Violence and Child Protection: Requires schools to implement child protection measures against sexual violence, FGM, and exploitation.	Reinforces the 2020 Guidelines' directive that survivors of gender-based violence must be supported and re-admitted to school without stigma.

2.0. METHODOLOGY

As part of the research methodology, Zamara Foundation and the Nyanza Initiative for Girls' Education and Empowerment collaborated to conduct the study. This study employed a systematic desk review as the primary research method to analyze Kenya's National Guidelines for School Re-Entry (2020) and their alignment with national, regional, and international legal frameworks. Through a comparative policy analysis, the study benchmarked Kenya's approach against best practices from other jurisdictions to identify gaps, strengths, and areas for improvement. The study relied exclusively on secondary data sources, selected through rigorous inclusion and exclusion criteria to ensure credibility, relevance, and legal research standards. A structured search strategy was implemented to uphold research integrity.

Step 1

Study Design and Methodology

- The research adopted a systematic desk review as the primary method, allowing for an in-depth legal and policy analysis.
- The study focused on the National Guidelines for School Re-Entry (2020) and assessed their alignment with national, regional, and international legal frameworks.
- A comparative policy analysis was conducted to benchmark Kenya's policies against best practices from other jurisdictions.



Step 2

Data Collection and Selection

- The study relied exclusively on secondary data sources, selected through rigorous inclusion and exclusion criteria to ensure credibility, relevance, and adherence to legal research standards. A structured search strategy was implemented, ensuring research integrity and reliability.

Step 3

Systematic Search Strategy

- Keyword Selection and Boolean Logic Application
- Search terms such as "school re-entry policy AND Kenya" and "education policies for adolescent mothers" were used.
- Source Selection and Database Utilisation
- Data was drawn from Google Scholar, African Journals Online (AJOL), UN Treaty Body Databases, OHCHR repositories, the Ministry of Education archives, and national legislative databases. Peer-reviewed articles, government reports, and international policy documents were also utilised sources of the data.





Step 4

Data Extraction and Thematic Categorization

Key findings were systematically extracted and categorised based on:

- Legal provisions
- Structural challenges
- Implementation barriers
- Policy effectiveness
- Comparative best practices

Step 5

Selection Criteria

To ensure credibility, relevance, and reliability, the study applied strict selection criteria when identifying sources. It prioritised legal and policy documents, government reports, international frameworks, and scholarly research directly addressing school re-entry policies for pregnant learners and adolescent mothers. Preference was given to peer-reviewed studies, official statistics, judicial decisions, and comparative legal analyses from both national and international contexts. Reports from reputable NGOs, think tanks, and intergovernmental organisations were considered to provide diverse insights into policy effectiveness and implementation challenges. To maintain research integrity, the study excluded opinion-based content, non-peer-reviewed materials, outdated policies, duplicate studies, and unverified online sources. Laws and policies unrelated to education rights were also omitted unless they directly influenced school re-entry frameworks.





Step 6

Data Analysis Process

The study used a structured content analysis to review legal and policy documents, government reports, and treaty body observations, identifying key themes through an iterative coding process. A human rights and child rights lens guided the analysis, assessing legal protections, policy gaps, implementation challenges, and socio-cultural barriers affecting school re-entry for adolescent mothers.

Comparative reviews of national and international frameworks helped evaluate Kenya's compliance with global best practices. The process also examined structural barriers, funding limitations, and institutional weaknesses, ensuring findings were aligned with principles of non-discrimination, child participation, and gender equality.



Step 7

Comparative Legal Analysis

The study conducted a comparative legal analysis by systematically reviewing school re-entry policies across different jurisdictions to assess how various legal systems address barriers faced by adolescent mothers. This involved examining legal texts, policy directives, and judicial decisions to identify similarities, differences, and best practices. The process included analyzing how laws define the right to education, the extent to which they prohibit discrimination based on pregnancy, and the enforcement mechanisms in place. National policies were assessed against regional and global legal standards to determine alignment and gaps. Multiple sources, including government reports, treaty body observations, and scholarly analyses, were cross-referenced to ensure accuracy and mitigate bias.

3.0. FINDINGS

LEGAL AND POLICY ENVIRONMENT

Despite the existence of strong national, regional, and global commitments supporting school re-entry, the effectiveness of Kenya's guidelines remains limited by several factors. Weak enforcement mechanisms mean that many schools continue to find ways to exclude adolescent mothers, either through outright expulsion or more subtle forms of discouragement. Cultural and societal resistance further undermines the implementation of the guidelines, as deeply entrenched patriarchal norms, reinforced by pervasive stigma against pregnant learners and adolescent mothers, often dictate that a girl who becomes pregnant has failed morally and is unfit to continue with her education. This stigma manifests through public shaming, isolation by peers and teachers, and discriminatory school environments that discourage re-entry and perpetuate cycles of exclusion and inequality. The limited intersectoral collaboration between education, health, and social protection systems weakens the support structures that young mothers need to successfully return to school. While Kenya's policies align with international and regional frameworks, gaps in implementation, accountability, and resource allocation hinder their full realization. Strengthening enforcement, enhancing community awareness, and improving linkages between legal provisions and practical interventions are critical steps toward ensuring that school re-entry policies genuinely translate into educational opportunities for adolescent mothers. This section presents an analysis of how these legal and policy frameworks either facilitate or hinder the realisation of the guidelines.

NATIONAL LEVEL

- At the national level, the Constitution of Kenya (2010) provides a strong foundation for the re-entry guidelines, as it guarantees the right to education under Article 43(1) (f) and mandates free and compulsory basic education under Article 53(1)(b). The constitutional principle of non-discrimination, outlined in Article 27,[26] aligns with the guidelines' emphasis on ensuring that adolescent mothers are not denied educational opportunities. Despite these constitutional protections, enforcement remains a challenge, as many schools still impose informal barriers that prevent young mothers from returning to class. The Basic Education Act (2013) explicitly prohibits the expulsion of pregnant learners, reinforcing the guidelines' objectives. [27] Yet, in practice, stigma and lack of school-based support mechanisms continue to act as deterrents, revealing a gap between legal provisions and their actual implementation.
- Other national policies further promote school re-entry and retention. The Children Act (2022), which recognizes the right of every child to education without discrimination. This Act complements the re-entry guidelines by emphasizing the shared responsibility of parents, guardians, and the state in ensuring continued access to education. The National Gender and Equality Commission Act (2011) supports gender-responsive interventions in education, reinforcing the need for inclusive policies that prioritize adolescent mothers. However, despite these legal provisions, the unclear enforcement mechanisms means that many schools and communities still fail to fully uphold the rights of young mothers.

- The re-entry guidelines also intersect with national health and reproductive rights policies. The National School Health Policy (2018) recognizes the importance of adolescent sexual and reproductive health (SRH) services within schools, which directly aligns with the need for psychosocial and health support for young mothers returning to education. However, gaps in the availability of adolescent-friendly SRH services undermine this link, making it difficult for pregnant learners to access the support envisioned in the guidelines. The HIV Prevention and Control Act (2006) and the Health Act (2017) provide a legal basis for integrating reproductive health services into schools, yet these services remain limited in many regions, weakening the implementation of re-entry policies. Moreover, while the FGM Act (2011) and the National Education Sector Strategic Plan (2023-2027) advocate for the protection and retention of girls in school, enforcement remains inconsistent, particularly in communities where child marriage and other harmful practices continue to contribute to school dropouts.

26 'Kenya Law: The Constitution of Kenya'
<<https://kenyalaw.org/kl/index.php?id=398>> accessed 21 February 2025.
27 'BasicEducationActNo_14of2013.Pdf'
<http://www.parliament.go.ke/sites/default/files/2017-05/BasicEducationActNo_14of2013.pdf> accessed 21 February 2025.

REGIONAL LEVEL

- At the regional level, Kenya is bound by several commitments that reinforce the principles of the re-entry guidelines. The African Charter on the Rights and Welfare of the Child (ACRWC), to which Kenya is a signatory, guarantees every child's right to education under Article 11 and calls for state efforts to eliminate barriers that prevent girls from continuing their education. Similarly, the Maputo Protocol (2003), which calls for the elimination of gender-based discrimination in education, aligns with the objectives of the re-entry guidelines. However, the persistence of stigma and community resistance in Kenya indicates a disconnect between these regional commitments and their local implementation. A significant legal precedent was set by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) in its ruling against Tanzania's school ban on pregnant girls, reinforcing the notion that states must actively remove discriminatory policies and practices that hinder access to education. This ruling offers an important reference point for Kenya in ensuring that its own school re-entry policies are not just present in law but actively implemented.
- Kenya's commitment to gender-responsive education policies is also reflected in the African Youth Charter (2006), which advocates for equal access to education for young mothers. The charter emphasizes the need for holistic support mechanisms, including childcare and financial assistance, aspects that remain largely absent in Kenya's current re-entry framework. While the guidelines provide a policy direction, their implementation is often left to the discretion of individual schools, leading to inconsistencies in how adolescent mothers are reintegrated into the education system. The lack of explicit monitoring and enforcement mechanisms weakens the link between regional commitments and actual policy outcomes at the national level.

GLOBAL LEVEL

- At the global level, several international frameworks reinforce Kenya's obligation to ensure school re-entry for adolescent mothers. The Convention on the Rights of the Child (CRC) (1989), under Article 28, recognizes the right to education, while Article 2 explicitly prohibits discrimination, including on the basis of pregnancy. The re-entry guidelines align with these commitments by seeking to remove barriers that prevent adolescent mothers from returning to school. However, weak enforcement at the community level means that many young mothers still face exclusion, revealing gaps between global obligations and national realities. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) calls for proactive measures to ensure that girls who become pregnant are not denied education. While Kenya's re-entry guidelines theoretically support this principle, the poor accountability mechanisms make it difficult to ensure compliance at the school level.
- Kenya's education policies are also informed by the Sustainable Development Goals (SDGs), particularly SDG 4, which calls for inclusive and equitable quality education, and SDG 5, which emphasizes gender equality. The school re-entry guidelines contribute to these global goals by promoting the retention of adolescent mothers in education. However, their impact is limited by persistent stigma, financial constraints, and inconsistent enforcement. UNESCO's Comprehensive Sexuality Education (CSE) Guidelines advocate for integrating SRH education into school curricula to empower learners with the knowledge they need to make informed decisions. While Kenya has made some strides in implementing sexuality education, resistance from conservative groups has hindered full integration, weakening the support system for adolescent mothers within schools.

COMMITMENTS AND POLICY SHIFTS

- Kenya's withdrawal from the East and Southern Africa (ESA) Commitment on comprehensive sexuality education [28] has had far-reaching implications for school re-entry and retention efforts, particularly in relation to adolescent sexual and reproductive health rights (ASRHR). The ESA Commitment, which was signed in 2013 by 21 countries, aimed to improve comprehensive sexuality education (CSE) and adolescent-friendly sexual and reproductive health (SRH) services to address challenges such as teenage pregnancies, early marriages, and HIV infections. By pulling out of this regional commitment, Kenya has weakened its alignment with progressive policies that prioritize access to SRH information and services for young people, which are crucial for preventing unplanned pregnancies and ensuring that adolescent mothers can successfully return to school. The withdrawal of the ESA commitment signals a reduced political commitment to regional agreements that support ASRHR, including policies ensuring the re-entry and retention of young mothers in education. Without the ESA framework guiding national policies, there is a risk that Kenya's school re-entry guidelines will face increased resistance from conservative stakeholders who oppose comprehensive sexuality education and adolescent reproductive health services. The ESA Commitment provided a regional accountability mechanism that encouraged governments to invest in evidence-based programs supporting adolescent learners, including those who become pregnant. Its absence creates a policy vacuum where school re-entry efforts may struggle to gain sustained government support, potentially leading to fragmented implementation and reduced funding for programs that assist adolescent mothers in resuming their education.

28 'Alarm as Kenya Pulls out of Regional Accord on Teen Sex Education | Nation' <<https://nation.africa/kenya/health/alarm-as-kenya-pulls-out-of-regional-accord-on-teen-sex-education-4237324?s=03>> accessed 21 February 2025.

COMMITMENTS AND POLICY SHIFTS

- Beyond the regional context, Kenya can draw valuable lessons from the ACERWC ruling on Tanzania (2022), which addressed state-imposed barriers to adolescent mothers' education. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) ruled against Tanzania's policy of expelling pregnant learners and banning them from re-entering school, stating that such practices violate children's rights to education, non-discrimination, and dignity. The ruling recommended that Tanzania prohibit forced pregnancy testing, a practice that has been documented in some Kenyan schools as well, where learners are subjected to invasive and humiliating procedures that deter them from continuing their education. Kenya must take proactive steps to ensure that no learner is subjected to such violations, reinforcing a rights-based approach to school re-entry.
- The ACERWC ruling emphasized the **need for structured support programs** to facilitate school re-entry, including psychosocial counseling, childcare services, and financial assistance. These recommendations provide a clear framework that Kenya can adopt to **strengthen its approach to school re-entry**. While Kenya's guidelines acknowledge the need for school-based support, implementation remains weak, with many adolescent mothers facing stigma and inadequate resources upon returning to school. By aligning with the ACERWC recommendations, Kenya can **enhance its legal and policy frameworks** to ensure that adolescent mothers receive the necessary support to remain in school and complete their education.

COMMITMENTS AND POLICY SHIFTS

- The Tanzanian case sets a legal and political precedence that Kenya can use to push for stronger enforcement of school re-entry policies. The ruling underscores the obligation of African states to uphold children's rights as outlined in the African Charter on the Rights and Welfare of the Child (ACRWC), reinforcing the need for Kenya to integrate these commitments into national education policies. Given Kenya's withdrawal from the ESA Commitment, leveraging the ACERWC recommendations becomes even more critical in maintaining momentum for adolescent girls' education and reproductive rights.



BEST PRACTICES IN SCHOOL RE-ENTRY AND RETENTION

- Regionally, other countries have adopted more structured approaches to school re-entry, offering important lessons for Kenya. Malawi's Re-Admission Policy [29] provides financial and psychosocial support to young mothers, addressing key barriers that Kenya's guidelines do not fully tackle. Botswana's Education Re-Entry Policy [30] mandates a standardised reintegration process, reducing the inconsistencies that are currently evident in Kenya's decentralised approach. Zambia's Re-Entry Policy [31] incorporates community sensitisation programs to counter stigma, a practice that Kenya could strengthen to enhance the effectiveness of its guidelines.
- The African Union's **Campaign to End Child Marriage** has reinforced the link between early pregnancies, education, and systemic barriers that hinder girls' retention in school. The **African Charter on the Rights and Welfare of the Child (ACRWC)** mandates state parties to take all necessary measures to ensure that pregnant learners continue their education without discrimination. The **ACRWC ruling on Tanzania (2022)** set a precedent by recommending the prohibition of forced pregnancy testing in schools and urging governments to implement structured re-entry programs, demonstrating a legal framework that can be adapted by other African nations. The **Southern African Development Community (SADC) Model Law on Eradicating Child Marriage** and protecting children already in marriage provides guidance on ensuring educational continuity for adolescent mothers.

29 'Re-Entry Policies in Other African Countries'
<<https://campaignforeducation.org/images/downloads/f6/1784/reworked-tenmet-re-entry-policy-brief.pdf>> accessed 21 February 2025.
30 *ibid*.

31 Namakau Kakanda Sinkala, 'Policy Brief Pregnancy School Re-Entry Policy in Zambia' (2021)
05 International Journal of Research and Innovation in Social Science 288.

OTHER KEY FINDINGS

3.1. Gaps in dissemination of the guidelines to parents, guardians, teachers, school.

- The National Guidelines for School Re-Entry in Early Learning and Basic Education (2020) emphasise the Ministry of Education's central role in ensuring widespread dissemination of re-entry policies. This responsibility extends beyond national-level directives to a multi-tiered approach involving regional, county, sub-county, and institutional actors. The Ministry, in collaboration with partners and stakeholders, is expected to facilitate awareness campaigns, capacity-building programs for educators, and engagement with local communities to create supportive environments for returning learners. Effective dissemination requires strategic partnerships with civil society organisations, county education offices, and school administrators to ensure that the guidelines reach and are enforced at the grassroots level. However, despite this directive, challenges persist in consistency and accessibility, highlighting the need for a more structured, well-resourced rollout to ensure that all learning institutions are equipped to uphold the rights of re-entering learners.
- In a study done in schools within Vihiga County (Leonard Latan Imbosa et al, 2022), 70% of the principals knew that there exists a National Guidelines for School Re-Entry in Early Learning and Basic Education for teen mothers. However, 30% of the respondents had never heard about the policy, rather, they had gathered through media that expectant students and teen mothers should be supported to complete secondary education.

- Further, among those who were aware of the guidelines, 60% did not have a copy of the policy in school. The 40% who claimed to have a copy did not produce evidence of having it when asked to do so. These findings have implications on the effectiveness of the implementation of the guidelines within the schools. This highlights inadequate dissemination of the guidelines which poses serious loopholes with respect to the consistency in the execution and effective implementation of the guiding principles. Possibly, the lack of a documented guide produced ad-hoc measures that may not have yielded optimal direction to support the retention of teen mothers in Vihiga County.[32]
- According to an initiative named 4Ts ('Trace, Track, Talk and reTurn') done by the population council, unavailability of the school re-entry guidelines in schools was identified as a major challenge for school re-entry during the phase I implementation of the initiative.[33] As a result, many head teachers who were supposed to oversee its implementation were not aware or lacked clarity on the key provisions of the school re-entry guidelines, making it difficult for them to implement[34] and monitor.[35] These findings can also be attributed to the high number of teen mothers who are out of school in other parts of the country as well. This gap points out the need to consider effective dissemination strategies while involving all the relevant stakeholders to enhance optimal guideline implementation.

32 '(PDF) Re-Entry Policy and Retention of Expectant Students and Teen Mothers in Public Secondary Schools in Vihiga Sub-County, Kenya' <https://www.researchgate.net/publication/359495548_Re-entry_Policy_and_Retention_of_Expectant_Students_and_Teen_Mothers_in_Public_Secondary_Schools_in_Vihiga_Sub-County_Kenya> accessed 21 February 2025.

33 "'Getting Girls Back to School in Kenya: The 4Ts ('Trace, Track, Talk an' by George Odwe, Chi-Chi Undie et Al.' <https://knowledgecommons.popcouncil.org/departments_sbsr-pgy/1622/> accessed 21 February 2025.

34 *ibid.*

35 *ibid.*

3.2.Gaps in implementation of the Guidelines

- The implementation of the National Guidelines for School Re-Entry faces critical gaps, particularly in defining the roles and responsibilities of key stakeholders such as parents, teachers, guardians, and schools. While the guidelines acknowledge the need for a supportive ecosystem, there is limited clarity on how these actors should be actively involved in ensuring a smooth transition for re-entering learners. The coordination between schools and health facilities remains weak, despite the essential role of healthcare services in addressing the physical and psychosocial needs of adolescent mothers.[36] A major challenge also lies in government resourcing, insufficient investment in infrastructure, such as childcare facilities, lactation rooms, and psychosocial support services within schools, continues to hinder effective re-entry. Without structured funding and accountability mechanisms, the burden of implementation is often shifted to schools and communities, exacerbating inequalities in access to education for young mothers.

36 'Adolescent Pregnancy and Challenges in Kenyan Context: Perspectives from Multiple Community Stakeholders - PMC' <<https://pmc.ncbi.nlm.nih.gov/articles/PMC5937539/>> accessed 21 February 2025.

3.2.1. Opportunities for Enhanced Clarity in the Guidelines

- The guidelines outline that learners who become pregnant shall be readmitted to the same class/form/grade they were in before they left the school to deliver the baby unconditionally. However, if the learner wishes to join another school, she will be supported by the school head through the Sub-County Director of Education to gain admission into the school. This process of readmission is not clear, especially when one opts to be readmitted to a new school. It leaves room for questions on how this process should happen. For instance, it ought to have given directives on a step-by-step procedure including if the head teacher needs to write a letter and reason for transfer; the letter then taken to the Sub-County Director of Education for authorisation to the new school. In the event the learner goes to the preferred school and is denied access, what happens and how this should be addressed also needs to be captured.

3.2.2. Guidance and counselling in schools

- The Constitution of Kenya, 2010, Article 43. (1a)[37] provides that every Kenyan has the right to the highest attainable standard of health, including psychological health. The school re-entry guidelines, despite providing for guidance and counselling for pregnant girls and teen mothers, do not clearly state the standards in which the guidance and counselling should be done and by whom. For example, the guidelines do not specify the type of training or certification that the guidance and counselling teachers are required to have in compliance with the Counsellors and Psychologists Board of Kenya, which registers and licenses qualified professionals as well as supervises the professional conduct and practice of the counsellors.[38]
- The AAAQ framework (Availability, Accessibility, Acceptability and Quality) describes that for a service to be termed effective it has to be acceptable and respectful of the culture of individuals, confidential and from an informed consent, though in most cases, no consent is obtained from the learners before accessing services or information. The confidentiality of the results is also compromised as this is shared with other teachers and the school administration and even to some extent, with the parents before the student herself is informed of the same.

37 'Kenya Law: The Constitution of Kenya' (n 26
38 'Counsellors and Psychologists Act - Kenya Law'
<<https://new.kenyalaw.org/akn/ke/act/2014/14/eng@2022-12-31>> accessed 21 February 2025.

OTHER KEY FINDINGS

3.2.3. Compensation for learning period

- The guidelines clarify that the pregnant learner can remain in school for as long as possible and are expected to re-enter school at least six months after delivery, at the beginning of the next calendar year. However, there is no provision on how the lost time should be compensated, which has made the learners unnecessarily waste learning periods at home. The ACERWC ruling in the case of Tanzania (2022) recommends that the state party provide special support programmes to compensate for lost years and ensure better learning outcomes for the returned girls. [39] This recommendation to the Republic of Tanzania can also be replicated in Kenya's education system.

39 Gina Bekker, 'The African Committee of Experts on the Rights and Welfare of the Child' in Manisuli Ssenyonjo (ed), *The African Regional Human Rights System* (Brill | Nijhoff 2012) <<https://brill.com/view/book/edcoll/9789004218154/B9789004218154-s013.xml>> accessed 7 November 2024.

OTHER KEY FINDINGS

3.2.4. Implementation of the policy in discriminatory ways

- Whereas the guidelines provide the steps to be taken if a learner is confirmed pregnant at school, there are no provisions of how the learning institutions should determine the pregnancy status of the girl; it varies from one learning institution to the other. It is sad to note that in most cases, it is mandatory and regularly conducted for female students. A preliminary fact finding study conducted by Mavis Olum 2010, indicated that mandatory pregnancy screening in secondary boarding schools in Kenya has a history running up to the early 1990s, but the methods and capacity of school officials who conduct pregnancy tests still remains unclear.[40] This scenario makes the learners aware that they are being monitored by school officials, and not only does it instill fear of premarital sex and pregnancy, but it also prevents pregnant students from hiding their pregnancy status. This practice of pregnancy testing contradicts the progressive proposals in the Care and Protection of Child Parents Senate Bill 2019. The Bill stipulates that where the principal of the institution of basic education is of the opinion that child may be pregnant, the principal shall refer the child to a health institution for a medical examination and such other health examination as may be necessary to determine the status of the child, and a child shall not be compelled to undergo a medical examination where she refuses to do so and, the school will not be liable for any eventuality that may arise.[41]

40 Mavis Akinyi Olum, 'Competing Ideas on Adolescent Girls' Sexuality: Mandatory Pregnancy Screening in Secondary Boarding Schools in Kenya' <<https://thesis.eur.nl/pub/8618/>> accessed 7 November 2024.

41 'The Care and Protection of Child Parents Bill, 2019.Pdf' <<http://www.parliament.go.ke/sites/default/files/201909/The%20Care%20and%20Protection%20of%20Child%20Parents%20Bill%2C%202019.pdf>> accessed 7 November 2024.

- The practice of forced pregnancy testing also violates the provisions of the Africa Committee of Experts on the Rights and Welfare of the Child on non-discrimination, best interests of the child, protection of privacy, education, and health services; protection against child abuse and torture; and protection against harmful social and cultural practices, as found in the Tanzanian decision. In the decision, the Committee established that the terminology of ‘mandatory’ testing contains the same meaning as ‘forced’ since the girls have no option of refusing the test to access education. [42] The ACERWC Committee viewed that no proof is required as to an increase in dropouts of school to establish that forced pregnancy testing is a violation of the right to education. Any form of unlawful requirement to access and continue education and any violation of children’s rights that occurs in schools and curtails education is, in and by itself, a violation of the right to education. Forced or mandatory pregnancy testing to access education is a pre-condition that is not aimed at fostering education. Rather, it violates the rights. Its recommendations to the United Republic of Tanzania stated the immediate prohibition of mandatory pregnancy testing in schools, health facilities and public announcements, and reviewing the law on which the policy is based.[43]

42 Bekker (n 39).

43 Virginia Sobol, ‘African Committee Recommends Tanzania Reform Policies That Barred Pregnant Girls from School’ (Center for Reproductive Rights, 20 September 2022) <<https://reproductiverights.org/acerwc-ruling-tanzania-pregnant-schoolgirls/>> accessed 7 November 2024.



4.0. RECOMMENDATIONS

1. Strengthening Data for Policy Action

- Despite existing laws, high dropout rates due to unintended pregnancies, expulsions, and stigma persist. There is a critical need to scale up to primary data collection to provide concrete evidence of the gaps identified in legal and policy analysis. The Ministry should invest in nationwide research to capture real numbers and lived experiences, strengthening advocacy, informing policy improvements, and driving targeted interventions.

2. Institutionalise a Multi-Sectoral Coordination Framework for School Re-Entry.

- The government should establish and enforce a mandatory coordination framework among the Ministries of Education, Health, and Social Protection, working alongside civil society organizations, regional bodies, and community leaders. This framework should ensure the effective implementation of school re-entry policies, integrate adolescent-friendly reproductive health services into the education system, and eliminate stigma against pregnant learners and young mothers. The Ministry of Gender should also be actively involved in addressing gender-specific barriers to re-entry and retention.



3. Strengthen Awareness and Dissemination of the National Guidelines for School Re-Entry.

The Ministry of Education should lead sustained, well-funded national awareness campaigns targeting schools, parents, caregivers, communities, and students. These campaigns should emphasize the right to education for all learners, the availability of support services, and the importance of creating inclusive learning environments. Collaboration with civil society, regional bodies, and international partners should be leveraged to ensure the guidelines reach all education stakeholders at national, county, and grassroots levels.

4. Prohibit Mandatory Pregnancy Testing and Enforce Non-Discriminatory Practices in Schools.

- The government should immediately ban mandatory pregnancy testing in all learning institutions and ensure adherence to national and regional human rights standards, including the African Charter on the Rights and Welfare of the Child. School policies should be reviewed to remove discriminatory practices and safeguard the dignity, privacy, and educational rights of adolescent mothers. The Ministry of Education, in partnership with the Ministry of Gender and international human rights bodies, should enforce accountability measures against institutions that violate these principles.



5. Develop and Implement Structured Learning Recovery Programs for Adolescent Mothers.

The Ministry of Education should create and fund structured remedial programs, catch-up classes, and flexible learning options to compensate for lost learning time. Drawing on best practices, such as the ACERWC's recommendations in Tanzania, Kenya should establish policies that support young mothers' academic success and prevent further educational disadvantages. Regional and international development partners should support these programs through financial and technical assistance.

6. Standardize and Regulate Guidance and Counseling Services in Schools.

- The Ministry of Education should establish and enforce clear national standards for school-based guidance and counseling services. All counseling services for pregnant learners and young mothers should be provided by certified professionals in compliance with Kenya's Counsellors and Psychologists Board regulations. Services must uphold confidentiality, cultural sensitivity, and informed consent. The Ministry of Gender and social protection agencies should collaborate to provide additional psychosocial support for adolescent mothers, their families, and caregivers.

5.0. CONCLUSION

Kenya's legal environment recognizes education as a fundamental right, reinforced by constitutional provisions, statutory laws, and policy frameworks that aim to ensure equitable access for all learners, including adolescent mothers. The Constitution of Kenya explicitly guarantees the right to free and compulsory basic education, prohibiting any form of discrimination that may hinder school re-entry for pregnant and parenting learners. Kenya is also a signatory to various international and regional human rights instruments, which obligate the state to eliminate barriers to education, including those stemming from pregnancy-related stigma and systemic exclusion. Nationally, laws and policies emphasize non-discrimination, child protection, and the importance of an inclusive education system, yet challenges persist in implementation. Societal attitudes, limited institutional capacity, and resource constraints often undermine these legal protections, leaving many adolescent mothers vulnerable to school dropout and economic marginalization. Strengthening enforcement mechanisms, enhancing awareness, and ensuring coordinated efforts across education, health, and social sectors are crucial in translating legal commitments into meaningful change for adolescent mothers.

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