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RESEARCH ARTICLE

Mandatory Pregnancy Testing in Uganda: Constitutional and Human Rights Implications

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Abstract
This article examines the constitutional and human rights implications of mandatory pregnancy testing in Ugandan schools. Using a doctrinal legal approach, it analyses the practice through the lens of Uganda's 1995 Constitution, regional and international human rights instruments, as well as relevant case law. The article argues that mandatory pregnancy testing and the expulsion of pregnant students infringe on the rights to privacy, non-discrimination, dignity and education. It further maintains that the gendered nature of the practices systematically targets girls, reinforcing harmful cultural norms and institutionalizing educational exclusion. Through a comparative analysis of jurisprudence from East, West and southern Africa, the article demonstrates that such practices fail to meet constitutional standards. It concludes by calling for the abolition of mandatory pregnancy testing, the adoption of inclusive policies that support pregnant learners and the urgent need for legal reforms to align Uganda's education system with its human rights obligations.

Keywords: mandatory pregnancy testing; school; Uganda; law; human rights

Introduction: incidence of mandatory pregnancy testing

In April 2024, a government-aided primary school in Tororo, Eastern Uganda, conducted a pregnancy test on one of their pupils, whom some teachers and fellow learners suspected of being pregnant and was subsequently sued.[1] The test was conducted without the consent of the pupil or her parents. The applicants argued that the school's mandatory pregnancy test was a violation of various rights, including privacy, freedom from discrimination, dignity, equality and education. They also contended that the test had been conducted by subjecting the learner to "extreme manual kneading/physical pressing of the lower abdomen". Having found that the learner was pregnant, the school proceeded to expel the learner. The school authorities averred that the learner was neither medically

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1 *Women With A Mission & Others v The School Management Committee Busamba Primary School* Misc Cause No 001 of 2024; J Omollo "Parent sues school over expelling pregnant pupil" (25 April 2024) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/national/parent-sues-school-over-expelling-pregnant-pupil-4602804> (last accessed 31 August 2025).

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examined by the school nor was she expelled.[2] The minor, through her parents, sued the school on the above grounds. The matter was later settled out of court, and the learner was re-admitted to the school to continue with her studies.[3] The out-of-court settlement required the school to make certain accommodations including permitting the learner to take breastfeeding breaks at regular intervals during the day.[4]

In Uganda, the practice of compulsorily testing both minors and adults for pregnancy at learning institutions is commonplace.[5] While little official quantitative data exists on the practice, the government enacted the Revised Guidelines for the Prevention and Management of Teenage Pregnancy in School Settings in Uganda (Pregnancy Guidelines) aimed at reintegrating pregnant girls and adolescent mothers into the education system. Primary and secondary schools often conduct routine assessments to determine if their female pupils are pregnant, even before any physical signs or symptoms appear.[6] The same is true for universities and other institutions of higher learning, where blood samples are reportedly drawn from students for more accurate tests.[7] Once pupils and students are found to be pregnant, they are usually suspended from school until they have given birth or expelled, never to return to that particular school. Students might lose the privilege of free university accommodation at some public universities.[8] Private tertiary institutions often follow the lead of primary and secondary schools, suspending or expelling students.[9] Increasingly, the practice has come under scrutiny following advocacy efforts for learners who have been expelled primarily from tertiary institutions.[10]

This article uses a doctrinal legal approach to examine whether the practice of mandatory pregnancy testing and the expulsion of pregnant students in Ugandan schools is compatible with constitutional guarantees and Uganda's international and regional human rights obligations. Specifically, it interrogates the legality of these practices through an analysis of primary legal sources, including the 1995 Constitution of Uganda, the United Nations Convention on the Rights of the Child

2 See affidavits in reply of Jamori Vincent, Zerubaberi Gusino and Mangeni Paul (on file with the authors).

3 Consent order dated 25 September 2024 (on file with the authors).

4 Ibid.

5 "Expulsion of pregnant students: protection or abuse" (19 June 2025) *The Independent*, available at: <https://www.independent.co.ug/expulsion-of-pregnant-students-protection-or-abuse/> (last accessed 31 August 2025); R Schraer "Kicked out of school for being pregnant; forced tests violating girls' rights in East Africa" (10 April 2025) *The Bureau of Investigative Journalism*, available at: <https://www.thebureauinvestigates.com/stories/2025-04-10/kicked-out-of-school-for-being-pregnant-forcible-tests-violating-girls-rights-in-east-africa> (last accessed 31 August 2025).

6 S Katushabe "High schools testing for pregnancy in darkness" (27 April 2026) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/education/high-schools-testing-for-pregnancy-in-darkness-5437736> (last accessed 4 August 2026). See also C Kiiza "Teenage mothers decry school expulsions over pregnancy" (19 June 2025) *ChimpReports*, available at: <https://chimpreports.com/teenage-mothers-decry-school-expulsions-over-pregnancy/> (last accessed 31 August 2025).

7 D Mukhaye, A Wadero and E Oluka "Lawyers force KIU to cancel mandatory pregnancy tests" (11 November 2022) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/national/lawyers-force-kiu-to-cancel-mandatory-pregnancy-tests-4016420> (last accessed 15 April 2024).

8 Ibid.

9 "We have values to uphold – IUIU responds to activists objecting to compulsory pregnancy tests" (23 September 2023) *The Independent*, available at: <https://www.independent.co.ug/we-have-values-to-uphold-iuiu-responds-to-activists-objecting-to-compulsory-pregnancy-tests/> (last accessed 31 August 2025); K Muyobo "Concern as IUIU reinstates mandatory pregnancy test for students" (21 September 2023) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/national/concern-as-iuiu-reinstates-mandatory-pregnancy-test-for-students-4376122> (last accessed 31 August 2025); Mukhaye, Wadero and Oluka "Lawyers force KIU to cancel mandatory pregnancy tests", above at note 7.

10 M Odeng "FIDA petitions court to nullify 'discriminatory' pregnancy laws" (19 June 2025) *The New Vision*, available at: <https://www.newvision.co.ug/category/news/fida-petitions-court-to-nullify-discriminator-NV_212997> (last accessed 31 August 2025); A Orie "Ugandan university drops mandatory pregnancy tests for students after outcry" (11 November 2022) *CNN*, available at: <https://www.cnn.com/2022/11/11/africa/nursing-students-pregnancy-test-uganda-intl-scli> (last accessed 31 August 2025).

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(UNCRC)[11] and the African Charter on the Rights and Welfare of the Child (ACRWC),[12] as well as authoritative interpretations from treaty bodies and judicial decisions from domestic, regional and international courts.

The article argues that the practice of mandatory pregnancy testing and the expulsion of pregnant students, as currently implemented, infringes a range of constitutional and human rights, including the rights to privacy, non-discrimination, dignity, bodily autonomy and education. It further contends that these violations are exacerbated by the gendered nature of the practice, which systematically targets girls and reinforces structural inequalities in the education system. By grounding its analysis in legal doctrine and case law, the article contributes to the growing body of scholarship that seeks to align educational policy and practice with children's rights. It concludes by considering viable, rights-compliant alternatives already in practice in some Ugandan schools and offers recommendations for legal and policy reform.

Defining the practice and some of its justifications

What is mandatory pregnancy testing?

There is no legal definition of the practice either in law or in the cases where it has been at issue. Civil society advocates often use "forced pregnancy testing" and "mandatory pregnancy testing" interchangeably. The Centre for Reproductive Rights (CRR), which spearheaded a campaign against the practice in Tanzania, defines it as "one that is conducted in a custodial context under school control and supervision and in which the student's consent is neither sought nor obtained".[13] Given the nature of the relationship between the school and the learner, at least in many African countries, the student cannot withhold their consent out of fear of dire consequences. As CRR point out, adolescent girls are effectively powerless to contest the practice.[14]

Rationale for the practice

Ugandan society is deeply religious and socially conservative.[15] Schools and institutions of higher learning play a crucial role in perpetuating these moral and social values. Ugandan education is inextricably linked to religious institutions, particularly the Anglican and Catholic churches, which own

11 UN Convention on the Rights of the Child (UNCRC) (adopted 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3.

12 African Charter on the Rights and Welfare of the Child (ACRWC) (adopted 11 July 1990, entered into force 29 November 1999).

13 Centre for Reproductive Rights "Forced out: Mandatory pregnancy testing and the expulsion of pregnant students in Tanzania" (2013), available at: <https://reproductiverights.org/wp-content/uploads/2019/04/crr_Tanzania_Report_Part1.pdf> (last accessed 23 November 2023).

14 Ibid. Some schools delegate the test to parents and guardians, requiring learners to present medical forms before admission, effectively barring entry to those who refuse or are pregnant. See E Ashimwe "Education ministry to investigate mandatory pregnancy tests for schoolgirls" (22 October 2020) *The New Times*, available at: <https://www.newtimes.co.rw/article/180939/News/education-ministry-to-investigate-mandatory-pregnancy-tests-for-schoolgirls> (last accessed 31 August 2025); N Bishumba "Parents, activists condemn 'ill motivated' mandatory pregnancy tests for school girls" (22 October 2020) *The New Times*, available at: <https://www.newtimes.co.rw/article/180930/News/parents-activists-condemn-aill-motivateda-mandatory-pregnancy-tests-for-schoolgirls> (last accessed 31 August 2025).

15 J Ohayan "Following the herd: The influence of religion and national identity on antigay sentiment in Uganda" (2018) 6/12 *International Human Rights Internship Program Working Paper Series*; E Biryabarema "Uganda suspends operations of charity championing LGBT rights" (6 August 2022) *Reuters*, available at: <https://www.reuters.com/world/africa/uganda-suspends-operations-charity-championing-lgbt-rights-2022-08-06/> (last accessed 31 August 2025). However, see K Ward "The role of the Anglican and Catholic churches in Uganda in public discourse on homosexuality and ethics" (2015) 9/1 *Journal of Eastern African Studies* 127 challenging the "stereotype" that Ugandans are conservative and religious.

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or co-manage most of the private and public schools in the country, alongside the government.[16] This is a relic of the colonial era when missionaries established schools, primarily as conversion centres, to spread their message and religion.[17] Consequently, many of the objections to pregnant girls continuing in school are centred around the denigration of cultural and religious values. A religious leader in Mukono warned thus:

> "All head teachers, I want to tell you that we shall not allow pregnant or breastfeeding girls in class. When all girls turn up, carry out the usual medical examination so that those found pregnant can go back and give birth they will come back after giving birth. Imagine someone saying even breastfeeding ones should be allowed to attend class. No, this we shall not accept because our schools were started purposely not only to impart knowledge but also discipline in children. How can a teacher be teaching when a girl is giving breasts to her child?"[18]

In some cases, the practice is supported by well-meaning entities, including parents and guardians, under the guise of benefiting the learners.[19] Civil society organizations in eastern Uganda have called for mandatory pregnancy tests "so that those found pregnant can be supported and counselled to stay in school".[20] Similar sentiments were expressed by the head teacher of a school that permits pregnant learners to continue their studies who opined that the "fear is that if we continue to help pregnant girls to continue their studies, it will set a bad example for the rest of other (sic) girls".[21] These justifications are not always grounded in law and often reflect adult-centric views of protection rather than children's rights-based approaches to the practice.

A widespread but not entirely universal practice

Uganda is not alone on the continent when it comes to restrictions placed on pregnant school-going children from continuing their education. A Human Rights Watch (HRW) report indicates that at least 30 African Union countries now have laws, policies or strategies to protect pregnant students and adolescent mothers' right to education.[22] 25 countries do not. Even among those 30 states, there

16 PP Andebo "Education privatisation in Uganda: Evolution from roots in human needs to a profit-oriented phenomenon" in A Zancajo et al (eds) *Research Handbook on Education Privatisation and Marketisation* (2025, Edward Elgar) 209.

17 N Muhumuza "The constitutionality of religious education in Uganda" (Global Campus of Human Rights master's thesis, University of Pretoria / University of Western Cape, 2019), available at: <http://dx.doi.org/10.25330/1588> (last accessed 31 August 2025).

18 F Muzaale "Block pregnant girls from attending school, bishop tells teachers" (10 January 2022) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/national/block-pregnant-girls-from-attending-school-bishop-tells-teachers-3677180> (last accessed 31 August 2025).

19 K Kule "Parents urged to take their girl children to pregnancy tests ahead of schools' official opening for first term" (24 January 2024) *Messiah Radio*, available at: <https://messiahradio.co.ug/parents-urged-to-take-their-girl-children-to-pregnancy-tests-ahead-of-schools-official-opening-for-first-term/> (last accessed 31 August 2025).

20 M Kolyangha "CSOs ask schools to subject female learners to pregnancy tests" (2 December 2020) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/national/csos-ask-schools-to-subject-female-learners-to-pregnancy-tests-3216510> (last accessed 31 August 2025); See also B Oketch et al "Girls fall to pandemic pregnancies as schools reopen" (2 March 2021) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/national/girls-fall-to-pandemic-pregnancies-as-schools-reopen-3309492> (last accessed 31 August 2025).

21 I Otto "Are schools prepared to take in pregnant girls?" (10 November 2020) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/special-reports/are-schools-prepared-to-take-in-pregnant-girls–3017368> (last accessed 31 August 2025). See also J Bweyale "The complexity of re-admission of pregnant schoolgirls in Uganda: A critical exploration of religious education teachers' perceptions and attitudes" (May 2025) 8/1 *EAJIS* 300.

22 "Africa: Rights progress for pregnant students" (29 September 2021) *Human Rights Watch*, available at: <https://www.hrw.org/news/2021/09/29/africa-rights-progress-pregnant-students> (last accessed 31 August 2025). See for instance N Bishumba "Parents, activists condemn 'ill motivated' mandatory pregnancy tests for schoolgirls" (22 October 2022) *The New Times*, available at: <https://www.newtimes.co.rw/article/180930/News/parents-activists-condemn-aill-motivateda-mandatory-pregnancy-tests-for-schoolgirls> (last accessed 31 August 2025) describing the practice as a "norm in several private schools" in Rwanda.

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are varying standards. Uganda's Pregnancy Guidelines which were introduced in 2020 following the reopening of schools in the wake of the COVID-19 pandemic require "all girls" to be "examined for pregnancy periodically, at least once termly and at well time-tabled timelines", require girls who are found to be pregnant to be suspended from school and impose conditions for their readmission.[23] HRW observes that these conditions constitute an "effective barrier", particularly as girls must stay out of school for up to a year.[24] The policy relies on effectively compulsory periodic pregnancy testing to detect and "prevent pregnancies" (without mentioning how the latter objective is to be achieved), potentially violating girls' rights to privacy, equality and bodily autonomy.[25] Notably, the Pregnancy Guidelines prominently feature children's rights as a principle anchor for their implementation. This principle is designed to "ensure that children's rights are protected".[26] After all, "children have a right to education" and the Pregnancy Guidelines recommend that "all obstacles to completion should be removed to keep girls in the schools longer".[27]

Children's rights framework

Origin and rationale of children's rights

This section does not rehash the origin, concept and rationale of the children's rights framework. Rather, it seeks to place the concept of children's rights within the context of mandatory pregnancy testing and how these rights mediate the tensions between children's rights on the one hand, and parental rights and responsibilities on the other. The concept of children's rights is a relatively modern one. The children's rights movement, which began in earnest in the early 20th century, challenged the notion that parents had unfettered discretion over their children's destiny.[28] For much of history, across the world, children were considered their parents' property, akin to chattel. The thinking was that children lacked the maturity to look after themselves and enjoy the full benefits of self-determination that came with citizenship.[29] In some communities, children were often employed as adult workers and court disputes related to children often involved the legality of contracts of indenture or the resolution of conflicts regarding child labour.[30] Prevailing societal expectations required children to be obedient and provide labour befitting their age and legal status, either as enslaved or free persons.[31] Their labour was commodified and could be sold or hired out by fathers or assigned by their masters.[32]

Today, the zeitgeist has changed positively. Children's rights have gained widespread public and private acceptance over the past few decades, becoming a mainstream concept. However, Sloth-Nielsen and Mezmur caution that children's rights have yet to become a primary societal value informing social policy in many African countries.[33] Indeed, in some countries, it is questionable

23 Ministry of Education and Sports "Revised Guidelines for the Prevention and Management of Teenage Pregnancy in School Settings in Uganda" (2020) (Pregnancy Guidelines).
24 "Africa: Rights progress for pregnant students" *Human Rights Watch*, above at note 22.
25 Pregnancy Guidelines, above at note 23.
26 Id at 17.
27 Ibid.
28 PN Stearns "History of children's rights" in MD Ruck, M Peterson-Badali and M Freeman (eds) *Handbook of Children's Rights: Global and Multidisciplinary Perspectives* (2017, Routledge) 3; FE Raitt "The children's rights movement: Infusions of feminism" (2005) 22 *Canadian Journal of Family Law* 11.
29 J Montgomery "Children as property" 51/3 *Modern Law Review* 323 at 325.
30 MA Mason *From Father's Property to Children's Rights: The History of Child Custody in the United States* (1994, Columbia University Press).
31 Ibid.
32 Ibid.
33 J Sloth-Nielsen and BD Mezmur "Surveying the research landscape to promote children's legal rights in an African context" (2007) 7/2 *African Human Rights Law Journal* 330.

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if parent / guardian-children relationships are mediated through the language of rights at all.[34] The practice of mandatory pregnancy testing and the consequences visited upon pregnant learners are a litmus test for the application of children's rights in public (school) and in private (at home) settings.[35] Parents, guardians and teachers are likely to assess their options without considering the child's opinions, viewing the learner as an extension and object of their care, rather than as an agentic being.[36] Even so, the Committee on the Rights of the Child (CRC) has stated that a parent's or an adult's judgement of a child's best interests cannot override the obligation to respect all children's rights under the UNCRC and similar instruments.[37]

These rights are expressed through the tripartite framework that creates obligations on states to respect, protect and fulfil them. Article 4 of the UNCRC and article 1 of the ACRWC enjoin states parties to take appropriate legislative, administrative and other measures for the implementation of children's rights. This process must not be seen as a form of charity bestowing favours on children but as a legal imperative.

The obligation to "respect" requires states to refrain from interfering in the enjoyment of children's rights.[38] States, as primary duty bearers, must ensure that they and third parties, such as parents and schools, do not infringe on the freedom, autonomy and liberty of children. In the context of mandatory pregnancy testing, the state should not encourage the potential violation of children's rights, such as through the Pregnancy Guidelines. The state is also required to protect children from infringements of their rights by third parties, including parents, guardians and schools. According to the African Commission on Human and Peoples' Rights, this obligation enjoins the state to take measures to protect beneficiaries of the protected rights, including children, from political, economic and social interference with their rights and freedoms.[39] It requires developing and maintaining a normative and administrative matrix that enables children to exercise their rights and freedoms. The very existence of the Pregnancy Guidelines and the political support of the practice of mandatory pregnancy testing, particularly from the Ministry of Education, is a veritable demonstration of the violation of this obligation.

The obligation to fulfil imposes a positive duty on the state to work towards the actual realization of children's rights including those detrimentally impacted directly or indirectly by mandatory pregnancy tests.[40] For instance, it requires measures to ensure that all affected learners can either stay in school or resume school after giving birth. Where necessary, reasonable accommodations should be provided for learners who, on their own volition, may take a break from their studies but wish to remain in school during pregnancy. In other words, the purpose of the legislative, policy and

34 See for instance O Adonteng-Kissi "Exploring the tension between the rights of the child and parental rights: Voices from Ghana" in T Corrigan (ed) *Human Rights in the Contemporary World* (2022, IntechOpen) 39 who argues that the present relationship between the parent and the child is regarded as a split of duties and responsibilities. This relationship has resulted in antagonism between parental and children's rights; See also SM Davis *Children's Rights Under the Law* (2011, Oxford University Press) at 4.

35 For an exploration of this dichotomy BD Mezmur "'Don't try this at home?': Reasonable or moderate chastisement, and the rights of the child in south Africa with *YG v S* in perspective" (2018) 32/2 *Speculum Juris* 75 on the prohibition of corporal punishment in the home setting.

36 See, for example, Adonteng-Kissi "Exploring the tension", above at note 34. Sorbring and Kuczynski, for instance, note that there is a chasm between accepting the idea of children as agentic beings capable of influencing social policy in theory on the one hand, and the actual implementation of this concept in practice; E Sorbring and L Kuczynski "Children's agency in the family, in school and in society: Implications for health and well-being" (2019) 13/1 *International Journal of Qualitative Studies on Health and Well-being* 1.

37 Committee on the Rights of the Child "General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)", UN doc CRC/C/GC/14 (29 May 2013), para 14.

38 *Social and Economic Rights Action Center SERAC and Center for Economic and Social Rights v Federal Republic of Nigeria* Communication 155/96, African Commission on Human and Peoples' Rights, 27 October 2001, [2001] ACHPR 35 (Communication 155 of 1996), para 45.

39 Id, para 46.

40 Id, para 47.

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administrative scheme of the "respect, protect and fulfil" framework should be to ensure that more children, not fewer, can realize their rights.

The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child

Children's rights are guaranteed by the UNCRC and the ACRWC. These two instruments contain key provisions vital to determining the legality of mandatory pregnancy tests in Uganda and Africa. The rationale underlying the promulgation of these two instruments was the transformation of children's relationship with society from one that viewed children as passive recipients of charity to one where children are worthy of protection, yet are also empowered as active agents of their own destiny, with the right to self-determination.[41] In a contentious situation involving a child, every act or omission must always be to the child's benefit.[42] The CRC has also stated that "an adult's judgment of a child's best interests cannot override the obligation to respect all the children's rights under the Convention on the Rights of the Child".[43] In other words, an adult's interpretation of what is best for the child cannot and should not result in undermining the rights guaranteed by the UNCRC and the ACRWC.[44]

This does not mean that every action taken by the state must incorporate a full formal children's rights impact assessment. Rather, where a decision will have a significant impact on a child or children, such as whether they can access education or not, the CRC recommends a greater level of protection and detailed procedures to consider their best interests.[45] Indeed, the instruments are designed to guarantee that children can and do make claims against their parents, guardians and the state.[46] The ACRWC's preamble tends towards protection of children, particularly from the "unique factors of their socio-economic, cultural, traditional and developmental circumstances".[47]

The treaty monitoring bodies of both instruments, the CRC and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), have distilled their provisions into five core principles. These principles underpin the majority of the UNCRC and ACRWC's provisions and serve as an interpretative tool for both instruments. This approach is taken to avoid a cumbersome assessment of the treaties on a provision-by-provision basis.

Principles underpinning children's rights

Non-discrimination

Discrimination is any distinction, exclusion, restriction or preference based on any ground, such as race, colour, sex, language, religion, political or other opinion.[48] The principle of non-discrimination speaks to every child's need to belong. This is the rationale for article 24(1) of the International Covenant on Civil and Political Rights, which protects children from discrimination on any ground and guarantees them "the right to such measures of protection as are required by his/her status as a minor on the part of their family, society and the state". Children are full human beings with rights,

41 C O'Mahony "Constitutional protection of children's rights: Visibility, agency and enforceability" (2019) 19/1 *Human Rights Law Review* 401 at 404; A Lloyd "A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child" (2002) 1 *African Human Rights Law Journal* 11.

42 M Freeman "Article 3: The best interests of the child" in A Alen et al (eds) *A Commentary on the United Nations Convention on the Rights of the Child* (2007, Martinus Nijhoff Publishers) 4.

43 Committee on the Rights of the Child "The right of the child to freedom from all forms of violence, General Comment No 13 (2011)", UN doc CRC/C/GC/13 (18 April 2011), para 61.

44 Ibid.

45 Committee on the Rights of the Child "General Comment No 14", above at note 37, para 20.

46 United Nations High Commissioner for Human Rights "Access to justice for children", UN doc A/HRC/25/35 (16 December 2013), paras 36–38.

47 ACRWC, above at note 12, preambular para 4.

48 See UNCRC, above at note 11, art 2 and ACRWC, above at note 12, art 3 respectively.

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despite their dependence on adults for survival during the early years of their lives, and are often treated differently because of this fact. This principle must, therefore, be integrated into implementing all other measures taken to implement children's rights, including decisions about their health and their bodies.

Routine mass testing for pregnancy purely for purposes of identifying and suspending pregnant learners amounts to sex-based discrimination. As the Canadian Supreme Court has held, discrimination on the basis of pregnancy is discrimination on the basis of sex "simply because of the basic biological fact that only women have the capacity to become pregnant".[49] Uganda's 1995 Constitution acknowledges this fact in article 33(3). This provision requires the state to protect women and girls' rights, taking into account "their unique status and natural maternal functions in society". The Pregnancy Guidelines require male students who are responsible for a student's pregnancy to take mandatory leave during a girl's pregnancy. The government justifies this as "a deterrent and lesson to other boys".[50] However, unlike girls, boys are not subject to mandatory paternity leave and are allowed to return to school after a girl has delivered.[51]

The Ugandan state cannot use this constitutionally recognized ground to further disadvantage a group that the Constitution recognizes has been negatively affected by "imbalances created by history, tradition or custom".[52] As the Canadian Supreme Court reasoned in *Brooks v Canada Safeway Ltd (Brooks)*, those who bear children and benefit society as a whole should not be economically or socially disadvantaged, and it is unfair to impose all the costs of pregnancy upon one half of the population.[53] *Brooks* anticipated arguments that mass testing or firing might mitigate the discriminatory impact of targeted sex-based exclusions.[54] *Brooks* stated that pregnancy-related discrimination is still discrimination even if not all women become pregnant because it affects only women due to the fact that only they can get pregnant.[55]

Best interests of the child

There is no government policy that does not have an impact on children either directly or indirectly. Investing in children is one of the best investments that governments can make because the benefits, from improving health, education and the school as well as social welfare system, accrue for generations.[56] Ultimately, what is best for children is good for the wider society. The best interests principle sets a high but ultimately beneficial human rights standard to which states should be held accountable. This underscores why article 3 of the UNCRC and article 4 of the ACRWC, which provide for the best interests principle, are important. The wording and scope of the best interests principle are broad enough to encompass state policies and the activities of private entities, including private schools, over which the state has regulatory control. To that end, considering the child's best interests should permeate all government policies down to the lowest level.

49 *Brooks v Canada Safeway Ltd* [1989] 1 SCR. See generally European Parliamentary Research Service "The principles of equality and non-discrimination, a comparative law perspective: Canada" (November 2020), available at: <https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659362/EPRS_STU(2020)659362_EN.pdf> (last accessed 15 August 2025).

50 Pregnancy Guidelines, above at note 23 at 19.

51 Human Rights Watch "Submission to the Committee on the African Charter on the Rights and Welfare of the Child on Uganda 39th Ordinary 2022" (14 March 2022), available at: <https://www.hrw.org/news/2022/03/14/submission-committee-african-charter-rights-and-welfare-child-uganda> (last accessed 31 August 2025).

52 1995 Constitution of the Republic of Uganda, arts 32(1) and 33(5).

53 [1989] 1 SCR.

54 See, for instance, Justice Ginsburg in *Vernonia School District 4J v Acton* 515 US 646 (1995).

55 [1989] 1 SCR at 1246–48.

56 C Helen et al "A future for the world's children" (2020) 395/10224 *The Lancet* 65. See also S Naudeau et al *Investing in Young Children: An Early Childhood Development Guide for Policy Dialogue and Project Preparation* (2011, World Bank).

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The CRC underscores its importance by noting that all law and policy development, administrative and judicial decision-making and service provision that affect children must consider the best interests principle.[57] The committee adds that:[58]

> "every legislative, administrative and judicial body or institution is required to apply the best interests by systematically considering how children's rights and interests will be affected by their decisions or actions – by, for example, a proposed or existing law or policy or administrative action or court decision including those which are not directly concerned with children but indirectly affect children."

There is a slight but significant difference between the UNCRC and the ACRWC in the formulation of the standard. The UNCRC requires that the best interests shall be *a* primary consideration, while the ACRWC provides that the best interests of the child shall be *the* primary consideration. The former means that the best interests principle is not the overriding factor in the face of competing interests, while the latter means that it is. The ACRWC has a higher standard in that regard.[59] Since Uganda is a party to both instruments, it is argued that it should be held to the higher standard provided for under the ACRWC.[60] When it comes to mandatory pregnancy testing and the consequences learners suffer, does the practice meet or violate the best interests obligation? The documented effects of the trauma and the lifelong cycle of poverty and negative consequences that learners who are denied a formal education suffer cannot be said to be in their best interests.[61]

Lessons from jurisprudence and comparative case law

Children and the right to privacy

Mandatory pregnancy testing and its effects, such as the expulsion of pregnant learners, often pits the protection of children's rights on the one hand against parents' and guardians' legitimate interests, guaranteeing children's safety and the maintenance of order in school settings on the other. It is essential to determine whether school-going children enjoy the right to privacy and to what extent this right applies. In short, the answer is yes: school-going children have a right to privacy. In Uganda, this right is guaranteed by the 1995 Constitution, which protects individuals from being subjected to "unlawful searches of the person".[62] The right to privacy for children has not been litigated as frequently or as robustly as it has for adults but a few instructive cases exist.

In *Centre for Child Law and Others v Media 24 Limited and Others,* the South African Constitutional Court observed that the right to privacy is "more pressing" when dealing with children.[63] The case dealt with the constitutionality of provisions of South Africa's Criminal Procedure Act that excluded child victims from anonymity protections. The court found that privacy is central to a child's identity and further observed that while the expectation of privacy applies across

57 Committee on the Rights of the Child "General Comment No 14", above at note 37, para 10.

58 Committee on the Rights of the Child "General Comment No 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child", UN doc CRC/GC/2003/5 (27 November 2003), para 12.

59 A Lloyd "The African regional system for the protection of children's rights" in J Sloth-Nielsen (ed) *Children's Rights in Africa: A Legal Perspective* (2008) 36.

60 It is notable that Uganda's comparable provision in the Children Act CAP 62 of 1996 uses the phrase "welfare of the child" and provides that "the welfare of the child shall be of paramount consideration whenever the State, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of property of a child, or the application of any income arising from that administration". See Children Act, sec 3(1) "Welfare and guiding principles".

61 "Expulsion of pregnant students: protection or abuse?" (19 June 2025) *The Independent*, available at: <https://www.independent.co.ug/expulsion-of-pregnant-students-protection-or-abuse/> (last accessed 31 August 2025).

62 1995 Constitution of the Republic of Uganda, art 27(1)(a).

63 (CCT261/18) [2019] ZACC 46; 2020 (3) BCLR 245 (CC); 2020 (1) SACR 469 (CC); 2020 (4) SA 319 (CC) (4 December 2019).

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a continuum starting strongest in the "truly personal realm" and gradually eroded in the context of communal relations and activities, it is never entirely extinguished.[64] Furthermore, protecting the privacy of younger persons fosters respect for their dignity, personal integrity and autonomy. Children's rights, dignity and privacy are inherently intertwined, as each child has their own dignity, special needs and interests.[65]

The right to privacy is often considered peripheral in the context of school discipline, yet for children, especially girls, its violation can have lasting psychosocial and developmental consequences.[66] As HRW has observed, the threat of humiliation from public revelations sometimes compels girls to pre-emptively drop out of school when they find out they are pregnant. Others will go to great lengths to procure unsafe abortions, putting their health and lives at risk.[67] The recognition of these rights, even though underdeveloped in Ugandan jurisprudence, raises serious concerns about the legality of blanket pregnancy testing practices, particularly in the absence of demonstrated health and safety risks to the learning environment.

Children's rights and mandatory pregnancy testing: lessons from comparative jurisprudence

Having established that children do have a right to privacy, it is important to weigh that right against the need to limit its enjoyment in the interests of the broader public. Can a student's constitutional right to privacy be limited to balance schools' interests in maintaining a safe learning environment? USA jurisprudence is instructive regarding the balance between children's rights, including the expectation of privacy in a school setting on one hand, and the government's legitimate interest in maintaining order and safety for all learners on the other. There are a few points to highlight. The first is that school-going children are still entitled to the constitutional and human rights protections that are due to them. However, the nature of these protections must be such that they are appropriate for children in school.

This question has been considered in the case of *Gruenke v Seip (Gruenke)*.[68] In that case, the US Court of Appeals for the Third Circuit had to determine whether schools can limit the right to privacy for students at school for the maintenance of public order. The court observed that students at school have a reduced expectation of privacy compared to the general public. In determining the circumstances under which this right can be limited in a school environment, it is important to consider the nature of the intrusion. The government's interest in conducting a search of a student's person or property must be "compelling and important" enough to justify the intrusion.[69] In that particular case, a swimming coach at a school had insisted that a female member of the swim team take a pregnancy test after he had observed what he thought were signs of pregnancy. The court observed that a school cannot compel a student to take a pregnancy test without a "legitimate health concern" about a possible pregnancy.[70] These legitimate health circumstances might include concerns about the health of the student or the unborn child. Crucially, the court found that mandatory pregnancy testing to merely satisfy a school official's curiosity was not enough.[71]

64 Id, paras 47–49.
65 Id, para 50.
66 L Munongi and J Pillay "Protecting the rights of the girl child: Implications for educational psychologists" (2020) 24/5 *The International Journal of Human Rights* 563. See M Muhindo "Learners need privacy, keep details of their results private" (17 February 2023) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/oped/letters/learners-need-privacy-keep-details-of-their-results-private-4127140> (last accessed 31 August 2025) for a discussion on the risks to learners arising from displaying their examination results.
67 Human Rights Watch *Leave No Girl Behind in Africa: Discrimination in Education against Pregnant Girls and Adolescent Mothers* (2018) at 13.
68 225 F.3d 290.
69 Id, para 55.
70 Id, para 56.
71 Ibid.

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A similar issue arose in the Kenyan case of *KELIN & 3 Others v Cabinet Secretary, Ministry of Health & 4 Others*.[72] This case challenged a directive from the then-President of Kenya requiring local governments to obtain information about the HIV prevalence of school-going children. The Kenyan High Court held that compulsory testing for HIV in school-going children would be a violation of the children's right to privacy. The court observed that persons, including children, must consent to HIV testing even "in the face of overwhelming public interest".[73] The court observed that the right to privacy protects "the very core of the personal sphere of an individual" and safeguards the ability to live with minimum interference.[74] The right also restricts the collection, use and disclosure of private information.[75]

Countries on the continent have made similar morally-cloaked "public interest" arguments as the rationale that justify mandatory pregnancy testing, compulsory maternity leave and the suspension and expulsion of pregnant students from school. *Legal and Human Rights Centre & Centre for Reproductive Rights v Tanzania (Legal and Human Rights Centre)* challenged Tanzania's policy of expelling pregnant schoolgirls and barring re-entry for those who had given birth.[76] The applicants argued that the policy violated the ACRWC, specifically its provisions prohibiting discrimination, cruel treatment and the requirement to guarantee the right to education. The respondent state contended that it was exercising its discretion, under the principle of the margin of appreciation, to interpret and apply the provisions of the ACRWC. Further, it was incumbent upon Tanzania to protect the society's "values and morals".[77]

The ACERWC found that forced or mandatory pregnancy testing and expulsion from schools was a violation of article 16 of the ACRWC, which prohibits torture and inhuman or degrading treatment. The committee found that this treatment is that which causes mental or physical harm and includes physical and psychological acts committed against victims without their consent or under coercive circumstances. The ACERWC concluded that psychological harm and physical pain experienced by girls forced to undergo mandatory pregnancy tests and the humiliating manner of expulsion amounts to cruel, inhuman and degrading treatment. The committee cited the CRC which found that expulsion based on pregnancy is a discriminatory act which should be prohibited.

The ACERWC further found that the expulsion of pregnant girls with no chance of re-entry is in violation of article 11(6) of the ACRWC. The provision requires states to ensure that children who become pregnant before completing their education have an opportunity to continue their education. The provision of education must not be tied to any conditions. The ACERWC further emphasized that there should be no restrictions on the pupils' return after they have given birth. States must undertake measures to encourage pregnant girls to continue with their education and ensure that there is retention and re-entry of pregnant and married girls or alternative education programmes where this is impossible.

The ACERWC also observed that setting preconditions to access education violates children's rights, particularly the right to education, and that the respondent's contention on morals and values had no basis in the provisions of the ACRWC and was an unacceptable argument. Forced pregnancy testing is a violation of the right to education, right to dignity, freedom from torture and the right to privacy. There is no moral argument or margin of appreciation that can justify a policy or practice violating the ACRWC's provisions. Citing the European Court of Human Rights, the ACERWC found that the nature of the right in question must be taken into account in assessing the breadth of the margin of appreciation. In this case, the ACRWC provisions left no room for limitation or conditioning of the right to education. Further, the ACRWC imposes additional obligations on states

72 Petition 250 of 2015.
73 Id, paras 76–78.
74 Id, para 69.
75 Ibid.
76 ACERWC Communication No 0012/Com/001/2019; Decision No 002/2022.
77 Id, paras 27 and 42.

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to take special measures in respect of girls to prevent them from dropping out and to support those who are pregnant while in school.

The ACERWC has also utilised its state reporting mechanisms to urge the governments of Tanzania and Uganda to reexamine their policies on mandatory pregnancy testing. In its Concluding Observations on Tanzania's Initial Report, the committee highlighted the discrimination in the treatment of pregnant learners in mainland Tanzania.[78] The ACERWC encouraged the government of mainland Tanzania to harmonize its legislation with Zanzibar's, which had enacted legislation permitting learners to be readmitted to school after giving birth.[79] In its Concluding Observations on Tanzania's Periodic Report, the ACERWC recommended that the government enact legislative measures to ensure inclusive education and to permit pregnant learners to re-enter school.[80] The ACERWC followed a similar pattern with Uganda's reports, initially criticizing Uganda for discriminating against pregnant and parent learners by barring them from school.[81] The ACERWC's Concluding Observations on Uganda's first periodic report also expressed support for the government's efforts to help learners continue their education, including the process of adopting a National Inclusive Education Policy.[82] However, because the Concluding Observations on Uganda's periodic report postdated the country's Pregnancy Guidelines, the ACERWC should have pressed the government given their potential to violate children's rights.

African culture, values and mandatory pregnancy testing

While the decision in *Legal and Human Rights Centre* itself is positive and welcome, it is curious that the ACERWC chose not to engage more deeply with the respondent's contention on morals and values, given that the ACRWC states that education shall be aimed at "preserving and strengthening positive African morals, traditional values and cultures". It is also noteworthy that several provisions of African human rights instruments require that culture be interpreted in a manner that advances and enhances the well-being of rights-holders. Article 29(7) of the African Charter on Human and Peoples' Rights (ACHPR) urges African citizens to "preserve and strengthen positive African cultural values".[83] Article 2(2) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) enjoins states to commit to "modify the social and cultural patterns of conduct of women and men" to eliminate harmful cultural and traditional practices that are based on the "inferiority or superiority of either of the sexes" or on stereotyped roles for women and men.[84] Further, article 17 of the Maputo Protocol guarantees the right to a "positive cultural context". Article 11(2)(c) of the ACRWC requires education to be directed at preserving positive African morals and traditional values.

Tanzania's argument that pregnant learners or those who have recently given birth should not return to school has the "totalising effect of obscuring the potential that culture may hold as an

78 African Committee of Experts on the Rights and Welfare of the Child "Concluding recommendations on the Republic of Tanzania report on the status of implementation of the African Charter on the Rights and Welfare of the Child" (adopted at the 14th Ordinary Session, Addis Ababa, 16–19 November 2010) at 2.

79 Ibid.

80 African Committee of Experts on the Rights and Welfare of the Child "Concluding Observations and Recommendations on the United Republic of Tanzania's Combined Second, Third and Fourth Periodic Report on the Implementation of the African Charter on the Rights and Welfare of the Child" (adopted July 2017), para 28(d).

81 African Committee of Experts on the Rights and Welfare of the Child "Recommendations and Observations to the Government of the Republic of Uganda on the Initial Implementation Report of the African Charter on the Rights and Welfare of the Child" (adopted at the Committee's 15th Ordinary Session, Addis Ababa, 15–19 March 2010) at 2.

82 African Committee of Experts on the Rights and Welfare of the Child "Concluding Observations and Recommendations to the Government of the Republic of Uganda on its First Periodic Report on the Implementation of the African Charter on the Rights and Welfare of the Child" (adopted May 2022), para 30.

83 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986).

84 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) (Maputo Protocol).

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emancipatory tool".[85] Johnson defines positive African values to mean those "that do not tolerate discriminatory acts against women, are consistent with international human rights standards, and work to eliminate harmful traditional practices that negatively affect human rights".[86] As Tamale argues, these provisions validate African women and girls' agency in utilising culture to reinforce rights, not undermine them. Tamale is emphatic about the need to "invoke the core values of our societies to engender transformation", particularly those that "resonate from indigenous cultures" and "speak to the rights repertoire".[87] The idea of relying on "African culture, values and morals" to argue for a restrictive approach to sex and sexuality, one that is grounded in puritanical ideology, flies in the face of documented histories and contemporary practice on the continent.[88] As Felber-Seligman observes, African attitudes and approaches to sexuality amongst young people are "varied and expansive".[89] According to Okechi, sexuality can be found in the folktales and oral traditions in ritual ceremonies, traditional songs and dance among the Zulu, Kikuyu, Masai, Mende, Bechuana, Pondo and Lokele peoples.[90] Sex-positivity is indeed African, and African learners should not be punished by being denied education as a result. For instance, some African communities endorse and encourage pre-marital sexual exploration among adolescents and emphasize ceremonies that shape young people into "gendered adults".[91] The South African Constitutional Court has observed that consensual sexual conduct between children of a certain age is part of normal physical, psychological and emotional sexual exploration and development.[92] Punishing such forms of sexual expression degrades and inflicts a state of disgrace on adolescents.[93]

It might be argued that mandatory pregnancy testing, if consented to by parents and guardians, is permissible because it aligns with the need for children to respect and obey their elders.[94] This argument is sometimes undergirded by provisions of the ACRWC, particularly article 31, on the "Responsibilities of the Child". This provision, among others, requires children to promote family cohesion, respect their parents, superiors and elders, and preserve and strengthen African cultural values. According to the ACERWC, this is designed to contribute to the moral well-being of society.[95] Interpreting this provision as permitting mandatory pregnancy testing and its attendant consequences is incongruent with the ultimate aim of the children's rights and the ACRWC itself.[96] The

85 S Tamale "The right to culture and the culture of rights: a critical perspective on women's sexual rights in Africa" (2008) 16/1 *Feminist Legal Studies* 47 at 49.

86 African Commission "Pretoria Declaration on Economic Social Cultural Rights" (2004), available at: <https://www.achpr.org/public/Document/file/English/achpr_instr_decla_pretoria_esc_rights_2004_eng.pdf> (last accessed 31 August 2025), cited in A Johnson "Article 17: Right to a positive cultural context" in A Rudman, CN Musembi and TM Makunya (eds) *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Commentary* (2023) 365.

87 Tamale "The right to culture and the culture of rights", above at note 85 at 60.

88 EE Evans-Pritchard "Sexual inversion among the Azande" (1970) 72/6 *American Anthropologist* 1428; S Tamale "Exploring the contours of African sexualities: Religion, law and power" (2014) 14/1 *African Human Rights Law Journal* 150; EE Evans-Pritchard "Collective expressions of obscenity in Africa" (1929) 59/1 *The Journal of the Royal Anthropological Institute of Great Britain and Ireland* 311; Ahaki "Towards a reproductive justice framework for Africa" (2024), available at: <https://www.afyanahaki.org/download/framework-a-reproductive-justice-towards-for-africa/> (last accessed 31 August 2025).

89 Y Felber-Seligman "African traditions of sexualities" in ME Wiesner-Hanks and M Kuefler (eds) *The Cambridge History of Sexualities* (2024, Cambridge University Press) 158.

90 OS Okechi 'The indigenous concept of sexuality in African tradition and globalization' (2018) 6/1 *Global Journal of Reproductive Medicine* 1 at 2.

91 Felber-Seligman "African traditions of sexualities", above at note 89 at 158.

92 *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* (CCT 12/13) [2013] ZACC 35 at para 55.

93 Ibid.

94 Kolyangha "CSOs ask schools to subject female learners to pregnancy tests", above at note 20.

95 African Committee of Experts on the Rights and Welfare of the Child "General Comment on Article 31 of the African Charter on the Rights and Welfare of the Child on 'The Responsibilities of the Child'" (2017), para 77.

96 See discussion on origin and rationale of children's rights above.

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provisions on duties in the ACRWC are neither designed nor intended to facilitate the infringement of children's rights or to restore pre-modern notions of adult control over children's bodies.

As Sloth-Nielsen and Mezmur observe, duties under the ACRWC are intended to facilitate the realization of children's rights.[97] In other words, they presuppose children as rights-holders capable of meaningful participation in shaping the direction of their societies.[98] They also impose corresponding obligations on governments to create enabling conditions through education, information and supportive platforms that enable children to perform these duties. The ACERWC has unequivocally stated that duties should not be invoked to justify rights violations such as child labour, child marriage or other forms of coercion.[99] Mandatory pregnancy testing of schoolgirls and its attendant rights violations represent precisely such misuse and misunderstanding of the import of duties.

Such a reading of the concept of duties repurposes the language of responsibility, morality or discipline to subordinate children's rights, including their autonomy, to adult authority, echoing historical regimes in which children were treated as extensions of parental or institutional control rather than as agentic rights-holders. This interpretation is incompatible with the modern children's rights paradigm, which emerged to supplant the idea of children as chattel and to constrain both public and private power over them. Even where adults purport to act in a child's best interests, international human rights law requires that such judgments do not override the obligation to respect the full spectrum of children's rights.[100] Therefore, the duties recognized by the ACRWC are designed to deepen children's capacity to realize their rights and contribute to their communities, not to legitimize invasive, punitive or discriminatory practices such as mandatory pregnancy testing, which entrench stigma, exclusion and structural inequality.

WAVES v Sierra Leone challenged Sierra Leone's policy of banning school-going children from continuing in mainstream schools and instead continuing to study in separate educational facilities at the Economic Community of West African States (ECOWAS) Community Court of Justice (ECCJ).[101] The petitioners argued that the establishment of these facilities amounted to institutionalized discrimination and was a violation of the right to equal education, especially given that teaching in these schools was "significantly inefficient". Pregnant learners in these separate education facilities were taught only four subjects, three times a week. Further, these learners would all be integrated into the same class regardless of their age or academic progress. The respondent's minister for science, education and technology was quoted justifying the existence of these separate schools as necessary to prevent pregnant learners from being a "negative influence on their peers".[102] The petitioners alleged violations of the ACHPR, the ACRWC, the Maputo Protocol, the UNESCO Convention Against Discrimination in Education,[103] the UNCRC, the Convention on the Elimination of All Forms of Discrimination against Women,[104] the International Covenant on Economic, Social and Cultural Rights[105] and the Universal Declaration of Human Rights.[106]

The ECCJ found that it was "obvious" that the actions of the respondent are discriminatory and that there was no reasonable justification for the differential treatment meted out to pregnant girls

97 J Sloth-Nielsen and B Mezmur "A dutiful child: The implications of article 31 of the African Children's Charter" (2008) 52 *Journal of African Law* 169 at 183.

98 Ibid.

99 African Committee of Experts on the Rights and Welfare of the Child "General Comment on Article 31", above at note 95, para 86.

100 Committee on the Rights of the Child "General Comment No 14", above at note 37, para 4.

101 ECW/CCJ/APP/22/18.

102 Id at 19.

103 Convention Against Discrimination in Education (adopted 14 December 1960, entered into force 22 May 1962).

104 Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13.

105 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3.

106 Universal Declaration of Human Rights (adopted 10 December 1948), UNGA Res 217 A(III) (UDHR)

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who were in school before they became pregnant.[107] Banning pregnant pupils from continuing with their education in mainstream schools was "clear evidence of prima facie violations of the right to education and non-discrimination".[108] Further, girls should not be discriminated against on the basis of their (pregnancy) status, essentially elevating pregnancy to a protected ground alongside sex, religion and ethnicity paralleling the conclusion in *Brooks*. The ECCJ was unequivocal that Sierra Leone must ensure that girls attend school with the same privileges and opportunities "just as their male counterparts".[109]

According to the ECCJ, the only justification for separate educational facilities was if it was necessary to ensure the provision of "essential health facilities and care" required by expectant mothers.[110] Even then, the standards in those schools must not be worse than those in "regular mainstream schools".[111] In essence, despite the social opprobrium attached to teenage pregnancy in the country, that disapproval should not be the basis for denying learners the right to quality education. It is essential for schools not to be discriminatory by banning them from educational facilities. The ECCJ declared that Sierra Leone's policy of forcing pregnant pupils into alternative facilities was discriminatory and ordered that the ban be reversed.

Three months after the ECCJ decision, Sierra Leone reversed the policy barring pregnant learners from attending mainstream schools. Explaining its decision, the government observed that the policy shift was based on evidence and consultation with diverse actors.[112] The government promulgated the National Policy on Radical Inclusion, which, among others, is designed to ensure the "inclusion and retention of pregnant learners and parent learners in school".[113] According to the Sierra Leonean government, since the policy reversal, there has been a significant increase in school attendance and retention.

Courts elsewhere on the continent have recognized the discriminatory nature of pregnancy-based exclusion. One of these cases is *Mandizvidza v Chaduka NO & Morgenster Teachers College (Mandizvidza)*.[114] It must be noted that this case was not about a minor and was not decided within a children's rights framework. Nonetheless, it remains instructive for assessing the constitutionality of pregnancy-based expulsion in school settings. Because the decision was premised on constitutional principles, it provides a clear articulation of how competing rights might be adjudicated.

In *Mandizvidza*, a female student was expelled from a teachers' training college because she was pregnant. On admission, the student was required to sign a contract agreeing that if she became pregnant, she would withdraw from the institution. Over the course of her studies, she married under customary law and later became pregnant. The college sought to enforce the terms of her contract by expelling her. The student challenged the expulsion before the High Court of Zimbabwe, arguing that it violated her constitutional right to freedom from discrimination based on sex. The college argued that it had to maintain institutional discipline and moral standards in line with its religious ethos as well as preserve the professional reputation of a teacher training institution. The Zimbabwe High Court had to determine whether pregnancy was misconduct justifying expulsion from the college and whether such expulsion violated Zimbabwe's constitutional guarantees.

The High Court found that pregnancy is a biological condition unique to women and that any rule of disciplinary measure penalizing pregnancy, by definition, targets women as a class, rendering the

107 *WAVES v Sierra Leone*, above at note 101 at 26.
108 Id at 18.
109 Id at 27.
110 Id at 28.
111 Ibid.
112 Ministry of Basic and Senior Secondary Education (Sierra Leone) "National policy on radical inclusion in schools" (March 2021) at 19.
113 Ibid.
114 1999 (2) ZLR 375 (H).

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expulsion discriminatory.[115] It found that the asymmetrical application of discipline, where a married, male student would be unaffected if his wife became pregnant while a pregnant married female student would have to withdraw, was further evidence of this discrimination.[116] The High Court dismissed the college's argument that it lacked childcare facilities as another form of discrimination because it negates women's rights and ability to combine their roles as mothers and productive members of society while fathers are free to pursue their productive lives unencumbered by such responsibilities.[117]

Regarding the fact that the student was bound by contractual terms requiring her to withdraw in the event of a pregnancy, the High Court held that the principle of freedom of contract was outweighed by the principle of fairness, adding that the students did not really contract freely as they had no choice but to accept the terms of the contract.[118] In other words, the enforcement of the discriminatory clause would be contrary to public policy and government efforts to eliminate discrimination on the grounds of sex and gender. On appeal by the college, the Supreme Court upheld the High Court's decision, finding that the contract's discriminatory clause was contrary to public policy.[119] The contract punished the married woman who fell pregnant but not the male student who had extra-marital sex with a non-student, even if pregnancy resulted. Such a clause, according to the Supreme Court, could not be defended because a religious organization such as the college is entitled to insist on specific moral standards among its students.[120]

Although *Mandizvidza* concerned an adult learner, its core findings are directly relevant to minors in Uganda. The High Court's finding that any rule penalizing pregnancy is inherently sex-discriminatory applies with greater force in school settings where girls bear the full consequences of pregnancy and boys are unaffected. Further, the courts' rejection of justifications based on institutional inability to accommodate, morality or even contractual consent applies in Uganda, where mandatory pregnancy testing and the resultant expulsion are often based on school rules, parental approval or policy guidelines.

The Botswana Court of Appeal made similar findings in *Student Representative Council v Attorney General of Botswana (for and on behalf of the Principal of Molepolole College of Education and Permanent Secretary of Ministry of Education)*.[121] In that case, the Court of Appeal of Botswana was seized with a challenge to regulation 6 of the College Regulations, which required female students who became pregnant to withdraw from their studies for extended periods and, in some cases, permanently. The regulation applied exclusively to women and was defended by the state on the basis that it was protective rather than punitive, designed to safeguard the welfare of pregnant students and their children. The applicants, acting through the Student Representative Council, argued that the regulation was discriminatory on the basis of sex, violated constitutional guarantees of equality and imposed disproportionate and punitive consequences on female students, while male students responsible for pregnancies faced no sanction. The central issue before the court was whether pregnancy-specific regulations in educational institutions could be justified as legitimate differential treatment based on biological difference, or whether, in substance, they constituted unlawful sex discrimination.

The Court of Appeal held that regulation 6 was unconstitutional and discriminatory, finding that its practical effect was punitive rather than protective.[122] While acknowledging that not all differential treatment based on biological difference amounts to discrimination, the court emphasized

115 Id at 381.
116 Ibid.
117 Id at 382.
118 Id at 383–84.
119 2002 (1) ZLR 72 (S).
120 Ibid.
121 Unreported, Civil Appeal No 13 of 1994, Misc No 396 of 1993.
122 Ibid at 32.

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that such measures must be reasonable, fair and genuinely designed to benefit the affected group.[123] On a close reading of the regulation, the court concluded that mandatory withdrawal for at least one academic year, the absence of individualized assessment and the imposition of harsher consequences for repeated pregnancies revealed an intention to punish rather than support pregnant students. The regulation entrenched gendered responsibility for pregnancy by placing the full educational burden on women, while leaving male students entirely unaffected.[124]

In Head of Department, Department of Education, Free State Province v Welkom High School and Another, the Constitutional Court of South Africa was required to determine whether public schools could lawfully adopt and enforce pregnancy policies that required pregnant learners to take compulsory leave from school for extended periods.[125] The dispute arose after the head of department instructed Welkom High School and Harmony High School to readmit pregnant learners who had been excluded under school policies mandating leave of up to a year following childbirth. The schools resisted, arguing that the policies fell within their statutory authority to determine codes of conduct and were justified on grounds of learner welfare, discipline and educational disruption. The central issue before the court was whether such pregnancy policies were consistent with learners' constitutional rights, and whether the provincial education authority was entitled to intervene.

The Constitutional Court held that the schools' pregnancy policies were unlawful and unconstitutional. The court found that the policies differentiate between learners based on pregnancy and because the differentiation is made on the basis of sex, a constitutionally protected ground, it is both discriminatory and presumptively unfair.[126] It found that compulsory exclusion of pregnant learners violated the right to basic education by requiring learners to repeat up to an entire year of school, yet many cannot afford to add the extra time to their studies.[127] On the right to dignity, privacy and bodily and psychological integrity, the court found that the reporting provisions requiring pregnant learners or their schoolmates to inform school authorities about a pregnancy had a stigmatizing effect. Learners would instead be compelled to hide their pregnancies instead of seeking the requisite support.[128] The court also found that the inflexibility of the guidelines, especially the mandatory exclusion from school, undermined the authorities' ability to consider whether such a move would be in the best interests of the learner. The court emphasized that pregnancy cannot be treated as misconduct warranting punishment. The court rejected the argument that learner welfare justified automatic exclusion, noting that such policies were inflexible, punitive in effect and failed to consider the individual circumstances of learners. Notably, the court stressed that public schools exercise public power and are bound by constitutional norms, including the obligation to accommodate rather than exclude pregnant learners. It further affirmed the authority of the education department to intervene where school policies infringe constitutional rights.

The foregoing cases are important because they demonstrate that the judicial and quasi-judicial organs are likely to find that mandatory pregnancy testing is a violation of several human rights

123 Id at 33.

124 Id at 34–35.

125 (CCT 103/12) [2013] ZACC 25; 2014 (2) SA 228 (CC).

126 Id, para 114.

127 Id, paras 115–16.

128 The South African Constitutional Court treated mandatory reporting as a rights-sensitive intervention that must be interpreted and applied consistently with learners' dignity, privacy and best interests. The court warned against reflexive or punitive reporting practices that deter access to education or health services. In essence, the court declined to treat educators as extensions of the criminal justice system. By contrast, the Ugandan Constitutional Court in *Fox Odoi-Oywelowo & Ors v Attorney General & Ors* (Consolidated Constitutional Petitions Nos 14, 15, 16 and 85 of 2023) [2024] UGCC 10 (Constitutional Court of Uganda, 3 April 2024) adopted a markedly deferential approach to reporting obligations, construing them primarily as tools of law enforcement and public morality, with limited engagement with their chilling effect on privacy, autonomy and access to services. The South African approach is normatively preferable because it embeds reporting duties within a proportionality and child-centred framework, whereas the Ugandan approach risks normalizing surveillance and coercion in contexts involving vulnerable populations, including learners.

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instruments. It is also likely that the Uganda Pregnancy Guidelines, which require compulsory maternity leave, may be a violation of several provisions of the Bill of Rights, especially considering that there is no reasonable justification for such a measure. If the argument is that pregnant pupils will be a negative influence on their peers, this must be supported by empirical evidence and, in any case, must meet the test for limitation of rights under article 43 of the Constitution.

Given the documented stigma, mental distress and structural violence that pregnant learners endure during their pregnancy, and the fact that in Uganda just 8 per cent of learners who drop out for pregnancy-related reasons, whether voluntarily or through expulsion return to school, is expelling them really for their own good? As discussed above, courts have consistently determined that blanket, mandatory testing is discriminatory and violates multiple rights. While children have a reduced expectation of protection from intrusions on their person and property, parents and guardians do not have unlimited authority to do so. In fact, children's rights and their constitutional guarantees limit the exercise of parental and governmental authority.[129] Courts are willing to limit or restrict the circumstances under which these tests might be carried out, including the purpose for which they are done, the incidence of the practice and with whom the resulting information is shared. The decisions also reflect the paucity of using morality or nebulous public interest claims to justify infringements on children's rights.

In Uganda, 92 per cent of teens and minors who drop out of school because they are pregnant never re-enrol.[130] They are lost to the school system forever. Without formal education, they are exposed to a cycle of poverty, early marriage, more teenage pregnancy, gender-based violence and limited economic opportunities.[131] If the purpose of the testing is to effectively punish the learner in a manner that clearly violates their rights, the practice is clearly unconstitutional. It is also necessary to consider how the process is conducted to determine if it passes constitutional muster.

While the practice is widely known to occur as part of routine medical examinations, there is little to no official data about the number of girls tested every year, how they are tested, how many are found to be pregnant and whether the information elicited from the tests is treated confidentially, among other things. According to the Pregnancy Guidelines from Uganda's Ministry of Education, "all girls" must be examined (mandatorily tested) for pregnancy periodically at least once every four-month term. The nature of the process, as documented in some of the literature, also raises concerns in Uganda. The process is sometimes conducted manually by kneading or applying pressure on the abdomen or breasts of learners. Learners have reported that the practice is painful and leaves them feeling vulnerable. Only female learners are required to undergo this painful practice, as described by *Gruenke*, to satisfy the curiosity of school authorities.[132] Uganda's Pregnancy Guidelines are silent on how the practice is to be conducted, although some schools have adopted urine testing for accuracy.[133] By itself, the silence allows and opens the practice up for variation and ultimately abuse as the cases of manual kneading and extreme physical pressure on the abdomen have demonstrated.

Way forward: examples from Uganda

The onus is on the authorities to empirically demonstrate their inability to ensure that pregnant and breastfeeding learners are unable to continue with their education or cannot be reintegrated into

129 M Tunick "State authority, parental authority, and the rights of mature minors" (2023) 27/1 *The Journal of Ethics* 7.

130 Ministry of Education, Science, Technology and Sports (Uganda) "A study on the linkage between pregnancy and school dropout in Uganda" (Study report, August 2016) at 10.

131 UNFPA "The cost of inaction: The economic and social burden of teenage pregnancy in Uganda" (2021), available at: <https://uganda.unfpa.org/sites/default/files/pub-pdf/cost_of_inaction_report_on_teenage_pregnancy._final_print_ready._8.4.2022.pdf> (last accessed 31 August 2025); V Chemutai et al "Prevalence and factors associated with teenage pregnancy among parturients in Mbale regional referral hospital: A cross-sectional study" (2022) 22/2 *African Health Sciences* 451.

132 *Gruenke*, above at note 68.

133 Katushabe "High schools testing for pregnancy in darkness", above at note 6.

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the public school system. Thus far, the government has not provided any evidence to support this claim. This assessment is crucial in determining how courts can balance competing and conflicting interests regarding the right to education, on the one hand, and the government's inferred interest in maintaining order and discipline within its institutions on the other.

A few schools in Uganda have demonstrated the capability to accommodate pregnant students even before they give birth. Promoting Equality in African Schools, a chain of 30 secondary schools, has been accommodating pregnant and breastfeeding adolescent girls in their schools with no demonstration of the so-called negative influence on the rest of their peers.[134] Unfortunately, little empirical data exists on how these schools not only accommodate but also integrate pregnant and breastfeeding learners into their structures. This information, such as the number of students retained and graduation outcomes, if available, would make the "proof of concept" more concrete. As such, this analysis relies on publicly available literature on these institutions. Ngora High School also has a policy that accommodates pregnant and breastfeeding pupils.[135] These schools prove that it is possible to implement common-sense regulations that ensure that school-going children who are either pregnant or have given birth can continue their education. These examples demonstrate that schools, even in conservative societies like Uganda, can accommodate pregnant and breastfeeding learners with minimal disruption to the learning environment and no harm to the physical, emotional or psychological well-being of fellow learners.

Advocating for school retention should not be confused with encouraging teenage pregnancy in schools and among learners. In fact, the CRC has urged states to advised states parties to:

> "develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law, adequate and comprehensive obstetric care and counselling; (b) to foster positive and supportive attitudes towards adolescent parenthood for their mothers and fathers; and (c) to develop policies that will allow adolescent mothers to continue their education."[136]

Relatedly, the CRC has also urged states parties to review legislation with a view to guaranteeing the best interests of pregnant adolescents.[137] Mandatory pregnancy testing and its consequences, such as expulsion from school, should prompt Ugandan society and authorities to evaluate the effectiveness of their approach to adolescent and youth sexual and reproductive health and rights (SRHR) interventions. The government has limited access to SRHR services, including safe and legal abortion and contraception for young people.[138] In a country where the median age of sexual debut is 17 years, and a significant proportion of minors engage in sexual activity before 18, with notable gaps in meeting contraceptive needs, this approach is destined to fail.[139] The prevailing knowledge system

134 T Abet "School leaders welcome African union ruling on pregnant girls" (26 September 2022) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/national/school-leaders-welcome-african-union-ruling-on-pregnant-girls-3962008> (last accessed 31 August 2025).

135 Abet, ibid; IA Abalo "Are schools prepared to take in pregnant girls?" (10 November 2020) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/special-reports/are-schools-prepared-to-take-in-pregnant-girls--3017368> (last accessed 31 August 2025).

136 Committee on the Rights of the Child "General Comment No 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child", UN doc CRC/GC/2003/4 (1 July 2003), para 27.

137 Committee on the Rights of the Child "General Comment No 20 (2016) on the Implementation of the Rights of the Child During Adolescence", UN doc CRC/C/GC/20 (6 December 2016), para 60.

138 JM Buser et al "A scoping review of qualitative studies on sexual and reproductive health and rights in Uganda: Exploring factors at multiple levels" (2024) 20 *Women's Health*, available at: <https://doi.org/10.1177/17455057241285193> (last accessed 31 August 2025); A Wesaka "Health experts, government disagree over teenage contraceptive guidelines" (12 October 2017) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/news/national/health-experts-government-disagree-over-teenage-contraceptive-guidelines-1721802> (last accessed 3 July 2025).

139 G Nantume "Contraceptives for teenagers divides opinion" (19 March 2021) *Daily Monitor*, available at: <https://www.monitor.co.ug/uganda/magazines/healthy-living/contraceptives-for-teenagers-divides-opinion-3328540> (last accessed 15 June 2024).

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is underpinned by a sexuality education framework that is skewed towards a values-based approach and is inadequate in providing the necessary information for young people to make proper choices about their bodies and behaviour.[140]

Several Ugandan institutions have pushed back on the blanket application of mandatory pregnancy testing and the resultant expulsion from schools and tertiary institutions. Most of these interventions have sought to protect the rights of adult learners. Still, they reflect a groundswell against the practice in the country that has led to the filing of a legal challenge at the Constitutional Court. One of these institutions is the Equal Opportunities Commission (EOC), a statutory body with a quasi-judicial mandate established to monitor, evaluate and ensure the protection of rights for historically marginalized groups in the country.[141] The EOC has issued an interim order halting the expulsion of a pregnant adult learner from a training institute after she was discontinued when her pregnancy was discovered.[142] Upon its preliminary review, the EOC found that the regulation and its application potentially violated the rights to equality, freedom from discrimination and the right to education for all persons. It thus ordered the school to permit the learner to sit her final exams while her complaint is investigated.[143] The EOC's ruling demonstrates that, even within Uganda's legal framework, pregnancy does not warrant exclusion from school.

Building on the legal challenge at the EOC, FIDA Uganda has filed a constitutional petition challenging the Health Training Institutions Rules and Regulations.[144] These regulations require students to report pregnancy during their studies to management. Pregnant students are required to take six months of mandatory maternity leave. Readmission to these facilities is conditional on learners having voluntarily self-reported and having a good disciplinary and satisfactory academic record. The FIDA-Uganda petition frames mandatory pregnancy testing and pregnancy-based exclusion as forms of reproductive coercion exercised through educational regulations. On the weight of the jurisprudence discussed above, the Constitutional Court should be inclined to find that the health regulations operate as coercive mechanisms that disproportionately affect female learners and normalise institutional intrusion into reproductive decision-making.

Conclusion

This article has argued that the practice of mandatory pregnancy testing in Ugandan schools, as currently implemented, is incompatible with Uganda's constitutional framework and its regional and international human rights obligations. Drawing on a doctrinal analysis of the 1995 Constitution, the UNCRC, the ACRWC and comparative jurisprudence from African and international courts, the article demonstrates that such testing violates the rights to privacy, dignity, equality, non-discrimination and education. It also disproportionately affects girls, reinforcing structural gender inequalities and perpetuating educational exclusion.

Judicial and quasi-judicial bodies in Africa and beyond have increasingly rejected policies that stigmatize or exclude pregnant learners, recognizing them as forms of discrimination and cruel, inhuman and degrading treatment. These judgments make clear that neither moral panic nor institutional convenience can justify blanket, invasive and non-consensual mandatory pregnancy testing

140 Ministry of Education and Sports "National sexuality education framework 2018"; JA Boozalis et al "A new hope: Introducing comprehensive sex education to a Christian secondary school in Uganda after repeal of parliamentary ban" (2020) 4 *Journal of Global Health Reports*, available at: <https://doi.org/10.29392/001c.12528> (last accessed 31 August 2025).

141 Equal Opportunities Commission Act, Cap 7, Laws of Uganda, sec 14.

142 Equal Opportunities Commission (Uganda) "Injunction against discontinuation of Ms Namukisa Sarah from the Medical Laboratory Training School – Jinja on grounds of pregnancy", Ref EOC/GIF/ER/143/2025 (11 June 2025) (on file with the authors).

143 Ibid.

144 *Uganda Association of Women Lawyers (FIDA-Uganda) v Attorney General* Constitutional Petition No 9 of 2025 (Constitutional Court of Uganda, filed June 2025) (on file with the authors).

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regimes. While learners do not forfeit their rights at the school gate, the current practice in Uganda treats them, especially girls, as subjects of control rather than as rights holders deserving of respect, protection and participation. The absence of data on how pregnancy testing is conducted, coupled with vague government guidelines, creates a high risk of rights violations, especially when testing involves coercive or physically invasive methods. The limited evidence available suggests that the practice not only fails to prevent harm but often causes it. Yet alternative models within Uganda already demonstrate that it is possible to support pregnant learners without undermining school order or peer learning.

To comply with its constitutional and human rights obligations, Uganda must prohibit non-consensual and punitive pregnancy testing practices. The Ministry of Education and Sports should review its current guidelines, ensure that learners' privacy and dignity are protected and actively support school re-entry and retention for pregnant and parenting learners. These reforms should be part of a broader commitment to realizing sexual and reproductive health rights for adolescents and ensuring that no child is denied an education due to pregnancy.

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