



## **BILL DIGEST**

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<b>NAME:</b>	<b>EDUCATION AMENDMENT BILL, 2018</b>
<b>HB NUMBER:</b>	<b>H.B.1, 2019</b>
<b>MINISTRY:</b>	<b>MINISTRY OF PRIMARY AND SECONDARY EDUCATION</b>
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### **1.0 INTRODUCTION**

The Education Amendment Bill which was gazetted on 15 February 2019 seeks to address the shortcoming of the 2006 Education Act (Chapter 25:04). The Education Amendment Bill is being introduced mainly to ensure that it complies with the provisions in the Constitution of Zimbabwe (Amendment No. 20) of 2013, United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). The Bill when passed into law, is expected to improve the rights of learners and the education system in Zimbabwe.

### **2.0 BACKGROUND**

At attainment of independence in 1980, the Government adopted the 'Education for All' policy which declared education as a basic human right hence free and compulsory. The introduction of free and compulsory basic education benefited a lot of Zimbabweans and made remarkable improvement in the sector as witnessed by the high literacy levels of 92% as of 2010. However, the introduction of the Economic Structural Adjustment Programmes (ESAP), which aimed at reducing government spending on education and health led to the reversal of the gains that had been achieved soon after independence. The right to education became compromised as the

Government failed to fund basic education. Thus the Bill seeks to introduce the right to a basic State-funded education to all school-going children up to grade seven.

Prior to the enactment of the Constitution of Zimbabwe, the Education Act (Chapter 25:04) was the sole legislation providing for the declaration of the fundamental rights to and objectives of education in Zimbabwe. However, with the promulgation of the new Constitution in 2013, the right to education was cemented and strengthened by Section 75, which stipulates that; *“Every citizen and permanent resident of Zimbabwe has a right to (a) a basic State-funded education, including adult basic education; and (b) further education, which the State, through reasonable legislative and other measures, must make progressively available and accessible.”* Thus, the 2013 Constitution of Zimbabwe brought about a new dimension by mandating the State to play a leading role in the provision of education in the country in line with international practice. Further to that, Section 27 of the Constitution provides that the state must take all practical measures to provide free and compulsory basic education for children and higher and tertiary education, while at the same time ensuring that the girl child is not disadvantaged.

However, Zimbabwe failed to achieve the 2015 target for the Millennium Development Goal Number 2 on ‘Achieve Universal Primary Education’ due to economic downturn and inability to afford costs associated with education. The country is currently working towards the attainment of the United Nation Sustainable Development Goal (SDGs) number 4, which seeks to ‘ensure inclusive and equitable quality education and promote lifelong learning opportunities for all’ by 2030. The education bill is seen as the bedrock in facilitating effective education system in the country.

### **3.0 PURPOSE OF THE BILL**

The Bill seeks to amend the Education Act (Chapter 25:04) and bring it in line with the constitutional provision on education and international practice as stipulated in the African Charter and the Convention on the Rights of the Child. Of major importance, is the right to a basic state funded education, including adult basic education whereby the State is being obliged to put in place reasonable measures to ensure progressive realisation of the education right within the limits of the resources available to it. In addition, the Bill recognises the importance of the Best Interests of the Child principle and the rights of persons with disability in the education sector.

## **4.0 REVIEW AND ANALYSIS OF THE MAIN CLAUSES**

### **4.1 Definition of Terms (Clause 2)**

Clause 2 seeks to repeal the word *Pre-school* and substitute it with *Early Childhood Development*, which refers to the physical, mental and social development of children between the ages of four and five years.

### **4.2 Children Fundamental rights to education in Zimbabwe (Clause 3)**

This clause amends Section 4 (2)(b) of the Principal Act by repealing it and inserting a new provision which ensures that no child is discriminated against by the imposition of onerous terms and conditions in regards to his/ her admission to any school on the grounds of his or her nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.

This provision is in line with Section 56(3) of the Constitution on the right to equality and non-discrimination.

### **4.3 Compulsory Education (Clause 4)**

The clause seeks to repeal Section 5 of the Principal Act by inserting new section which provides that every child shall be entitled to basic state funded education unlike the current Act which says it shall be the duty of the parent of any child to make sure that such child attends primary school. The provision places an obligation on the State to fund basic education within the limit of the resources available and at the same time ensure progressive realization of the right to education.

This move is welcome as it eases pressure from parents and reduce number of school dropout especially in rural areas. While this provision is commendable, its application is subject to resources being available. It is therefore imperative for the Minister to put in place a Statutory Instrument that have timelines in terms of the operational modalities on how the basic state funded education shall be implemented. For example, adopting the step-up approach whereby the implementation is gradual, targeting Early Childhood Development in the first few years and

expanding to grade 1 to 3 until Government is able to fund up to grade seven as proposed in the Bill that basic education shall be up to grade seven.

#### **4.4 General Duty of Local Authorities (Clause 5)**

Clause 5 seeks to amend Section 8 of the Principal Act, which mandated the Local Authorities the duty to establish and maintain primary schools that are accessible by all the children within its jurisdiction for purposes of ensuring fairness and equitable access to basic education. The new provision now places the obligation to provide land for the construction of school infrastructure to every local authority in Zimbabwe.

The new provision is a good development as it seeks to promote building of more schools in the country by private organisations and well-wishers.

#### **4.5 Children's Entitlement to Enrolment at Nearest Schools (Clause 6)**

This clause seeks to introduce a new section which repeal Section 10 of the Principal Act on enrolment of school-going children to the nearest school. The Bill states that every child of school going age shall be entitled to be enrolled at school nearest to his/her residential place and in the event that the school is fully enrolled, the Head of that school shall certify that the school is fully enrolled and allow the possible next nearest school to enroll the child.

Thus the bill is welcomed as it aimed at reducing the number of out of school children caused by long walking distance from home to school.

#### **4.6 Prescribing of Fees at Government Schools (Clause 8)**

The clause repeals Section 13 (4) of the Principal Act and put a new insertion altogether mandating the Minister to take into consideration of the location and status of school when prescribing new fees for government schools.

#### **4.7 Registration of Non-Government Schools (Clause 9)**

Clause 9 amends Section 15 of the Principal Act by inserting subsection (7) which makes it mandatory for non-governmental and faith-based schools to pay a registration and annual fee as may be prescribed from time to time by the Minister.

This is a welcome development as this will contribute significantly to government revenue. However the bill does not specify whether the funds will be paid to the Consolidated Revenue Fund (CRF) or to the Basic Education Fund. The bill does not also provide for the uses of the registration and annual fees to be levied to all non-governmental and faith-based schools. It is important for the bill to provide for such, to ensure transparency and accountability.

#### **4.8 Adult Education (Clause 10)**

The clause amends Section 25 of the Act by inserting paragraph (c) which makes it mandatory for every school to offer non-formal education including adult education.

Thus the provision ensures equal access to education by all.

#### **4.9 Meeting and Procedure of Board (Clause 11)**

Clause 11 amends Section 33(1) of the Act which allows the National Education Advisory Board to meet as and when the Minister may decide. The new provision mandates the Board to meet quarterly or any other shorter period as the Minister may fix.

However, neither the Bill nor the Act stipulates the maximum number of terms a board member might serve. It is important that the appointment and reappointment of board members is not left to the discretion of the Minister. The role of Parliament in the appointment process should be included, in particular, the relevant Committee to ensure transparency and accountability.

#### **4.10 Languages to be taught in Schools (Clause 12)**

The clause repeal Section 62 of the Act, which only recognises three main languages as official languages. However, Section 62 is amended to recognise the 16 official languages as stipulated in the Constitution. The Bill provides that every school shall endeavor to teach every official recognized language while making sure that the language of instruction shall be the language of examination. The Bill also ensures that the mother tongue is to be used as a medium of instruction at early childhood education. Section 62(2) and (3) of the principal act is also repealed and insertion of a new provision to promote or uphold the culture of the language that is being taught at any school.

This provision is welcome as it is in line with the Constitution and the African Charter which calls for an education that aims at preserving and strengthening positive African morals,

traditional values and cultures. However, this provision must be supported by the training of more language teachers to close the current gap in some languages such as Tonga, sign language, Koisian, Ndaou Xhosa, Nambya, Venda, Tswana and Sotho, among others.

#### **4.11 Health in Schools (Clause 13)**

This clause seeks to amend Section 64 of the Principal Act by inserting an additional paragraph (k) which provides for the appointment of Sexual and Reproductive Health (SRH) personal.

The provision is important as it will improve the teaching and understanding of the subject matter at schools, given the risks and violations associated with sexual and reproductive health rights among the children and young adults.

#### **4.12 Regulations (Clause 14)**

Clause 14 amends Section 69 of the Act by inserting (n2) which provides for the ‘use of emerging technologies in education’ and (n3) which provides for ‘the manner in which feeding schemes may be conducted at schools.’

The amendment is plausible as it promote the use of technologies in schools and the school feeding programmes at schools.

**4.13** Clause 15 inserts three new provisions in the Bill.

**Pupil Discipline** – Section 68A outlaws corporate punishment in schools in line with the Constitution which prohibits any physical or psychological torture, or cruel, inhuman or degrading treatment or punishment. The Bill also bars the teachers from beating school children in whatever circumstances. The provision is commendable as it seeks to ensure that school discipline is administered in a manner consistent with child’s human dignity and in conformity with the Constitution.

The Bill supports other forms of discipline in schools and thus encourages the schools to draw up ‘a disciplinary policy’ in accordance to the standards set out in regulations to be gazetted by the Minister.

The Bill further provides for the right of every child to be heard and have their opinions taken seriously in administrative proceedings affecting them at the school before any suspension from

the school is granted. This provision is welcome as it recognises the rights of children to be heard based on their evolving capacities and the ability to participate in matters that affects them.

**Pupil with disability** – Section 68B mandates every registered school to provide infrastructure suitable for use by pupils with disabilities. The Bill further bestows upon the Secretary the mandate to monitor every school to make sure that the rights of pupils with disabilities are provided for and are being met during learning and teaching. In addition, the Bill mandates all registered schools to submit a plan highlighting the extent to which the school is advancing the needs and rights of pupils with disability. The plan shall be the basis for all school fees approval by the Secretary.

While this provision is commendable, the Bill only focuses on the pupils with disability and does not provide for students with disability at higher and tertiary education.

**Basic Education fund** – Section 68C provides for the creation of the Basic Education Fund, whose operations shall be guided by the Audit Office Act (Chapter 22:18) and the Public Finance Management Act (Chapter 22:19). The Bill provides that the Fund shall be utilised to finance infrastructure development, payment of fees for pupils who genuinely cannot afford. The Bill also stipulates that the activities of the fund shall be funded by monies appropriated Parliament or donations, grants or bequests approved by the Minister.

However, it is important that the moneys collected from the registration and annual fees under Clause 9 of the Bill (Registration of Non-Governmental Schools) be paid into the fund in addition to what has been proposed under Section 68C (1) (2) to fulfill the objectives stipulated in the Bill. It is also critical that the Basic Education Fund be administered an independent Board or Commission rather than the Government for purposes of transparency and accountability. Lessons may be drawn from the issues and challenges surrounding the Basic Education Assistance Module.

### **Non Exclusion of Pupils from School**

Section 68D provides a new insertion altogether seeking to protect the rights of children to education by stating that no pupil shall be excluded from school for non-payment of school fees or on the basis of pregnancy.

The provision places an obligation on school authorities to ensure that pregnant girls are allowed to continue with their education regardless of their status while at the same time ensuring that no child is sent back home for non-payment of fees which is the parent's responsibility and not the child. This provision attempts to address the social imbalances that currently exist in the Zimbabwe context. This is a welcome development in line with the Constitution and the African Charter. Article 11 of the African Charter has been applauded for making provisions that cater for the disadvantaged groups by obliging member states to take affirmative action and measures which protect the female, disadvantaged and gifted children.

## **5.0 CONCLUSION**

The enactment of the Bill is expected to improve access to both primary and secondary education in the country. Free education is highly beneficial especially to students from disadvantaged families who want to study but cannot afford to pay fees. The Education Amendment Bill presents changes in primary and secondary schools which will result in better education in the country and in turn result in poverty reduction. It is proven that free education can also help reduce early marriages and unwanted pregnancies, as many girls who are dropping out of school get married at an early age. Therefore, there is an urgent need to ensure that the Bill sees the light of day and enhance the legislative framework in the education sector.



## **References**

African Charter

Constitution of Zimbabwe (Amendment No. 20), 2013

Convention on the Rights of the Child

Education Act (Chapter 25.04)

Education Amendment Bill, H.B. 1, 2019