



LEGAL ANALYSIS AND PROPOSED AMENDMENTS OF THE EDUCATION AMENDMENT BILL AND THE EDUCATION ACT

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1. INTRODUCTION

Zimbabwe enacted a new Constitution in 2013.¹ Section 2 of that Constitution provides for the supremacy of the Constitution. The section makes any law, practice, custom or conduct inconsistent with the Constitution invalid to the extent of the inconsistency. It is therefore imperative to review other laws to ensure compliance with the Constitution. Zimbabwe is also a State Party to many international treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). These create an obligation on Zimbabwe to align its laws with the international legal framework.

The Government of Zimbabwe is in the process of aligning the Education Act [Chapter 25:04] (the Act) to the Constitution. The Education Amendment Bill, 2019 (the Bill) was drafted and published in the Government Gazette of 15 February 2019. The Education Coalition of Zimbabwe (ECOZI) commissioned a legal analysis of the Bill and the Act and the drafting of proposed amendments of the Act which resulted in this report that is to be submitted to the Parliament of Zimbabwe for consideration.

1.1. Purpose of the Report

The report presents:

- a. a legal analysis of the Education Amendment Bill and the Education Act which identifies issues that were omitted and sections that need to be repealed or amended for them to be in line with the national, regional and international human rights frameworks.
- b. proposed amendments, in a legal language, to the Education Act to be included in the Bill.

1.2. Methodology

The report was produced through meetings and interviews with stakeholders, who included ECOZI Technical Working Group and literature review, including of the legal framework and written submissions by ECOZI's stakeholders on education. The following sections deal with the analysis of the Bill and the Act and contain the proposed amendments to the provisions of the Bill and the Act.

¹ Constitution of Zimbabwe Amendment (No. 20) Act 2013

1.3. Purpose of the Bill

The purpose of the Bill is to amend the Education Act so as to align it with the Constitution. The list of constitutional provisions is very comprehensive. The following issues should however be attended to:

- 1.3.1. Since the Bill already draws from national objectives, as is required by section 8 of the Constitution, there is need to include in the purpose the national objective which requires the State to take all practical measures to promote free and compulsory education for children and ensure that girls are afforded the same opportunities as boys to obtain education at all levels (section 27 of the Constitution).

Proposed Amendment

Add a first bulletin as follows “the national objective which requires the State to take all practical measures to promote free and compulsory education for children and ensure that girls are afforded the same opportunities as boys to obtain education at all levels (section 27 of the Constitution).”

- 1.3.2. Section 75 of the Constitution of Zimbabwe specifically requires the State to take “reasonable legislative and other” measures to progressively realise the right to basic state funded education. The *first bulletin* in the Bill omits the words “reasonable legislative and other”. It is critical that the constitutional obligation be captured as it is in the Constitution in the Bill.

Proposed Amendment

In bulletin 1: amend by the addition after “take” of the words “reasonable legislative and other”.

- 1.3.3. Section 75 of the Constitution mandates the State to take “reasonable legislative and other measures” to make further education progressively available and accessible. The *second bulletin* in the Bill leaves out the constitutional obligation to take “reasonable legislative and other measures” to fulfil the right to further education. The same section in the Constitution uses the mandatory word “must” in place of the words, “is enjoined to”, used in the Bill. The word “enjoin” may be interpreted as permissive rather than mandatory. The Bill must reflect the language of the Constitution.

Proposed Amendment

In bulletin 2: amend by the addition after “the State”, of the words “through reasonable legislative and other measures”. Further amend the same bulletin 2 by the deletion of the words “is enjoined to” and substitution thereof by the word “must”.

- 1.3.4. There is need to also add a bulletin on “the right of every child to education (section 81(1)(f)”. Unlike the rights in section 75 which are subject to the available resources, this right has not been qualified.

Proposed Amendment

Add a bulletin after bulletin 2 on “the right of every child to education (section 81(1)(f)”.

- 1.3.5. On *bulletin 3* there was an omission of the section 81(2) of the Constitution which provides that “A child’s best interests are paramount in every matter concerning the child.” This section contains a justiciable right compared to section 19(1) of the Constitution which is a national objective.

Proposed Amendment

In bulletin 3: amend by adding “and section 81(2)” after “19(1)”.

- 1.3.6. On *bulletin 4* there is need to correct the paragraphs of section 83 of the Constitution referred therein by deleting (d) and substituting with (f) to correctly refer to the relevant constitutional provision.

- 1.3.7. On *bulletin 4* there is use of the words “where necessary” in reference to training. Section 84(f) of the Constitution uses the words “training where they need it”. It is clear in the Constitution that people with disabilities will decide on whether or not they need training. Alternatively, it is their needs which determine the training provision. The Memorandum does not make it so clear on who decides on the necessity of the training. In fact the Bill is silent on the issue of training for persons with disabilities.

Proposed Amendment

In bulletin 4: amend by deleting “(d)” and substituting with “(f)” to correctly refer to the relevant constitutional provision (paragraph).

Further amend by the deletion of the words “where necessary” and substitute with the words “where they need it”.

1.3.8. There is a serious omission of the right to personal security which protects every person's right to bodily and psychological integrity including the right to freedom from all forms of violence from public or private sources (section 52(a) of the Constitution). This is critical as the Bill prohibits beating of pupils in schools.

Proposed Amendment

Amend the Bill by adding after bulletin 5 a bulletin on “the right personal security including freedom from all forms of violence in the public and private sources (section 52(a) of the Constitution)”.

2. THE LEGAL ANALYSIS OF THE BILL AND ACT

Description	The Act	Analysis	Bill	Analysis	Proposed Amendments
2.1. Definitions			<i>Bulletin 3</i> on purpose of the Bill includes recognition of a child as a person under the age of 18 years as in Section 81(1) of the Constitution.	The Bill however does not include a definition of a child. It is recommended that such a definition which complies with the constitutional definition of a child be included in the Bill.	Amend the interpretation section by the insertion of ““child” means a boy or girl under the age of eighteen years.”
	A number of schools are administered and controlled by local authorities as provided in section 8 of the Act.	The definition of “government school” in the Act excludes such from being government school. It is recommended to expand the definition of a “government school” to include			Amend the definition of a “government school” to mean “a school administered and controlled by the national government, local authority or any tier of government as established in Section 5 of the

	A government school is defined in section 2 of the Act as “a school administered and controlled by the Ministry”.	schools established and maintained by local authorities. Local authorities are part of the government in terms of section 5 of the Constitution of Zimbabwe.			Constitution of Zimbabwe Amendment (No.20) Act 2013.”
			Basic state funded education is defined as education from early childhood education up to grade seven or adult education up to grade seven or any other category as may be declared by the Minister by notice in the Gazette	The definition does not make it clear that it is the State which will fund the education. It also does not clarify what is included in the state funding. The State must fund the tuition, levies and learning material for pupils as well as the infrastructure and teaching needs. The Bill uses the	Amend the definition of “basic state funded education” in <i>Clause 2 of the Bill</i> to read as follows: “basic state funded education” means a. Education from early childhood education up to grade seven and after five years from the date of this amendment up to

			from time to time (Clause 2 of Bill).	internationally accepted definition of basic education to cover from early childhood education up to the fourth form. Basic education should be funded by the State and be free and compulsory. This may be achieved progressively. We therefore recommend that the State should within five years of the amendment expand basic state funded education to up to form four. The definition of basic state funded education should therefore be amended in paragraph (a) and (b).	<p>form four; or</p> <p>b. Adult education up to grade seven and after five years from the date of this amendment up to form four; or</p> <p>c. Any other category as may be declared as such by the Minister by notice in the Gazette from time to time:</p> <p><i>for which pupils shall not be required to pay fees or levies and the State shall provide them with learning and teaching materials, facilities, infrastructure and resources subject to the provisions of the</i></p>
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					Constitution.
		Both the Act and the Bill do not define a public school and private school. These definitions are necessary as they have implications to which school should be registered and thereby pay the registration fee and annual fees. The definitions also aid in determining which schools do some of the provisions of both the Act and the Bill apply.			Amend interpretation section by the insertion of ““public school” means a school established and maintained by the government, registered private voluntary organisation or faith based organisation to provide education to the public not for profit.” ““private school” means a school established and maintained by any person or body independent of the government to provide education for profit.”

<p>2.2. Children's Fundamental Right to Education</p>			<p><i>Clause 3 of the Bill:</i> The expansion of the grounds upon which a child may not be discriminated to comply with section 56(3) of the Constitution is commendable.</p>	<p>There is however need to expand the protection beyond admission into school. A child should not be suspended, excluded or expelled from school on any of those grounds. Section 4(2)(b) of the Bill should be amended accordingly.</p>	<p>Amend section 4(2)(b) of the Bill by adding after “admission to” of the words “suspended, excluded or expelled from”.</p>
		<p>Notwithstanding that every child in Zimbabwe is guaranteed the right to school education, there are sexual and reproductive health issues that affect the attendance and retention of girls in schools. Girls often</p>			<p>Amend section 4 by inserting subsection (1a) which provides that “(1a) The State shall provide sanitary wear to girls and other menstrual health facilities in government schools to promote menstrual health.”</p>

		<p>miss school due to menstrual health issues. There is need to provide for such given the constitutional mandate to ensure that girls are afforded the same opportunities as boys to obtain education at all levels and that every citizen or permanent resident of Zimbabwe has the right to have access to basic health care services, including reproductive health care services. We therefore</p>			
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		<p>recommend that a subsection be added providing for the provision of sanitary wear to promote menstrual health in government schools and empowering the Minister of Education, in consultation with the Minister of Health, to make regulations on sexual and reproductive health education in schools.</p>			
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<p>2.3. Compulsory Education</p>		<p>Zimbabwe has experienced cases where parents, despite primary education being compulsory as in section 5 of the Act, which is being repealed, would deny their children the right to education for various reasons, including beliefs. Section 60(3) of the Constitution of Zimbabwe is intended to address this problem. That subsection gives the parents the right to determine, in</p>	<p>The provisions of <i>Clause 4 of the Bill</i> guaranteeing to every child the right to basic state funded education are in sync with the constitutional obligation upon the State.</p>	<p>There is however need to reconcile the motivation in the Memorandum with the contents of <i>Clause 4 in the Bill</i>. The Memorandum speaks of the State having to fund basic education within the limits of resources available and that where there are no resources parents or guardians should make sure that every child attains basic education. <i>Clause 4 of the Bill</i> does not qualify the children's entitlement to basic state funded education. The Memorandum should be amended to reflect the contents of the clause in</p>	<p>Amend <i>Clause 4 in the Memorandum</i> by deleting the words “within the limits of resources available. Where there are no resources parents or guardians should make sure that every child attains basic education.”</p> <p>Amend the proposed section 5 in the Bill by adding the following subsections:</p> <p>“(2) Any parent who deprives their child the right to basic state funded education shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a</p>
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		<p>accordance with their beliefs, the moral and religious upbringing of their children provided they do not prejudice the rights of their children, including the right to education. It is therefore necessary to include provisions that support this constitutional provision and ensure that parents do not deprive their children the right to education.</p>		<p>the Bill, which reflect a preferred position supported by the State's constitutional and international human rights obligations of making basic education compulsory and free for every child.</p>	<p>period not exceeding two years.”</p>
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2.4. General Duties of Local Authorities			<p><i>Clause 5 of the Bill</i> is introducing another subsection to section 8 of the Act which makes it mandatory for every local authority in Zimbabwe to provide land for school infrastructure. The contents already in section 8 would have to constitute subsection (1).</p>		
2.5. Enrolment at schools			<p><i>Clause 6 of the Bill</i> repeals and substitutes section 10 of the Act by clarifying that zoning will apply to government schools</p>	<p>The challenge is however with the <i>proviso</i> to paragraph (3) which speaks to what happens when a child cannot be enrolled at a school nearest to their place of residence</p>	<p>Amend the <i>proviso (ii) of subsection (3) in Clause 6 of the Bill</i> by deleting and substituting it in its entirety by the following: “the head of the school who has decided not to issue a</p>

				<p>because that school is fully enrolled.</p> <p><i>Proviso (i)</i> prohibits the head of school which cannot enrol a child because it is fully enrolled from issuing a certificate certifying that the child could not be enrolled if it is apparent that the enrolment of such a child at the next nearest school is impossible due to the inaccessibility of such nearest school. The challenge is that the <i>proviso</i> does not state what would happen to the child in such event. It is recommended that the child should then be</p>	<p>certificate in terms of <i>proviso (i)</i> shall enrol the child despite his or her school being fully enrolled.”</p>
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				<p>enrolled at that school that is fully enrolled. This may be what was intended by <i>proviso (ii)</i>.</p> <p><i>Proviso (ii)</i> is confusing. It states that “the head of the school shall enrol the child at such nearest school.” It is not clear which head is being referred to between the head who has issued a certificate and that of the nearest school. If the <i>proviso</i> refers to the head who has issued a certificate the question is why he or she would assume the obligation to enrol the child at the nearest school beyond issuing the certificate. The</p>	
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				<p>parents of the child should approach the next nearest school armed with the certificate. If the <i>proviso</i> refers to the head of the next nearest school then there is need to consider that such next nearest school may also be fully enrolled. Why would it then be mandatory for that head to enrol the child when the first head has the option of issuing out a certificate in cases of his or her school being fully enrolled? Whether or not one of these two options is what was intended the <i>proviso</i> must be revised. It is recommended that the</p>	
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				<p><i>proviso</i> should compel the head who has decided not to issue a certificate to the child to enrol that child despite his or her school being fully enrolled. Such a school should seek for more resources from the State to match its increased enrolment, where necessary.</p>	
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<p>2.6. Prescribing of Fees at Government Schools</p>	<p>In view of the provisions on basic state funded education introduced by the Bill, there is need to amend subsection 13(1) of the Act which empowers the Minister to prescribe fees in addition to subsection 13(4) which is being repealed and substituted by another subsection (4) as in <i>Clause 8 of</i></p>	<p>Experience has shown that children are often excluded from school and denied their right to education due to failure to pay the general purpose fund or contribute towards or have learning material. This section needs to be amended so that children covered by basic state funded education are not required to pay the general purpose fund or contribute towards learning material. The State</p>	<p>The Bill repeals and substitute Section 13(4) of the Act with a new subsection which still allows the Minister to prescribe fees to be paid without providing for the refusal to admit a pupil for non-payment of fees as in the current subsection.</p>	<p>It must be clear that the prescribed fees only apply to children not covered by the provisions on basic state funded education. There is need to state categorically that no child shall be denied admission into government school for failure to pay fees or have other school accessories such as school uniforms. In respect of children not covered by basic state funded education, the school should engage the parents for the payment of fees and also seek to have the child supported by the government where parents are unable to pay the fees.</p>	<p>Amend subsection 13(1) of the Act by inserting after “payable” the words “by pupils not entitled to basic state funded education”.</p> <p>Amend section 13 by adding subsection (5) which provides that “no pupil shall be refused admission at or excluded from a public school on account of failure to pay any prescribed fees or contribute to any general purpose fund or provide or have learning materials and accessories.”</p>
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	<p><i>the Bill.</i> Section 13(4) of the Act which is being repealed allows the head of a government school to refuse to admit any pupil on whom any fees payable in terms of the law have not been paid.</p> <p>Section 13(4) of the Act which is being repealed also refers to section 14 of the Act which provides for the</p>	<p>must fund for such extracurricular activities, facilities and learning and teaching materials. No child should be refused admission into or excluded from school on account of failure to contribute towards the general purpose fund or have the learning material which the State must provide.</p>			
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	<p>establishment of a general purpose fund by a head of a government school for aiding extracurricular activities and facilities. The Secretary is then empowered to fix fees that shall be payable into the general purpose fund by pupils attending such a government school.² The same section</p>				
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² Section 14(3) of the Education Act

	(14(5)) makes reference to pupils at government schools making contributions towards costs of purchasing material for practical subjects.				
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<p>2.7. Registration of non-Government Schools</p>			<p><i>Clause 9 of the Bill</i> seeks to introduce a new subsection (7) in section 15 of the Act which makes it mandatory for schools, other than government and faith based schools, to pay a registration and annual fee prescribed from time to time by the Minister.</p>	<p>There are challenges with this provisions: The first challenge is the absence of a definition of a faith based school in either the Bill or the Act. It is also difficult to find consensus on the meaning of a faith based school. Faith based organisations are not registered in Zimbabwe. Zimbabweans also share different faiths, a right protected in section 60 of the Constitution. The second challenge it that there are many faith based schools which have emerged in recent years which are for profit and fall within the category of</p>	<p>Amend the subsection (7) in the Bill to read as follows: “Every school other than public school shall pay a registration and annual fee as may be prescribed from time to time by the Minister.” Add another subsection (8) in the Bill which provides that “Any person or responsible authority who operates a school other than a public school without paying the registration and annual fee as prescribed in subsection (7) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a</p>
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				<p>private schools rather than the traditional mission schools which were meant to complement the government in providing education, even in remote areas. There is no justification to exempt such schools.</p> <p>The third challenge is that there are some schools run by private voluntary organisations registered in terms of the Private Voluntary Organisations Act [Chapter 17:05] that have not been exempted from paying the registration and annual fees yet they play a complementary role to the</p>	<p>period not exceeding two years.”</p>
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				<p>government by providing education not for profit, just as some faith based schools do.</p> <p>Another challenge is the omission of the consequences for failing to pay the registration and annual fee.</p> <p>It is recommended that government schools and schools established and maintained by registered welfare organisations or faith based organisations that provide education not for profit be exempted from paying the registration and annual fee. These should be categorised as public</p>	
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				<p>schools as opposed to private schools. All private schools must pay the registration and annual fee. There is therefore need to amend the definition section to include “public schools” and “private schools”.</p>	
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<p>2.8. Adult Education</p>			<p><i>Clause 10 of the Bill</i> seeks to introduce paragraph “c” to section 25 which requires every school to endeavour to offer non-formal education, including adult education.</p>	<p>The paragraph will however not flow from the opening statement of that section. Joined together the sentence will read like “The Minister may provide for- (c) every school shall endeavour to offer non formal education including adult education.” It is recommended that the section be reconstituted to introduce subsections with the first subsection containing what is already in the Act and the paragraph sought to be introduced by the Bill constituting the second subsection.</p> <p>The paragraph (c) is</p>	<p>Amend the section 25 together with the proposed addition to read as follows:</p> <p>“(1) The Minister shall, subject to the available resources, provide facilities and infrastructure for-</p> <p>(a) the teaching of; or</p> <p>(b) the training of persons for the purposes of teaching adult education.</p> <p>(2) Every school shall, subject to the available resources, offer adult education and other non formal education.</p>
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				<p>vague. It may defeat the objective which is to comply with section 75 of the Constitution which requires the State to take reasonable legislative and other measures, within the limits of resources available, to achieve the progressive realisation of the right to adult basic education and further education for every citizen or permanent resident. It is proposed to separate non formal education and adult education.</p>	
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2.9. Meetings and Procedure of Board			<i>Clause 11 of the Bill</i> seeks to enhance the effectiveness of the National Education Advisory Board by repealing and substituting subsection 33(1) of the Act. The new subsection will require the Board to meet quarterly or any other shorter period prescribed by the Minister.		
2.10. Language to be Taught in Public Schools	Section 62 of the Act provides for “languages to be taught in schools” which	The section in the Act refers to all schools which gives the impression that it applies to both	<i>Clause 12 of the Bill</i> seeks to repeal section 62 of the Act and substitute it with another section on	The new title of the section in the Bill refers to public school. The contents of the new section in the Bill do not refer to public schools	Amend the title of section 62 in the Bill by removing the word “public” so that the title reads “Language to be taught in schools” as

	<p>were prescribed as Shona, Ndebele and English. These were to be taught on equal time basis in all schools.</p>	<p>public and private schools.</p>	<p>the same subject of languages to be taught in schools. The proposed <i>section 62(1)(a) of the Bill</i> requires every school to endeavour to teach every officially recognised language.</p>	<p>but every school. Will the new section apply to private schools? Both the Act and the Bill do not define a public school, a definition which is necessary if the section is to apply to public schools only. It is recommended that it should apply to every school. There are sixteen officially recognised languages in Zimbabwe.³ It requires substantial amount of resources and time for each school across Zimbabwe to teach all these languages. It is recommended that there be</p>	<p>in the old section. Amend section 62(1) to read as “Every school shall-</p> <p>(a) teach, in addition to English and sign language, any other officially recognised language prescribed for the region in which the school is situated by the Minister from time to time.”</p>
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³ Section 6(1) of the Constitution

				<p>a zoning system whereby schools teach languages dominantly used in the region they are situated in addition to languages such as English and sign language which must be taught across the country. The Minister may be empowered to make regulations defining the zones from time to time. The paragraph can therefore be amended as proposed herein.</p>	
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2.11. Health in Schools			<i>Clause 13 of the Bill</i> seeks to empower the Minister of Education, in consultation with the Minister of Health, to make regulations for the appointment of sexual and reproductive health personnel. This is achieved by adding paragraph (k) to section 64(2) of the Act.	This is a welcome provision in line with the growing needs to empower children on sexual and reproductive health issues affecting them. As highlighted above there is need for sexual and reproductive health education in schools hence the Minister should also be empowered to make regulations on that subject by adding another paragraph (l).	Amend section 64(2) of the Act by adding paragraph (l) which empowers the Minister to make regulations as follows: “sexual and reproductive health education in schools.”
2.12. Regulations	Section 69(2)(c) of the Act empowers the Minister to make	In view of Articles 51, 52 and 53 of the Constitution and the recent court judgments, including	<i>Clause 14 of the Bill</i> seeks to empower the Minister to make regulations for the use of emerging	Among the challenges militating against girls education is sexual abuse in schools by other pupils, teachers and other staff	Amend section 69(2)(c) of the Act by removing after “including” the words “the administration of corporal punishment and” so that

	regulations on the administration of corporal punishment.	that of the Constitutional Court on corporal punishment, ⁴ there is need to amend section 69(2)(c) of the Act by removing after “including” the words “the administration of corporal punishment and”.	technologies in education and the manner in which feeding schemes may be conducted in schools. This is achieved by amending section 69(2). Regulations in the two mentioned areas are long overdue.	members. It is critical to have regulations passed that deal with sexual abuse in schools. Such regulations will complement the criminal laws available. There will be need to raise awareness on such regulations targeting especially the children. It is therefore recommended to add another paragraph as section 69(2)(n4) empowering the Minister to make regulations on sexual abuse in schools.	the paragraph will reads “discipline in schools and the exercise of disciplinary powers over pupils attending school, including the suspension and expulsion of such pupils in respect of the their attendance and conduct in schools, and in public places when not accompanied by their parents or by adult persons into whose custody they have been entrusted by their parents;”. Amend section 69(2) by adding another paragraph which empowers the
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⁴ Pfungwa and Justice for Children Trust v Headmistress Belvedere Junior Primary School and 2 Others HC6029/16

					Minister to make regulations on sexual abuse in schools which reads as follows “(n4) handling of sexual abuse cases in schools.”
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<p>2.13. Pupil Discipline</p>			<p><i>Clause 15 of the Bill</i> introduces a new section 68A which deals with pupil discipline. The section will empower and oblige every responsible authority of any school to draw up a disciplinary policy for the school in accordance with the standards set out in the regulations prescribed by the Minister.</p> <p>Both the disciplinary policy and regulations shall not permit any treatment</p>	<p>It is recommended that the policy and regulations should also not permit any treatment that violate the right to bodily and psychological integrity which include the right to freedom from all forms of violence from public or private sources.</p> <p>It is recommended that this protection should also cover pupil from exclusion and expulsion from school hence the need to amend the clause.</p> <p>The main challenge with Section 68A(5) is that it</p>	<p>Amend section 68A(2) in the Bill by adding paragraph (iii) which reads</p> <p>“violates the right to bodily and psychological integrity, which includes the right to freedom from all forms of violence from public or private sources.”</p> <p>Amend section 68A(4) to cover exclusion and expulsion from school so that the subsection reads</p> <p>“no pupil may be suspended, excluded or expelled from school without first being granted a reasonable opportunity, with the support of his or</p>
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			<p>which does not respect the human dignity of a pupil or which amounts to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment and prescribe the manner in which any such punishment may be administered.</p> <p>Section 68A(4) will prohibit the suspension of any pupil without first being granted a reasonable opportunity, with the</p>	<p>prohibits only teachers from beating children. Any other person such as a matron or other support staff at a school may beat a child. The other challenge is that the subsection does not provide for any sanction for contravening it.</p> <p>It is recommended that the subsection should categorically abolish corporal punishment within the education system and prescribe the sanction for violation.</p>	<p>her parents, to make representations with respect to the proposed suspension, exclusion or expulsion.</p> <p>Amend section 68A(5) to abolish corporal punishment so that the subsection reads “(i) No person may administer corporal punishment on a pupil.</p> <p>(ii) Any person who contravenes paragraph (i) shall be guilty of an offence and liable on conviction to a sentence which could be imposed for the offence of assault.”</p>
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			support of his or her parents, to make representations with respect to the proposed suspension. Section 68A(5) provides that “under no circumstances is a teacher allowed to beat a child”.		
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<p>2.14. Pupil with Disability</p>			<p><i>Clause 15 of the Bill</i> further introduces a new section 68B on pupil with disability. The section will require registered schools to provide infrastructure, subject to availability of resources, suitable for use by pupils with disabilities. It further empowers and mandates the Secretary to monitor and enter premises of every registered school for purposes of ascertaining whether the rights of</p>	<p>Infrastructure alone is not adequate. There is also need for learning and teaching materials, approaches, facilities and resources suitable to pupils with disabilities. In terms of the Act, section 15 as read with section 2, registered schools are non-government schools. The proposed section 68B, in its current draft, will not apply to government schools. It is also not clear whether it would apply to local authority schools. It is recommended that both government and non-government schools should be covered by the</p>	<p>Amend section 68B by removing the word “registered” from all the subsections so that the section applies to all schools and also adding learning and teaching materials, facilities and resources in paragraph (1). The section will read as “(1) Every school shall provide infrastructure, learning and teaching materials, facilities and resources, subject to availability of resources, suitable for use by pupils with disabilities. (2)The Secretary shall monitor and enter premises of every school</p>
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			<p>pupils with disabilities are taken into account during teaching and learning. It further requires every registered school to submit a plan to the Secretary highlighting how the school shall advance the rights of pupils with disabilities when seeking approval of fees.</p>	<p>proposed section 68B. Section 68B(3) should however not be confused to introduce fees in cases of children covered by basic state funded education.</p> <p>It is also critical for pupils with disabilities, their parents and other interested parties to be able to participate in the planning, implementation and monitoring, including by making presentations to the responsible authority and Secretary, on the infrastructure, facilities, resources and learning and teaching materials suitable for pupils with disabilities.</p>	<p>for the purposes of ascertaining whether the rights of pupils with disabilities are taken into account during teaching and learning.</p> <p>(3) Pupils with disabilities, their parents and other interested parties have the right to participate in the planning, implementation and monitoring, including by making presentations to the responsible authority and Secretary, on the infrastructure, facilities, resources and learning and teaching materials suitable for pupils with disabilities.</p> <p>(4) For the purposes of fees approval, the</p>
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					Secretary shall require every school to submit a plan highlighting how the school shall advance the rights of pupils with disabilities.”
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<p>2.15. Basic Education Fund</p>			<p><i>Clause 15 of the Bill</i> further introduces section 68C which establishes a basic education fund for purposes of funding infrastructure and payment of fees for pupils who genuinely cannot afford. Given the fact that early childhood education and primary education are to be funded by the State, the reference to payment of school fees for pupils who cannot afford should be applied to those</p>	<p>To complement the provision of basic state funded education and the progressive realisation of the right to education, we propose the establishment of a basic education trust fund. The purpose will be, among others, to fund infrastructure development, facilities, equipment and learning materials to marginalised schools and learners. Both state and non-state actors will contribute to and be responsible for managing this fund. The basic education trust fund will promote efficient and effective use of funds at</p>	<p>Amend section 68(C)(1) (b) by addition of “who are not covered by basic state funded education” so that the paragraph reads as “payment of fees for pupils not covered by basic state funded education and genuinely cannot afford.” Add another paragraph 68(c)(1)(c) which provides that: “payment of fees and levies and provision of learning material for pupils from early childhood development education to grade seven.” Amend section 68C(2) by adding paragraph (c)</p>
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			<p>not covered by basic state funded education. This must be clarified to avoid defeating the right to basic state funded education.</p> <p>It must also be clear that this is the fund that will be used to fund infrastructure, facilities, learning and teaching materials and resources for the basic state funded education. Pupils in government schools shall therefore not pay any tuition or levies or be required</p>	<p>all levels of government and the school. It will be established through a separate Act of Parliament which will detail its establishment, management, source of funding as well as use of funds.</p>	<p>which provides that “building fund which may from time to time be levied on the approved school fees of every private school.”</p> <p>Provide for the establishment of a Basic Education Trust Fund by adding section 68E Basic Education Trust Fund “An Act of Parliament shall provide for the establishment of a Basic Education Trust Fund within three years of this amendment. The Act shall set out, among others, purpose of the fund, the funding mechanisms, the management of the fund</p>
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			<p>to acquire their own learning material. There is therefore need to amend the provisions on the purpose for the fund. The Memorandum refers to a building fund which may from time to time be levied on the approved school fees of every registered school contributing to the basic education fund. This is however missing in the new section. There is need to amend section 68C(2) by adding</p>		<p>which must include stakeholders from both the state and non-state actors, the use of the fund and transparency and accountability mechanisms of the fund.”</p>
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			<p>paragraph (c) which provides for the building fund contributing to the basic education fund. Private schools should contribute towards this building fund.</p>		
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<p>2.16. Non exclusion of Pupils from School</p>			<p><i>Clause 15 of the Bill</i> further introduces section 68D which prohibits the exclusion from school of any pupil for non-payment of school fees or on the basis of pregnancy. The ban on exclusion of girls on the basis of pregnancy is commendable. The total ban on exclusion of pupils who fail to pay school fees should however be reviewed and the section amended.</p>	<p>Section 68D(1) is drafted in a way which covers both public and private schools. The later include private schools which rely on the payment of the fees to offer services. There is no justification for extending the ban on exclusion for non-payment of school fees to private schools. Parents choose to send their children to such schools after considering their ability to pay the fees and for them not to pay the fees would compromise the ability of the school to offer expected services to other pupils who would have fully paid their fees.</p>	<p>Section 68D should be amended to read as follows “(1) No pupil shall be excluded from a public school for non-payment of school fees. (2) No pupil shall be excluded from school on the basis of pregnancy or disability. (3) Any person who contravenes subsections (1) and (2) shall be guilty of an offence and liable upon conviction to a fine not exceeding level six or to imprisonment for a period not exceeding two years.”</p>
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				<p>The section should therefore be amended to bring clarity on this aspect. There is also need to put a sanction for violation of the section.</p> <p>There is also need to protect the rights of persons with disabilities by prohibiting exclusion on the basis of disability.</p>	
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