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Current Issues in Education Law in Zambia: What Educators Must Know

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Abstract

The paper discusses the importance of understanding the nature and implications of legal issues in education. It analyses the scholarly articles related to education law globally. Most importantly, it analyses issues pertaining to the Education Act of 2011 as well as the Teaching Profession Act of 2013. It brings to the fore the main issues that the two Acts aims to address vis-à-vis, areas of liability in education, ethics and teaching, unethical conduct and fraud in education as well as discipline. The paper raises serious concerns upon which education could be managed without impinging on the rights of all the participants. Since the current society is rights based, it is important for the teachers to understand legal issues in the education process in order to create harmony in the system.

Key Words: Education Law, Education Act, Teaching profession Act, fraud in education, Due process, discipline

1. Introduction

Public schools are governed by the laws of the country, the basis of which is legislation. World-wide, the laws in this sector have evolved over time originating through common law, judicial precedence and legislation (Dekker and Lemmer, 2008). The law governing education in Zambia derives its power from the constitution, which is the highest law in the land. Apart from this, the system is governed by policies the important one is called Educating our Future which is the 1996 policy document on education. This policy stipulates how education should be governed. It also gives the philosophical framework as well as spelling out the channels of education delivery. In addition, this policy document addresses areas of concern which include girls' education, education of the handicapped and equity issues.

The Zambian education system has also subordinate legislation often in form of circulars that are issued periodically on prevailing issues. This paper however, discusses legal issues

in the Education Act of 2011 and the Teaching Profession Act of 2013. The aim is to avail the educators information on some of the current issues in education law emanating from the Education Act and the Teaching Profession Act of 2013 in order to promote efficiency and avoid irregularities and litigations.

2. Literature Review and Discussion

All education activities are legally grounded; therefore, educators require knowledge of the legal requirements governing these activities (Squelch, 2012). These activities fall under what is known as Education Law. Mahlangu (2010:10) defines education law as 'a discipline which ensures to all stakeholders in education the security of lawfulness within which education training can take place in an orderly, systematic and harmonious manner'. He further states that the essence of this law is to protect parties in an education set up. This is in contrast with general law whose aim is retribution. Whilst countries such as United States have made headways in education law, this concept is relatively new in Zambia. This is despite the country having had the Education Act since 1966 and having subsequently repealed sections of it over the years up to the current Act of 2011. The question is, are educators up-to-date with the changes currently prevailing? Do they know the legal implications of their actions and decisions?

According to Welner and Chi (2008), the law holds a unique position in education administration. This is because legal decisions may affect the daily operations of the public schools. In addition, the law upholds principles that the education system propagates such as equal access and equity issues. The law further upholds religious freedoms, freedom of speech and due process.

Although this is the case, few educators know about the law. Reglin (1990) carried out a study in Columbia among high school educators to assess their knowledge of public school law. He discovered that educators lacked knowledge in areas of school finance, corporal punishment, and teacher rights. These results suggested that there was need for courses in law as a prerequisite for teacher certification and for funding for staff development training in school law.

Newman (2013) argues that education is the right of all citizens hence the need to understand moral and legal rights that encompasses it. She brings to the fore the question of equality and fairness in education provision. In many countries such as United States of America and Canada as well as Australia where the rights to education provision have not only been enshrined but practiced, there have been court cases as well as community activism on the rights as well as obligations of the parties involved in education. Zambia has also seen court cases related to rights issues, the famous ones are; *Kachasu V Attorney General* (1967) ZR 145 on religion and human rights and the school setting. *Kachasu* claimed that her suspension from school and refusal of her unconditional readmission constituted a hindrance on her right to freedom of conscience and *John Banda V The People* HPA/6/1998 on corporal punishment. Banda stated that corporal punishment was

unlawful and infringed on Article 15 of the Zambian Constitution that states that no one shall be subjected to torture or inhuman treatment. The positive outcome from this case resulted in the ban of corporal punishment in schools. Activism therefore helps the learners know their rights as well as obligations.

World over, the premise of education law is the right of the child. These rights are protected through international documents such as the Universal Declaration of Human Rights (1948) and the convention on the rights of the child (1990). In all these documents and declarations, the best interest of the child forms the basis of these rights (Mhlanga, 2010). This includes the right to compulsory education. In many countries, Zambia inclusive, compulsory education has been enforced by statutes. Kleinberger (1975) states that both the legal obligation to receive formal education and the age span subjected to it counted as indices of a nation's relative level of development. For this reason, compulsory education has been embodied in the Universal Declaration of Human Rights in 1948, article 26 indicates 'that everyone has a right to education, education shall be free, at least at the elementary and fundamental stages, elementary education shall be compulsory'. Whilst many scholars have argued for compulsory education, some scholars have argued against compulsory education accusing governments of running schools and treating learners as if they were servants of the state. They argue that state monopoly of education violates individual liberty and civil rights (Kleinberger, 1975). Despite these arguments, the law on compulsory education ensures that the child may be free from any form of abuse social or economic hence presents a good case for it. It also compels parents and guardians to enrol their children in school and also ensures their retention in school to learn adequate skills for self-actualisation. These laws further increase the holding power of the school over the learners hence influencing them positively.

Adding to the fact that schools world-wide operate in societies shaped by legal decisions, courts often decide educational policy matters, curriculum issues, teacher rights, and student rights. As such, effective educators need to be knowledgeable of current issues in educational law and their impact on daily school operations.

As the training ground for tomorrow's citizens, schools have been given the task of providing to each pupil through classroom experiences and the disciplinary process an understanding of the need in our society to have rules and to abide by those rules. The importance of school discipline in this development, like parental discipline, is an integral and important part of training our children to be good citizens. The other participants too in the education system, i.e. the educators must too play their role in ensuring that schools are safe and conducive for learning by respecting the rights of parties in the education system co-exist under statutes guiding the sector.

Having reviewed literature related to education, laws and education provision, the subsequent section analyses some of legal issues in the Education Act of 2011 and The Teaching Professional Act of 2013.

2.1 Learners' rights versus teachers' obligations

Research and common sense dictates that what transpires in the education system revolves around the learner (Mahlangu, 2010, Dekker and Lemmer, 2008). The learner is therefore the main concern in this set up. Yet, the legal status of the learner is rarely discussed. Many times, learners are subjected to inhuman and unfair treatment. For this reason, the schools have a duty to protect pupils from unreasonable danger and teachers have specific responsibilities in this regard (Squelch, 2008). However, it should be stated here that although the learner is the most important character in the education sector, teachers, parents and school administration and other stakeholders are equally important as customers in the system (GRZ, 2011)

This subsection therefore discusses some areas of liability that may arise in the interactions between learners and teachers. Ebert and Cuyler (2012) define liability as the blame that may result from the interaction between parties. They further state that questions of blame entails that one is liable for an action. Liability falls under what is known as tort law. Here tort refers to a 'civil or private wrong other than a breach of contract' (ibid, p. 341). Ebert and Cuyler further classify these areas of tort in two namely, intentional and unintentional torts. These may include name calling. Calling a learner by a derogatory or mocking name would be considered intentional tort. Similarly, the Education Act advises against such acts and against discrimination and being prejudicial there by ensuring that equity and equality are propagated. Although we have not had cases in Zambia where teachers have been sued for name calling, in the United States where issues of education law are established, such cases are common. In such situations learners are known to have described how the 'name calling' damaged their standing socially or academically. Teachers, acting in loco parentis are advised in the Education Act of 2011 to be sensitive to the plight of learners thereby avoiding acts of intentional liability.

2.2 School Environment and Liability Cases

Traditionally, schools are called upon to take over the role of parents often referred to as in loco parentis (Dekker and Lemmer, 2012). This means that teachers assume the roles of parents. Parents in this instance delegate their roles to the teachers. This delegation comes with legal issues that may raise issues of blame or unintentional torts. Here one may find cases of negligence. There could be a case where a child is injured in class and this may be said to be as a result of the teachers' negligence. Ebert and Cuyler (2012) state that issues of negligence must involve the following elements; there must be a duty of care, violation of duty, this they say must be directly linked to the cause of injury. And above all, an injury must be sustained. Cases of negligence always fall on teacher supervision. Of course we have challenges in the system where the teacher pupil ratios are high (MOE, 2012). However, educators must try to monitor students at all times thereby preventing any reason for being sued for negligence. This is called acting in 'reasonable prudence' (Ebert and Cuyler, 2012)

ntly, schools have been safe-guarding this by letting parents sign disclaimer
ments that will discharge the schools of blame during special trips or potentially
ous situations. This does not exempt teachers from being liable. Thus, teachers must
anticipate dangerous situations and take reasonable steps to prevent them. Similarly,
ducation Act also protects parents who refuse to enter into a contract in terms of
the parent waives any claim for damages arising out of the education of the
ant (GRZ, 2011). This further confirms that teachers have duties of care that have
bestowed upon them in line with their role and they have an obligation to discharge
iligently.

teacher as an ethical being

e education sector, the laws and regulations governing the conduct of teachers in
ls as they interact with learners in the teaching and learning processes are aimed at
oting their professional conduct. Teachers' conduct at all times should be ethical
h to promote student achievement in schools whenever they interact with learners.
ch teachers are liable to a number of issues which directly or indirectly influence
learning in schools.

able to carry out their duties professionally, in and out of the classroom, teachers are
bited by law to enter into a sexual relationship or marry young girls in school.
ding to the Education Act of 2011, a teacher cannot contract any form of marriage
a girl who is a child. This is important to protect the professional identity of a teacher
s a role model to many both within the school and the community. It is clear then that
relationship between teachers and students is a very important and sensitive one. It
be built on strong foundations, stemming from mutual respect and trust as well as on
ghest of ethical standards to promote good practice in teaching (Arthur, et al, 2005).
over, teachers must always remain professional in their conduct for they are always a
d for a pupil of what an ideal human being in a community should be. As such no
nt of competence in class will compensate if the teacher is not an appropriate model
e learners. In addition, the law is very clear that if a teacher for example contravenes
n 18 of the Education Act which states that 'a person shall not marry or marry off a
er who is a child or prevent or stop a learner who is a child from attending school for
urpose of marrying or marrying off a learner who is a child' then he is deemed to have
mitted an offence and is liable, upon conviction to imprisonment for a period of not
han 15 years or even life imprisonment.

thers must remember that subject to the constitution, every child regardless of his/her
e-economic background and ethnicity has a right to education (Section 14, The
ation Act, 2011). In this vein, every teacher must strive to ensure that they place the
nt's welfare as a first priority in the core business of the school which is student
ing (Yonze, et al., 2014)). Every teacher must thus perform their duties professionally
e with the Teaching Profession Act and the Code of Ethics that govern teacher
riour for the school environment to support and nurture student learning.

In countries where school law is advanced, teachers are held accountable for student achievement. Boshier, et al (2004) found that school teachers in the United States are liable for educational malpractice and can be sued for poor school achievement of students. Teachers are thus not only responsible for ensuring physical safety and wellbeing of the students but also for their educational development. In this regard, class teachers have to ensure that they exercise care and avoid professional negligence which may lead to a student's poor academic performance (Imber and Vaan Geel, 2010). School head teachers and classroom teachers are thus liable for educational accountability if parents of students suspect them of educational malpractice (bad practice). In view of the above, even Zambian teachers must do everything possible and demonstrate that neither their acts nor failures to act were the proximate cause of a student's inability to meet the academic standards (Boshier, et al., 2004).

It is indisputable that that the teaching profession will at all times demand high character and perfect morality for those who join teaching. If by any chance the ethical standing of a teacher is not fairly high, the teacher's reputation among the students is likely to be low, he/she will not command respect thereby negatively affecting their classroom performance (Sidhu, 2012).

Students, therefore, are only likely to benefit being taught by a teacher whose character or moral standing is not questionable. To help students build good character in schools, teachers as role models should not be hypocrites, inconsistent in conduct, quarrelsome, mischievous, trouble makers, jealous, greedy, vulgar and fanatic. Every teacher's integrity of character must be beyond reproach and suspicion (Sidhu, 2012). It then follows that the purity of character of a teacher must be a noble example for all. In the same vein, the Teaching Profession Act No. 5 of 2013 provides for the Teaching Council of Zambia to ensure that it raises the character and status of the teaching profession to promote honourable and good practice and where necessary declare any particular teaching practice to be undesirable for all so as to increase confidence of the public in teachers. Teachers therefore should always ensure that they go prepared to class, avoid missing teaching periods and show greater concern for student achievement.

2.4 Unethical Conduct and Fraud in Education

One of the most important provisions in the Teaching Profession Act of 2013 worthy of mention is found in Part VI, Section 46 (b) and (c), which aims at regulating the professional conduct of teachers. It defines teachers' professional misconduct as an engagement "in conduct that is dishonest, fraudulent or deceitful"; penalty of which is a prison sentence of not less than "six months without the option of a fine." With this provision in mind, this paper attempts to draw to the attention of all concerned education stakeholders some of the critical aspects of teacher misconduct which may generally be termed as fraud.

Fraud is a form of corruption in which a person intentionally commits that which is by law, policy or regulation, regarded as an illegality (UNESCO, 2007). In education, fraud can

occur during procurement and allocation of school grants. It also manifests itself in teachers' unethical conduct such as absenteeism, private tutoring and sexual abuse of pupils. Fraud during procurement and allocation of grants usually relates to education officials or administrators. The focus of this paper however, is on the three fraudulent acts which are committed by the teacher.

It is generally agreed that teachers claim the largest share of the public expenditure in the education sector (MoE, 1996). It is for this reason that they are expected to uphold the highest standard of moral uprightness, honesty and character. Fraudulent conduct by teachers can further have damaging consequences on the very goals of the education system (Hallak and Poisson, 2007).

The common case of fraud involving teachers is absenteeism. A study by Kakupa (2014) revealed that one of the major challenges to school effectiveness in rural schools of the Western Province of Zambia was teacher absenteeism. This involves drawing a monthly salary for work not done. This is tantamount to swindling both the government and the parents of their resources. Malambo (2012) also found that teacher absenteeism was one of the major causes of poor student performance in government schools. An earlier study conducted in 2004 on teacher absenteeism in Zambian primary schools, reported the rate at 10 per cent (Hallak and Poisson, 2007).

Additionally, though the problem of 'ghost teachers' has not been fully researched in Zambia, it is one of the cancers in the education system, whose effects can be seen from international experiences. For instance, a study conducted in Papua New Guinea in 2002 revealed that payment of teachers who only existed on the payroll amounted to about 15 per cent of the total budget for teachers' salaries (UNESCO, 2007). An earlier study conducted in 1995 in Uganda showed that 'ghost salaries' were as much as 20 per cent of teachers' salaries. However, this was reduced to 4 per cent in 2006 (Winkler and Ngergaad, 2007). Research is needed in Zambia to determine the extent and budgetary impacts of the problem of a 'ghost teacher'.

Private tuitions in public schools constitute another avenue of corruption in the education sector in Zambia. Alongside private tuitions is the charging of illegal fees. Charging illegal fees may well be interpreted to mean a fraudulent and dishonesty conduct, which is in conflict with the Teaching Profession Act No. 5 of 2013. The conduct of private tuitions and consequent charging of illegal fees for such activities has its harshest effects on the children from poor backgrounds. In as far as private tuitions do not give children from rich families a comparative advantage over their poor counterparts, then, they may be considered as unfair.

The practice of private tutoring turns out to be a breeding ground for many corrupt and unethical activities. In most cases, teachers who conduct private tuitions use free public rooms, desks, chalk, books and other learning materials such as laboratory equipment

for private gain. This is a serious crime which has been overlooked over a long period of time. Besides, some teachers deliberately fail to cover all the syllabus topic in class for the sake of wanting to attract more pupils to register and pay for private tutoring in the uncompleted topics.

Recently, the Ministry of Education released a circular to ban the conduct of private tuitions on account that they disadvantaged pupils from poor families. This is commendable and should be encouraged to continue. Private tuitions, in themselves, are purely an illegality that works against the achievement of equity and quality. Monitoring mechanisms should be put in place to ensure that this policy is continuously adhered to. Another silent yet critical act of corruption being perpetuated in schools is sexual harassment of girls by male teachers. Many studies have revealed that sexual abuse of school girls was common practice in many Zambian schools (Mwansa, 1995; Fonseka, 2001; Kakupa, 2014). Though this vice is not usually reported for fear of getting in trouble with the teachers involved, it breeds an unsafe atmosphere for effective learning. Many victims end up shunning subjects taught by predatory teachers.

Education is seen as a process of acquiring values, attitudes, behaviours, perceptions knowledge and skills that are intolerant to corruption (UNESCO, 2007). For this reason, any anti-corruption crusade that does not use education is bound to fail. It is sad to note that fraudulent acts should be taking place in a place traditionally known to repel them. There is an urgent need for a plan to restore professionalism in the teaching service through adhering to the Teaching Profession Act of 2013.

2.5 Discipline in School

Recently, some schools in the country have been subjected to riotous behaviour of learners. Indiscipline in any form disrupts the learning process hence the need to avert this vice at all costs. It is therefore important for pupils or parents who are mostly not aware of the Teacher's code of ethics to know their rights concerning disciplinary issues. In other countries where teacher- parent relationships are established, a parent often knows that in as much as schools have the right to discipline a student who has breached a school rule, he or she has the right to suggest an alternative type of discipline which is more appropriate for his or her child (Darlow, 2011). As the essence of education law is to discipline and correct the child and not to punish, severe forms of punishment must be avoided in favour of legal forms. Among the legal forms are: detention, denial of privileges, giving manual work, sending students out of class, reprimanding, behavioural contracts, behaviour management programmes and daily reports.

The Education Act does not condone harsh forms of discipline such as corporal punishment. According to Ornstein & Levine (2000), corporal punishment is seen to be a disciplinary method in which a supervising adult deliberately inflicts pain upon a child in response to a child's unacceptable behaviour and/or inappropriate language. The immediate results of such punishment are usually to halt the offense, prevent its recurrence and set an

example for others. The expected long-term goal is to change the child's behaviour and to make it more consistent with the adult's expectations. In corporal punishment, the adult usually hits various parts of the child's body with a hand, or with canes, paddles, yardsticks, belts, or other objects expected to cause pain and fear.

Over the years corporal punishment has sparked a lot of controversy as a method of classroom discipline. It has a long history in Zambian schools dating back to the colonial period. In many sectors of society it is unacceptable but it enjoys considerable support within some segments of the community and is still administered more frequently than educators like to admit. Although it often involves physical pain, there are other non-physical forms of punishment which are also cruel and degrading. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child (Naker and Sekitoko, 2009). The Zambian culture considers child beating as a good disciplinary measure, not a human rights abuse issue hence it being a topic of debate among teachers. As early as 1956 corporal punishment was considered lawful under Article 46 of the Juveniles Act 1956 which embraced cruelty to juveniles under 19. It stated that "Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a Juvenile to administer lawful punishment to him". Preceding guiding instruments such as the 1996 Zambian constitution, the Anti-Gender-Based Violence Act of 2011 and the Persons with Disabilities Act of 2012 do not prohibit all corporal punishment in child rearing.

According to Global Initiative (2013), Zambia conducted a review in 2008 of all its legislature relating to children with the intention of aligning them to the United Nations Convention on the Rights of Children. It is against this background that the government accepted recommendations to prohibit corporal punishment which were adopted during the Universal Periodic Review in 2012. The report of the working group, paras. 102(23), 102(25) and 102(26) stated that "the government believes that corporal punishment does not have a place either in schools or in a home".

In the same vein teachers must be aware that corporal punishment is illegal in both public and private schools and this is clearly stated in the Education Act 2011, Article 28 which stipulates that, (1) A teacher, employee or other person at an educational institution shall not impose or administer corporal punishment or degrading or inhuman treatment on a learner or cause corporal punishment or degrading or inhuman treatment to be imposed or administered on a learner.

In addition, Zambia's Teaching Profession Act No. 5 of 2013 Section 47 sub section 1 notes that disciplinary action can be initiated when a person alleges that a teacher has contravened the code of ethics or any provision of the Act (GRZ, 2013). In case of corporal punishment, the teacher can be fined or imprisonment for a period not more than a year or both. Similarly, the Education Act stipulates that the learner must comply with the established regulations in school. However, if the school rules are breached; learners are

entitled to the due process. For this reason, teachers must have access to the school rules and in enforcing discipline must be seen to be fair.

Finally, it is important to note that disciplinary actions have a direct impact on the student achievement levels. As such they should be taken into serious consideration. All stakeholders must be aware of the various forms of legal and illegal discipline practices and also the acceptable disciplinary actions and procedures. In addition, the U.S Department of Education (2014:1) notes that, “developing positive school climates and improving school discipline policies and practices are critical steps to raising academic achievement and supporting student success”. It further states that policy makers, school leaders and all stakeholders should strive to improve school climate and discipline. Equally, the Education Act 2011 notes that even though learners are not exempted from any schools rules, they have a right to fair hearing through the correct due process as is established in the school setup. Students on the other hand achieve at higher levels when their schools operate in a safe and orderly manner. Hence, they too have a role to play by demonstrating responsibility for their actions and be accountable for the impact of those actions (Jefferson County Public Schools, 2014).

2.6 School fees and school uniforms

The issue of school fees and uniforms is usually subject to the laws of Zambia. The laws of Zambia stipulate that “ The fees shall be payable in advance on or before the first day of the school term to which they relate; or, in the case of a pupil joining the school after the first day of term, on or before the first day on which such pupil attends the school” (www.zamlil.org/zm/legislation). Yet this is one of the laws that is abrogated by the parents because many are times when parents fail to settle the fees for the children or dependents at appropriate stipulated and legal times. This usually creates a conflict such that the administrators have been left with no choice but to send the erring students back home. However, this also raises the issue of morality and fairness. Why should a child who has a right to education be denied a service on account of the parents who have failed to perform their duties? Moreover, it is illegal for administrators to send away students who have failed to pay school fees.

Additionally, even at the point of entry into a learning institution, the Education Act of 2011 stipulate that no institution be it public, grant- aided or community should discriminate against those who fail to pay admission or tuition fees or provide the necessary school uniforms. The law seeks to protect those that are deemed to be vulnerable and poor at the point of enrolment as well as during the process of enrolment. Therefore, though institutions of learning can legally insist on the correct uniforms, they have no mandate to send away those that fail to pay school fees or acquire the right or correct school uniform.

Another contentious issue is the one that borders on refunds of school fees. The law stipulates that when a pupil withdraws from school, a refund of fees shall be paid in accordance with the number of days the pupil attended in a school term (GRZ, 2011). Yet,

this regulation is not usually followed because many schools in Zambia are known for refusing to make refunds on the premise that school fees are non-refundable. It is therefore important for educators to know that they can be sued by enlightened parents if they breach this understanding.

3. Conclusion

This paper has discussed some of the laws that govern the administration of public schools in Zambia. Caution has been given to the educators to familiarise themselves with the prevailing laws so as to avoid litigations that may arise when learners and or parents decide to seek legal action whenever they may feel that their rights have been violated. The paper has shown that educators need to abide by the laws pertaining to the governance of learning institutions. In the past educators may have escaped litigation because unlike in the developed nations where issues of education law are entrenched, number of people may not be aware of the existence of such laws. It is therefore vital that the Zambian populace took keen interest in what the Zambian Education Act stipulates so as to protect the learner who is at the centre of the whole educational system. It is also important to protect the rights of other participants in the education system.

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