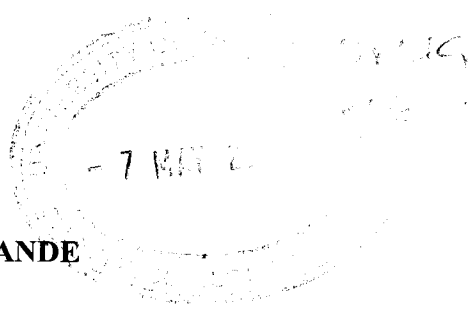


**ENFORCEMENT OF CHILDREN'S RIGHT TO EDUCATION: COULD THIS BE THE
ONLY BREAKTHROUGH TO ZAMBIA'S ECONOMIC DEVELOPMENT?**

BY

NANA MPANDE



**A dissertation submitted to the University of Zambia in partial fulfillment of the
requirements of the degree of Law.**

THE UNIVERSITY OF ZAMBIA

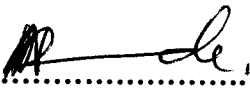
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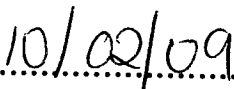
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ABSTRACT

This study marks the effort to develop a comprehensive understanding of how legal enforcement of a child's right to education can help lessen the economic problems that Zambia is facing. The country's economy is far from being called developed. There are more than 5 million children less than 17 years of age but less than three quarters of these are in school.

The essay opens a briefing on what the provision of education really, gives a historical background on the right to education and analyses the legal framework of this right both at the national and International level.

Noting that enforcement of the right to education cannot be entirely put on the government, the study emphasized that the responsibility also lied upon the entire civil society to participate in ensuring that all school age children are enrolled. It was recommended that parents and guardians who abandon their children should be made to face the law. It has been considered that

Following upon this research, the following strategies were considered: (1) The right to education needs to be put in the bill of rights of constitution and justiciable (2) There should be a time frame in which universal education should be achieved (3)

Several of these strategies can be learnt from Sweden and Finland who have the provision of the right to education in their constitutions and all the children are in school. The essay concludes by giving certain actions for Zambia to adopt if it is to fulfil the right to education of all the children in the country.

ACKNOWLEDGEMENT

‘The Right to Education,’ a topic close to my heart. I thank my dear kind and loving God for having blessed me with the ability to be able to do all that I have done from the first day I sat on a desk to this point when I hand in my Degree Qualifying essay. This was made possible through the care and financial help of my grandmother-Msewa M’schili Liwena, a mother and a friend.

Mum, wish you were here to see how your 8 year old little girl is blossoming into a Lawyer; you have helped in a way you’ll never know.

To Ms Lwatula, I would never have asked for a better Supervisor, thanks for all the patience when I just could not get the paper right. I would also love to thank Aunty Liseli, Mwansa Boy, Micheal, KasongoMofya, Mwenya kapasa and Wezi M’schili for letting me use your different resources.

Cynthia and Mukuka, mimbu...girls, its **1 On 1** guys, thanks for all and love you too.

TABLE OF LEGISLATION

ZAMBIAN

- The Constitution, Chapter 1 of the Laws of Zambia
- The Education Act, Chapter 134 of the laws of Zambia
- The Education Bill, Zambia, 2000

INTERNATIONAL

- African Charter on the rights and welfare of the child
- Convention on the rights of the Child
- International covenant on Economic Social and Cultural Rights
- The Universal Declaration of Human Rights

TABLE OF CASES

Kachasu V. The Attorney-General (1969) S.C.J. 60

Brown v. Board of Education of Topeka (1954) 347 U.S. 483

Plessy v. Ferguson (1896) 250 U.S. 34

Roy Clark V. The Attorney General (2004) SC 98A

LIST OF ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
CRC	Covenant on the Rights of the Child
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
NGO	Non Governmental Organization
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children’s Fund

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CHAPTER 1

1.1 INTRODUCTION

In whatever direction we look, we find that education is a powerful means of social progress. Anyone working with it, is working with probably the most powerful instrument man has yet devised for his own improvement.¹

Through education, a child can acquire attitudes for vocational efficiency and consequently for economic development; and through education, a child can acquire attitudes appropriate and necessary for the progress and survival of the social order. The power of education is immeasurable but most of all, an investment in human capital. Education produces consumers as well as producers.

However, it is perhaps the area of education that the government has failed the Zambian child the most. "Nearly half of primary school aged children are not enrolled."² Increasingly, growing numbers of street kids are seen in the hubs of Zambia's urban areas. Young boys fight to carry parcels to earn a few hundred kwachas. Young girls sell their bodies in exchange for food³. It seems the obligation to provide education waits for a child to become vulnerable and moreover, impoverished children are provided with an inferior education. And even though the Zambian government has ratified the international Convention on the Rights of the Child, there is no domestic law that affirms the international acclaim that education should be given as a matter of right. The

¹ . B.O. Ukeye, School and society in Nigeria (Taiwan: Al-Limited Industries, 1986) P. 123

² . Orphans and vulnerable children: A situation analysis (Central Statistics, Zambia 1999) P.24

³ Children's Right to access HIV/AIDS Related Treatment and Services (Zambia AIDSLAW Research and Advocacy Network, 2006) P.9

Education Act⁴ has no definition of government responsibility in providing education but just gives an outline of management and administration of it. Provision of education has only been based on policy programmes by the government and it remains subject to political will.

This thesis advocates for the constitutional guarantee and other possible legal education enforcement means. Education for all can help in having a united, strong and self-reliant human capital, which is just what Zambia needs for its economy that continues to dwindle. Education for children must have the first call on resources.

1.2 STATEMENT OF PROBLEM

‘Enforcement of children’s right to education: Could this be the only breakthrough to Zambia’s economic development?’

There is need to ensure the protection of all the rights of children. Education provides an enabling environment for and by all people. Attempts to review Zambia’s legislation in this area appears to have stalled. Government can ensure that the various conventions-to which Zambia has already committed itself, are not only signed but put in domestic laws and actively enforced. Currently Zambia faces an economic crisis and lack of education for many Zambians puts a pending crisis. This study marks the effort to develop a comprehensive understanding of how legal enforcement of a child’s right to education can help lessen the economic problems that Zambia is facing.

⁴. Cap 134 of the laws of Zambia.

When the Zambian government acceded to International Covenant on Economic Social and Cultural Rights (ICESCR) on 10th April, 1984, it entered a reservation against article 13(2)(a) which provides for compulsory primary education on the basis of lack of financial resources. This justification for the reserve is not true if at all there is political will of which this essay will advocate for.

1.3 PURPOSE OF STUDY

This was initialed out of a need to emphasise and advocate for the need to demonstrate the right to education in the Zambian laws.

1.3.1 CORE OBJECTIVE

To analyze current education provision in the Zambian Constitution⁵, the Education Act⁶ and the international laws.

1.3.2 SPECIFIC OBJECTIVES

- (i) To determine the impact of education on the economy
- (ii) To identify obstacles that limit children's access to education
- (iii) To determine the possible justifiability of this right to education
- (iv) To determine the possible solutions to the current situation

⁵. Cap 1 of the laws of Zambia

⁶. Cap 134 of the laws of Zambia

1.4 SIGNIFICANCY OF THE STUDY

The rationale of this study is based on the lack of government priority on resources and the lack of will to put children first. This also follows the literature review which uncovered a lack of adequate guidelines on how and why children's education should be prioritized. As the issues surrounding children's vulnerability and Zambia's development are vast, this study focuses on their right to education which is seen as an umbrella solution to the other problems.

1.5 RESEARCH QUESTIONS

1.5.1 How is the current economic situation in Zambia?

1.5.2 How many children between the ages of 6-16 are there in the whole country and how many are in school?

1.5.3 What is the government doing to implement the right to education?

1.6 RESEARCH METHODOLOGY

This research will employ a variety of research methods, as it is felt that this is necessary in order to ensure the quality of the data being collected. The first activity is a book review, part of which is already done (see heading #:4). The book review covers policy documents, similar researches by former students and books in related fields as well as the internet up-dates. Other sources are; statutes, journal and newspaper articles, case law and draft legislation where available. Prior to this literature, I did a Voluntary Community based research with the Ministry of Education and an international organization called Students Partnership Worldwide. For this latter portion of the

research, I got to learn some of the resource limitations of education in rural areas which shall be identified in this study.

1.7 ARRANGEMENT OF CHAPTERS

Chapter 2 will give some important definitions, highlight what the right to education really entails; its impact on the economy and its historical background. Chapter 3 will give a brief current legal framework of education at international level and a detailed Zambian education policy system with their possible redressal mechanisms. Chapter 4 will look at how countries like Finland have implemented the international right to education through the constitution. And finally, chapter 5 will conclude the essay and give recommendations.

CHAPTER 2

2.1 DEFINITIONS

Economic, Social and Cultural rights are a category of fundamental human rights which appear alongside civil and political rights in the Universal Declaration of Human Rights. They are sometimes called “positive rights.” they include the right to adequate standard of living, freedom from hunger and education⁷.

Education is defined by the Cambridge Advanced Learning Dictionary as;⁸ “the process of learning in school or college or the knowledge acquired from this.” The term has been given a specific connotation in this essay to mean only formal education, which is imported through educational institutions. Informal education on the other hand has been left out because it only has an impact of acquiring traditional attitudes, which is the way things have always been. Article 1 of the CRC defines a child as a person under the age of 18 years of age. The Zambian Constitution under Article 24 (2), however recognizes a young person as; “any person below the age of fifteen.” ‘Human Rights’ have been defined by Professor Anyangwe⁹ as; those rights which are inherent in our nature as individual human beings.

2.2 WHAT THE PROVISION OF EDUCATION REALLY ENTAILS

The right to education is an overarching right: a human right in itself and indispensable for the exercise of other human rights. Both individual and society are its beneficiaries.

⁷ Questions and Answers on Human rights. United Nations (June, 1973)

⁸ (2003) Cambridge University Press. P.390

⁹ C. Anyangwe, ‘Human Rights; Generations, Holism and Relativity; Zambia Law Journal (1993-1996). P.83

Indeed, education has the objective to “prepare the children of the world for the responsibilities of freedom”¹⁰ as UNESCO’s Constitution stipulates. It empowers individuals for full development of human personality, participation in society through acquisition of knowledge, human values and skills. The right to education has close linkage with the right to development, and is a powerful tool in poverty reduction strategies.

“All human rights are universal, indivisible, interdependent and interrelated”¹¹. This means that civil and political rights as well as Economic, Social and Cultural (ESC) rights have to be treated in an equal manner, on the same footing, and with the same emphasis. Part III of the Zambian Constitution is the Bill of Rights which protects Civil and Political rights, albeit in a somewhat limited and modest fashion.

ESC rights like education are not included constitution. Without going into detail about the reasons for such a demarcation, it is suffice to say that civil and political rights have for years received, both at the international and national levels, much more prominence than ESC rights. Zambia is no exception in this regard. It is safe to state that; in the realm of civil and political rights, much has been achieved in Zambia as seen in the case of **Roy Clark V. The Attorney General**,¹² where the minister’s Deportation Order over the applicant’s controversial metaphor was said to be against his constitutional right of expression. Many people freely exercise and enjoy the fundamental rights and freedoms

¹⁰ A Human Rights Based-Approach to Education For All (UNESCO, 2007) P.7

¹¹ C. Dillon-Malone, Towards a Consistent Ethic of Human Rights,’ Zambia Law Journal, Vol. 35 (2003), P.28

¹² SC 98A (2004)

recognised and protected in the Bill of Rights entrenched in the Constitution. The same cannot be said for ESC rights, though. This is so because of a number of factors, which many nations have justified on the basis of unenabling economy. Human rights jurisprudence from other jurisdictions like India show that ESC rights can and should play a greater role in improving people's opportunities in life. Directive Principles of State Policy (DPSP) in Part IV of the Indian Constitution has been used by the Supreme Court to impose positive duties on the state. Thus non-justiciable ESC rights have been enforced via creative interpretation of Civil and Political rights on the basis that paucity of the former prevents full enjoyment of the latter for example; Right to life (Article 21 of the Indian Constitution) has been interpreted to give rise to the right to livelihood, to health, and to education¹³.

Without education, a child is unable to acquire attitudes to curb ignorance¹⁴ and consequently they become the worst victims of diseases, and involve themselves in drugs, robbery and all the common misfortunes among the ignorant; unemployment, and lack of shelter follow, thus there is no development for the country.

The mounting evidence of the impact of Human Immuno-deficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) in many countries indicates the potential importance of links between education and behavioural change. Thus, the primary inherent value of formal education in this context would enhance the learning skills required to understand the HIV/AIDS education on offer and make sense of the many

¹³ C. Dillon-Malone. P.36

¹⁴ Ibid

related messages from other sources¹⁵. This suggests that access to and retention in the school system is indeed the uniquely important 'social vaccine' to which many refer. Good and compulsory education can enhance children's beneficial impact and ultimately help in the development of the country.

The current Zambian legislation is antiquated and is increasingly an impediment to transformation and improved education delivery. There are international instruments which have been developed dealing with the right to education of a child. Zambia has acceded to these instruments but has however, not enacted domestic legislation to recognize this right. In the case of Kachasu V. The Attorney General¹⁶, the court affirmed the fact that education in Zambia is not a right.

The international instruments include; the Universal Declaration of Human Rights (UNDHR) of 1948, the Declaration of Rights of a Child (1959), the International Covenant on Civil and Political Rights (ICCPR) of 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 and the Convention on the Rights of a Child (CRC) of 1989.

The United Nations believes that Education is a human right and that human rights are based on mankind's increasing demand for a decent, civilized life in which the inherent dignity of each human being will receive respect and protection¹⁷. Peaceful resolutions of conflict and development attitudes are not an innate human quality but are skills that must

¹⁵ P. Henriot, (2007) Zambia Jesuit Centre for Theological Reflection p.3

¹⁶ (1967) ZR 145

¹⁷ The United Nations: Questions and Answers on Human Rights (1973) P.4

be learned and practiced from childhood. To deny human beings their right is to set a stage for political and social unrest. As Mahatma Gandhi observed;

If we are going to bring about peace in the world, we have to begin with the children...education of the child should be directed to ... the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin¹⁸.

At the universal level, the CRC and the ICESCR are singled out as the most important sources of Children's right to education. In this regard, education will play an important role in accessing the other ESC rights such as; social security, the right to work, the right to rest and leisure, the right to an adequate standard of living, and the right to the benefits of science and culture.

2.3 IMPACT OF EDUCATION ON DEVELOPMENT

There is evidence that demonstrates that improving education quality has significant effects on individual earnings, economic growth, fertility and health. Better education enables people to live more productive lives, extend their freedoms, strengthen their values and expand their life choices.

Through education, people can acquire knowledge for vocational efficiency and consequently for economic growth. Development of attitudes is therefore related to living

¹⁸ R. Bell *et al* (1974) Central Government of Education. P.23

and experience and striving to understand the physical and social realities. Man will have knowledge of the external realities depending to a large extent on the training, socialization and education he receives¹⁹. Education helps in development of rational powers of a man so that he can fully understand the physical and social environment in a scientific sense. There is movement from a traditional order to a certain desired type of technology and associated forms of structure, motivations and norms²⁰.

Education has an impact on the occupational system of a person. It can be regarded as the most important factor which enables the individuals to exercise the choice of work and skill²¹. It brings about a change in traditional roles. It also has an impact on social change because educated people tend to have secular ideas as compared to illiterate people. The educational achievements of a person substantially affects his outlook on marriage²² and aspirations for his or her children; a parent realizes the value of education in a human life rather than just dowry and the characteristics of marriage as priority. Research indicates, for example, that one additional year of schooling for 1,000 women helps prevent two maternal deaths²³.

Administrative institutions play an important role in the organization and regulation of the country; obtaining and utilizing international assistance and the betterment of the country, for example; construction of roads, improvement of cultivation and generally in

¹⁹ J.M., Mwanakatwe (1974) *The Growth of Education in Zambia Since Independence*. P.239

²⁰ Ibid

²¹ Focus on Facts (International Labour Organisation, Fact sheet, 2004) P.12

²² The National Commissions on Women and Development, 1975 Report

²³ A Human Rights based approach to Education For All (UNESCO, 2007) P.11

implementation of economic and social reform legislation. There has been an adopted minimum of a Grade 12 Certificate for one to qualify as a Member of Parliament²⁴ so as to ensure they have basic education as they make national policies. There should however not be the wrong sorts of educated people. It seems, then, that there is good evidence to suggest that the quality of education has an influence upon the speed with which societies can become richer and the extent to which individuals can improve their own productivity and incomes. An example of a country that has had a good economic yield out of compulsory education is Sweden. The country has a total population of approximately 8.89 million, and an advanced industrial economy, mainly market based. Citizens enjoy a high standard of living, with extensive social welfare services²⁵.

We also know that years of education and acquisition of cognitive skills – particularly the core skills of literacy and numeracy have economic and social pay-offs as regards income enhancement, improved productivity in both rural non-farm and urban environments and strengthened efficacy of household behaviour and family life. Clearly, then, differences in education quality can affect human behaviour in many ways in life especially for developing countries like Zambia.

Granted, knowledge, even when widely shared, is not sufficient in and of itself to change behaviour. Opportunities of many kinds, however, can be found to improve the quality of

²⁴ The Post Newspaper (13/01/09) P.16

²⁵ Country Reports on Human Rights Practices - 2001-Released by the Bureau of Democracy, Human Rights, and Labour, March 4, 2002. P. 3

schooling so as to facilitate such consequences. One important current example concerns health behaviour – specifically the challenge of responding to the HIV/AIDS pandemic.

The education of each individual has the possibility of making others better off (in addition to the individual benefits just discussed. Specifically, a more educated society may translate into higher rates of innovation, higher overall productivity through its ability to introduce new and better production methods, and faster introduction of new technology. These externalities provide extra reason for being concerned about the quality of schooling.

2.4 GENERAL HISTORICAL BACKGROUND OF HUMAN RIGHTS

Man is said to possess certain rights in his natural state devoid of the intervention or support of society. He brings these rights with him into society. Society is created not to destroy the rights but to protect them by enacting laws²⁶.

Natural law theory is the first source of the idea that man has rights opposable against government²⁷. According to John Locke, some rights were surrendered in order to enable society to function but the natural rights to life, liberty and property should be inalienable. And if we use the Indian Human Rights jurisprudence as mentioned in earlier, we find that the right to life (in Article 21 of the Indian Constitution), will be interpreted to give rise to the right to education, among others.

²⁶ Ibid

²⁷ C. Anyangwe (2004) Introduction to Human Rights. P12

2.4 INTERNATIONAL HISTORY OF THE RIGHT TO EDUCATION

Internationally, 'Save the Children,' which is now a leading international organization helping children in need around the world, was the initiator of children prioritization. The Save the Children Fund was founded in London, England in 1919 by Eglantyne Jebb and her sister Dorothy Buxton²⁸. Their goal then was to create 'a powerful international organization, which would extend its ramifications to the remotest corners of the globe. They believed they should claim certain Rights for the children and labour for their universal recognition, so that everybody-not merely the small number of people who are in a position to contribute to relief funds, but everybody who in any way comes into contact with children, that is to say the vast majority of mankind-may be in a position to help forward the movement.'²⁹

The result was the Declaration of the Rights of the Child, drafted by Jebb, which was adopted by the League of Nations in 1924³⁰. This was the first important assertion of the rights of children as separate from adults, and began the process that would lead to the ICESR of 1966 and the UDHR, adopted by the United Nations in 1989 and now ratified by nearly all countries worldwide. Imire Srabo;³¹ asserts that; "UDHR was the first international instrument to lay down the right to education"

The United Nations Children's Fund (or UNICEF) was created by the United Nations General Assembly on December 11, 1946, to provide emergency food and healthcare to

²⁸The Historical Framework of International Documents on Children (2000), P.xvi

²⁹The Historical Framework of International Documents on Children (2000) P.1

³⁰ Ibid

³¹ I. Srabo (1974) Cultural Rights. P.35

children in countries that had been devastated by World War II. UNESCO is now the one that is recognized as the lead agency of the United Nations in education.

The 20th century was basically the time when the concept of children's rights began to receive tangible attention, when various laws and human rights instruments were being passed advocating for equal treatment for children and a fair distribution of resources and opportunities. However, most of these instruments did not result in significant improvements on the status of children³². It was not until 1979 that efforts were made to create comprehensive statements on child rights by the United Nations. Debates regarding this proposed instrument lasted an entire decade. In 1989, the General assembly of the United Nations arrived at the most comprehensive instrument on the rights of a child which became known as the Convention on the Rights of a Child (CRC). This became the first human rights instrument in which children were recognized as holders of a specific body of identifiable rights.

2.5 SOUTHERN AFRICAN REGION HISTORY OF THE RIGHT TO EDUCATION

The education historical origins of the Southern Africa Development Community (SADC) go back to 1975 when five frontline states of Angola, Botswana, Mozambique, Tanzania and Zambia grouped themselves to secure the liberation of Zimbabwe³³. In 1980 it transformed itself into the Southern Africa Development Cooperation Conference (SADCC). In 1992 the body, after further review, reconstituted itself into Southern

³² The Historical Framework of International Documents on Children

³³ M E. Salomon (2005) Education Rights, in Minority Rights Group International, Economic, Social and Cultural Rights: a Guide for Minorities and Indigenous Peoples. pp 55- 68

Africa Development Community whose membership continued to expand. The transformation meant that the regional body graduated from performing merely a coordinating role of sectional economic projects to facilitating and encouraging other efforts towards integration and cooperation in various fields of human rights.

The complexity in the area of legal integration of human rights arises from the different legal systems operating in respective member countries. The adoption of the Southern Africa Development Community Declaration and Treaty in 1992 provides the legal framework within which to develop areas of cooperation and integration on issues relating to legal education in the region. Discussions in this respect has taken place at various fora including summits of heads of states, ministerial conferences, conferences of universities for example; the Southern Africa Universities Social Science Conference (SAUSSC).

2.6 ZAMBIAN HISTORICAL INFLUENCES OF THE RIGHT TO EDUCATION

The concern for and debate on issues of enforcement of quality legal education in Africa and specifically Zambia, cannot be addressed without an overview of the influences that are in many ways traceable to centuries of colonialism, which had provided the framework for structuring the education system after 1925. Starting with the Department of Native Education of 1925³⁴, all education in Zambia was officially divided along racial and ethnic lines to reinforce the dominance of white rule by excluding blacks from quality academic education and technical training. European education was more

³⁴ Mwanakatwe

efficiently organized and more adequately provided with funds during the colonial government's control of the territory³⁵.

Racial discrimination in schools in the early nineties was not only in Zambia but worldwide; the case of **Brown v. Board of Education of Topeka**,³⁶ was a landmark decision of the United States Supreme Court, which overturned earlier rulings going back to **Plessy v. Ferguson**³⁷ in 1896, by declaring that state laws that established separate public schools for black and white students denied black children equal educational opportunities. The court stated that "separate educational facilities are inherently unequal." As a result, de jure racial segregation was ruled a violation of the equal protection of human rights of the United States Constitution. This victory paved the way for integration and the civil rights movement.

In view of the fact that education system in Zambia was for years structured and developed along separate lines, the new democratic government of Dr. Kenneth Kaunda, ushered in by the new constitutional dispensation and election in 1964, took it upon itself to urgently restructure it to achieve the goals of democracy. There was the establishment of the Emergency Development Plan in 1964, the First 'actual' National Development Plan in 1966 and the second National Development Plan in 1972; the Education Reforms were introduced in 1977, which were followed by Focus on Learning of 1992 and finally;

³⁵ Ibid

³⁶ (1954) 347 U.S. 483

³⁷ (1896) 250 U.S. 34

Educating our Future of 1996. All these are examples of the new Kaunda government concerted efforts to increase opportunities for education.³⁸

These reforms also replaced practically all provisions in the African Education Ordinance of 1956, under which the defunct Federation of Rhodesia and Nyasaland Government had administered and controlled European, Asian and African schools on a racial and discriminatory basis.

In the history of the system of education in Zambia, these plans clearly stand out as remarkable milestones in transforming education along democratic principles. It is instrumental in amending most of the colonial laws and providing for equal treatment of all races in schools."³⁹ The Education Act⁴⁰, which is discussed in the next chapter, was enacted in 1966 but did not have any provision declaring education as a right.

In 1984, 10th April, Zambia made a reservation against article 13 (2) (a) of the ICESCR, which puts a duty on every state party to provide free and compulsory education. The reservation reads;

The government of the republic of Zambia undertakes that it reserves the right to postpone the application of Article 13 (2) (a) of the covenant, in so far as it relates to primary education since, while the government of the Republic of Zambia fully accepts the principles embodied in the same article and undertakes to take the necessary steps to apply them in their

³⁸ Mwanakatwe P.230

³⁹ Ibid

⁴⁰ Chapter 134 of the Laws of Zambia

entirety, the problems of implementation and particularly the financial implications, are such that full application, and of the principles of the question cannot be guaranteed at this stage.

Zambia ratified the CRC on the 6th December, 1991. In 2000, the Education Bill was introduced to repeal and replace the Education Act. This was better than education the Act, as it attempted to enforce the right to education, but was never adopted up to date.

CHAPTER 3

3.1 CURRENT INTERNATIONAL LEGAL FRAMEWORK OF THE RIGHT TO EDUCATION

United Nations Educational, Scientific and Cultural Organization (UNESCO) is recognized as the lead agency in education as its very name indicates. The Convention stipulates that;

*state parties undertake to formulate, develop and apply a national policy which...will tend to promote equality of opportunity and of treatment...and in particular; to make primary education free and compulsory.*⁴¹

The right to education is an internationally recognized right and is an integral part of UNESCO's Constitutional mission for ensuring "full and equal opportunities for education for all." This right is also established by a number of international instruments. The entitlements to education at various levels are laid down in UNESCO's Convention against Discrimination in Education (1960), which covers the right to education comprehensively and is recognized by UNESCO's Executive Board as a key pillar of Education for All (EFA)⁴². Several other UNESCO's conventions and Recommendations, including the Convention on Technical and Vocational Education (1989), further develop various dimensions of the right to education.

⁴¹ Final Report, World Education Forum, Dakar, Senegal 26-28 April 2000, UNESCO. P.8

⁴² C.E. I, Milan (2003) Educational Rights of Persons Belonging to National Minorities, International Journal on Minority and Group Rights, vol. 10 No. 4, pp 381-386

Among the United Nations human rights treaties: Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, draws extensively on UNESCO's Convention against Discrimination in education, and like the Convention, covers the right to education comprehensively. This Article 13 of the ICESCR provides the main framework within which countries like Zambia can assert their right to education at international level.

Specific dimensions of the right to education are covered notably by: The Convention on the Rights of the Child (1989), articles 28-30. Article 28 provides rigorous and very extensive realization of the right to education of a child. Article 26 of the UDHR (1948) provides that;

"Everyone has the right to education. Education shall be free at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and high education shall be accessible to all on the basis of merit."

These and other international legal guarantees and political commitments have been signed to respond to the need for a challenge to provide education for every child⁴³.

3.2 ZAMBIA'S ECONOMIC SITUATION

An assessment of the human rights situation in Zambia would be incomplete without reflecting on the prevailing socio-economic conditions in the country. Research has shown that poverty is still widespread in rural communities, where nearly half the

⁴³ R.K.M Smith and C. Van den Anker (2005) Essentials of the Human Rights: The Right to Education. pp105-108

households spend more than 70% of their income on food⁴⁴. It is not reasonable nor is it justifiable that, in an open and democratic society based on human dignity and freedom, a large majority of the population still lives in object poverty alongside extremes of wealth. Ironically, Zambia is ranked as one of the poorest and least developed countries in the Third World⁴⁵. Poverty is widespread, and is increasing both in the urban and rural areas, although it is more severe in the later. Poverty studies by the World Bank unanimously conclude that "the prevalence, depth, and severity of poverty is greater in rural Zambia". Overall poverty has been increasing since the 1980s. It was estimated at 40% in 1975, but increased to about 60% of the urban population in 2005⁴⁶.

Women are worst hit by poverty due to high levels of unemployment, lack of access to such resources such as credit and land. The priority survey of 2006 indicates that poverty is higher or more severe among female-headed households⁴⁷. The survey found 75% of the female-headed household to be extremely poor compared to 60% of male-headed households.

The situation has been worsening since the re-introduction of the World Bank and IMF Structural Adjustment Programme in the 1990s. Out of the 11 million people in Zambia, about 5.5 million live in absolute poverty⁴⁸. Widespread poverty has had a negative impact on the access of people to basic needs such as education, health, water and

⁴⁴ United Nations Development Programme (UNDP), Human Development Report, 2006, Zambia P.2

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ UNICEF, Children and Families affected by HIV/AIDS: Guidelines for Action. Draft Paper (2005) P.10

⁴⁸ Ibid

sanitation. There is no "enabling environment" to assist the poor, (especially women), to overcome these.

3.3 EDUCATION

Generally, in Zambia, very few children have access to various levels of education. Recent data compiled by UNICEF depicts the situation as follows:

*"While Zambia once achieved Universal Primary Education, now only 56% of 7–13 year olds are in Primary School. Nearly 700,000 children are not, and only 44% of Primary School aged children actually complete Grade Seven. As is to be expected, adult illiteracy rates are high and rising. One third of the adults are illiterate and two thirds of these (66%) are women."*⁴⁹

Fewer children trickle up through to junior or senior secondary education. The progression rate of Grade 7 candidates has been less than 45% each year. Of the two million (2,428,622) Grade 7 children who sat for examinations between 2005 and 2007, 62% did not make it to secondary school. The drop-out rate is much higher than the progression rate at this level as the table below shows:

⁴⁹UNICEF, Children and Families affected by HIV/AIDS: Guidelines for Action. Draft Paper (2005) P.10

Grade 1. Selection Figures and Progression Rates 2005-2007⁵⁰

Year of Examination	N° of candidates	N° selected rate	Progression out	Drop-Grade rate
2005	766,746	108,188	36	64
2006	768,182	107,044	37	63
2007	893,705	103,348	23	77
Totals	2,428,633	318,580	38	62

Girls have less access to education than boys. More males than females enroll at various levels of education. Girls constitute about 38% of secondary school enrolment, 23% of total enrolment in vocational and technical colleges and about 25% at University Level⁵¹. In all the nine provinces of Zambia, there are more boys than girls in Secondary Schools.

3.4 LEGAL FRAMEWORK OF EDUCATION

Education in Zambia is based on the past education policies., which have been introduced by the government at different times. These policies have not been justiciable but simply guidelines as how the government was to work when it came to education, they operated as establishments of state control. None of these policies have mentioned education as a right. There was the Education Reforms of 1977, whose statement was; Education for Development “they were the first ever reforms to be locally inspired and which executed

⁵⁰ A Situation analysis of Children (Central Statistics Office), Zambia 2008. P 3

⁵¹ Ibid

attempt to re-align the education system to meet national and popular objectives; to guarantee greater equity of access”⁵². These reforms were followed by Focus on Learning of 1992, a national policy replacing the earlier one. The final one was; Educating our Future of 1996, which is the policy currently in force. The mission statement of ‘educating our future reads;

The mission of the ministry of education is to guide the provision of education for all Zambians so that they are able to pursue knowledge and skills, manifest excellence in performance and moral uprightness, defend democratic ideals, and accept and value other persons on the basis of their personal worth and dignity, irrespective of gender, religion, ethnic origin, or any other discriminatory characteristic.

The policy further emphasizes on organization and management of education and on the financing of the system. These policies do not however have any force of law nor did any of them repeal the Education Act of 1966. They have operated alongside the Act, as it is more of an administrative guide. In the case of KACHASU V. THE ATTORNEY GENERAL⁵³, the court stated that; as opposed to religion, education is not a constitutional right.

⁵² M.J. Kelly (1996) The Origins and Development of Education in Zambia. P135

⁵³ (1967) ZR 145

There is also the on-going Strategic Plan of 2003-2009, which is a plan on how to effectively implement the 'Educating our Future.'⁵⁴

3.4.1 THE RIGHT TO EDUCATION UNDER THE ZAMBIAN CONSTITUTION

The Zambian Constitution, for its Part III, contains an extensive catalogue of fundamental rights and freedoms-which are civil and political. However, as noted in Chapter 1, the Economic, Social and Cultural (ESC) rights provisions therein are protected in a rather limited and modest fashion. The provisions relating to ESC rights are couched as guiding principles of state policies that are fundamental to the governance of the country, and the state is obliged only to the extent of using these as guidelines in making laws and policies.

The constitution, being the supreme law of the land,⁵⁵ has only got the provision of the right to education under the Directive Principles of State Policy, pursuant to Article 112(e) of the Constitution. These Directive Principles are made non-justiciable by the operation of Article 111 of the Constitution. Article 112(e) provides;

(e) the state shall endeavour to provide equal and adequate educational opportunities in all fields and at all levels.

With the current constitution, no person in Zambia is able to claim for education as a right. The constitution does even impose an obligation on the capable parents to provide resources for the children. Some children in Zambia are not in school because they are

⁵⁴ Ministry of Education, Zambia: Policy Reference Database (2008) P.5

⁵⁵ Article 3 of the Constitution (Chapter 1 of the Laws of Zambia)

orphans or because their parents are not able to pay, but because they have been neglected by their parents, which is especially common on the male parents.

3.4.2 PROVISION OF EDUCATION UNDER THE EDUCATION ACT (CHAPTER 134 OF THE LAWS OF ZAMBIA)

A milestone was reached in April 1966 when the Education Bill was passed⁵⁶. The Education Act came into operation in September, 1966. This Act is rather a management guide, giving powers to the Minister of Education,⁵⁷ outlining the educational administration and structure of different authorities. The Statute is mainly based on how the school boards are to operate and how different schools are to be managed. Section 4 (1) provides:

It shall be the duty of the Minister, subject to the provisions of this Act, to promote the education of the people of Zambia and the progressive development of institutions devoted to that purpose and to secure the provision of a varied and comprehensive educational service throughout the Republic.

In 2000, the Education Bill was introduced to repeal and replace the Education Act. The Bill was better framed than the Education Act, for it had a provision of enforcement of the right to education. Paragraph 11 of the Education Bill, 2000, states; “Every child of school going age in Zambia shall have access to basic education, free of tuition in a basic school of parental choice.”

⁵⁶ M.J. Kelly (1996) The Origins and Development of Education in Zambia. P135

⁵⁷ Section 4 of the Act (Chapter 134 of the Laws of Zambia)

This Education Bill of 2000 is flawed on the other hand for a number of reasons, and most importantly that such legislation must be enforced by the central government following upon its own commitment and political will as there is no back up in the supreme Law of the land guarantying education as a right. These concerns however, are not even necessary at this point because the Education Bill has not yet been adopted by parliament and it has been eight (8) years since its introduction.

When the Late President Levy Patrick Mwanawasa came into power, he implemented free education at primary level, which means Grades 1-7. This however has not had a free realization to date because there are still a lot of children who do not get enrolled into Grade 1 for lack of different school requirements⁵⁸. A lot of young people are not in school due to the inability of their unemployed parents to buy school uniforms or lack of transport to get to their schools or even shortage of school places. Hidden charges and 'compulsory contributions' still prevent the most vulnerable children from going to school

3.4.3 RIGHT TO EDUCATION UNDER MUNICIPAL LAWS

The local Administration Act of 1980 entrusts the district councils responsibility of establishing and maintaining schools. But councils have done very little to implement this Act. Establishment of Education Boards in various districts has just helped in decentralizing the education administration, but there have been no further laws to emphasize the provision of education as of right. The fact that the constitution does not

⁵⁸ The post Newspaper-Zambia (12-01-2002) P.16

guarantee education as a fundamental right, it means education is not a right altogether and no inferior law of the land would provide otherwise.

Generally, in Zambia, very few children have access to various levels of education. This situation is much more pronounced in rural areas especially among the girl children. This problem is compounded by low progression rates from one grade to the other after qualifying examinations. Some of the causes for this state of affairs include inadequate and/or dilapidated infrastructure, a critical shortage of teaching staff, de-motivated teachers and poverty that has given rise to negative practices and inadequate learning materials.

In addition, the standards of education have fallen because of an inappropriate curriculum which does not adequately equip the pupils with life long skills to enable them cope with the demands of the labour market. In terms of quality of education, the present experiment with the so-called basic education has been grossly unsatisfactory.

CHAPTER 4

4. OBLIGATIONS AT INTERNATIONAL LEVEL: THE IMPLEMENTATION OF THE RIGHT TO EDUCATION

Like all human rights, the right to education imposes three levels of obligations on States: the obligation to respect, protect and fulfill⁵⁹. In turn, the obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide. The State obligations remain even in case of privatization of education. The conventions and treaties have no binding force for States which are parties to them unless the states incorporate their obligations into their domestic legal order. Even though the recommendations do not have binding force, they reflect political commitments by Member States and have moral force. Governments are expected to take measures for giving effect to them through national legislation.

The right to education's realization is especially dependent upon its effective implementation. Obligations and political commitments under international instruments must be reflected in constitutions and national legislation and be further translated into policies and programmes. UNESCO's Member States have the constitutional obligation to report to the Organization on measures they take for implementing UNESCO's conventions and recommendations⁶⁰.

⁵⁹ General Comments No. 13 on the right to education, Articles 13 of the *International Covenant on Economic, Social and Cultural Rights*. (02/10/99)

⁶⁰ A Human Rights Based Approach to Education UNESCO-2007) P.16

There is a Committee on Conventions and Recommendations (CR), which is a subsidiary organ of UNESCO's Executive Board, and which is the one that examines the outcome of periodic consultations of Member States conducted by UNESCO⁶¹. The follow up is given to decisions accordingly adopted by UNESCO's Governing Bodies – the Executive Board and the General Conference.

UNESCO's experience in monitoring shows that Member States particularly from the developing countries, good example being Zambia, do not have sufficient capacity and expertise for meeting their reporting obligations. Lack of political will in Zambia has also contributed. Capacity-building and training programmes for the benefit of National Commissions for UNESCO are especially important in promoting normative action, protection of the Right to Education, its enforcement and justiciability.

The Committee on Conventions and Recommendations (CR) examines cases of human rights violations within UNESCO's fields of competence through its communications and complaints procedures. A large number of complaints examined and communications settled by the CR have resulted in the protection of the right to education. UNESCO entrusts countries that when there is a case of violation of their right to education, citizens must be able to have legal recourse before the law courts or administrative tribunals. The judiciary has an essential role in protecting and enforcing the right to education as an entitlement. In a few countries, law courts have upheld the right to education, and the decisions by judiciary are exemplary.

⁶¹ Ibid

UNESCO also recommends the right to education to be enforced through administrative tribunals and national human rights institutions as well as by Ombudspersons, where they exist-as is with Zambia in Article 90 of the Constitution.⁶²

Promotional measures for achieving the right to education legal framework and normative bases of the right to education must be made known widely, with emphasis on its more effective implementation and on mobilizing efforts for overcoming difficulties and removing obstacles encountered by Member States. UNESCO promotes the right to education in several ways, notably by: Disseminating normative texts, and creating greater awareness; review and analysis of constitutional provisions and strengthening its foundations in national legal systems; expounding legal and policy questions, and undertaking and supporting research and studies on its various dimensions; organizing expert consultations, collaborating with professional bodies and the academic community, and raising public debate for reflections on issues of key importance, as well as developing partnerships and networks.

The right to education is also given high importance by the Committee on Economic, Social and Cultural Rights (CESCR) monitors the implementation of the International Covenant on Economic, Social and Cultural Rights.

UNESCO's collaboration with the CESCR is especially significant, as both have shared concerns and common objectives in monitoring the implementation of the right to education in a complementary spirit. The CR and the CESCR on the Monitoring of the

⁶² Chapter 1 of the Laws of Zambia

Right to Education, has a broad mandate of monitoring in all its dimensions. They play a valuable role in mutually reinforcing working methods and monitoring mechanisms of CESCER and the CR in making the monitoring more effective, with a focus on Education For All (EFA).

Education is indeed best investment a country can make. Given resource constraint on achieving EFA, a legal framework can be instrumental for mobilizing resources on an enduring basis at national level. In this respect, existing constitutional and legislative provisions on the financing of education in several countries provide practical examples. To understand education as a constitutional right, the example of Sweden can be given.

4.1 THE RIGHT TO EDUCATION IN SOME COUNTRIES' CONSTITUTIONS AND NATIONAL LEGAL SYSTEMS

A determinant factor in achieving the right to education is whether such a right has its foundation in constitutions and national legislation. Question of how the State obligations under existing instruments are incorporated into national legal systems has to be critically examined in that perspective. This should be further linked with national education policies and development process. The importance of giving enhanced consideration to the constitutional and legislative bases of the right to Education for All as a fundamental human right needs to be hardly emphasized.

Similarly, Article 11 of the African Charter on the Rights and Welfare of the Child, adopted in 1990 provides for the educational rights of the child comprehensively. It

recognizes that “Every child shall have the right to an education.” Article 11 (3) of the Charter provides that “States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular: (a) provide free and compulsory basic education”.⁶³

With respect to constitutional development, UNESCO’s Round Table meeting in 2002 on Constitutional and Legal Bases of the Right to Education made an observation from three constitutions⁶⁴; South Africa (Article 29 (1) b)) of its constitution provides “Everyone has the right to further education, which the state, through reasonable measures, must make progressively available. Namibia (Article 20 (2)): “Primary education shall be compulsory” and Kenya (Article 58 (1) of the Draft Kenyan Constitution): “Every person has the right to basic education, including pre-primary, primary and secondary education.” However, none of these countries have made these provisions into reality by providing legal and compulsory education⁶⁵.

Constitutions in some Nordic countries on the other hand, carry provisions on the right to education. The constitution examples of Sweden and Finland have been given;

⁶³ Article 11 of the Charter

⁶⁴ Round Table meeting on Constitutional and Legal Bases of the Right to Education-Paris (2002)

⁶⁵ Ibid

4.2 PRACTICAL EXAMPLES OF THE RIGHT TO EDUCATION IN SOME CONSTITUTIONS: FINLAND

A strong commitment to the quality of education is illustrated by the exceptionally high levels of expenditure on education (as a percentage of GDP) in Finland⁶⁶. The UNESCO Education For All (EFA) Report accords priority to those countries where the challenge of achieving EFA is greatest. The overall assessment of progress towards EFA confirms that more moderate levels are found in Finland As well as its neighbouring country Sweden⁶⁷. Finland has not only ratified the relevant human rights conventions, it has taken certain actions necessary to fulfil this right. It has done this by providing education as a constitutional right.

Section 16 of the Finnish Constitution is on educational rights. This section provides;

- (1) Everyone has the right to basic education free of charge. Provisions on the duty to receive education are laid down by an Act.
- (2) The public authorities shall, as provided in more detail by an Act, guarantee for everyone equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship.
- (3) The freedom of science, the arts and higher education is guaranteed.

⁶⁶ UNESCO - EFA Global Monitoring Report - EFA in industrialized and transition countries (EFAREPORT.UNESCO.ORG© 2003)

⁶⁷ UNESCO - EFA Global Monitoring Report - EFA in industrialized and transition countries (EFAREPORT.UNESCO.ORG© 2003)

The Government of Finland is committed strongly to children's rights and welfare; it amply funds systems of public education and medical care. The Government provides compulsory, free, and universal primary school education for children from 7 years to the age of 16⁶⁸. Education beyond the age of 16 is voluntary but also free, taking the form of either a three-year course in upper secondary school or a 2 to 5 year course at a vocational school. There are 20 universities or other institutes of higher education, with a total student population of 130,865 of whom 52% are women⁶⁹. Compulsory education also applies to handicapped children. For children who are unable to study at a normal comprehensive school, compulsory education begins at the age of 6 and lasts for 11 years⁷⁰. Handicapped children receive special teaching, or attend special classes or special schools, depending on the nature of their disability. The entire age group completes compulsory education, only 0.04% fail to receive a graduating certificate. Comprehensive school education lasts for 9 years⁷¹. It is divided into a six-year lower stage, identical internationally to primary education, and a three-year upper stage, similar to lower secondary education.

After their comprehensive school pupils have the option to take an extra tenth grade to improve their chances for further education. All comprehensive school graduates are equally eligible for further studies. Teachers must hold a master's degree from a university. The class teachers, who teach most of the subjects at the lower stage, takes a

⁶⁸ Country Reports on Human Rights Practices - 2001 Released by the Bureau of Democracy-Finland, Human Rights.

⁶⁹ T. Joachim (2008) Promoting Rights-Based Approaches-Save the Children Sweden

⁷⁰ Ibid

⁷¹ Ibid

degree in education. The subject teachers must have a degree in their special subject and their degree course must have included teacher training.

The ombudsman of Finland handles complaints of the authorities and civil servants from the public or acts on its own initiative⁷². The Ombudsman's work is regulated by the constitution. He has the right to: make investigations; recommend actions; publish reports and to bring an action against negligent servants including those that concern the provisions of education

The only challenge that Finland faces is on language of instruction which has become an issue⁷³. The Finnish documents indicate that the minority children have the right to be taught in their original language, and in Finnish as a second language⁷⁴. Even in this consideration, Finland recognizes that civilization belongs to all.

Copying Finland seems to be the best way for Zambia; more teacher training, and lots of special-needs teaching. It has the world's best primary schools⁷⁵. At the National Board of Education, a representative of UNESCO asked what other countries can learn from Finland and the chairperson of the Board said; the best is to develop excellent initial

⁷² Ibid

⁷³ Ibid

⁷⁴ M E. Salomon (2005) Education Rights, in Minority Rights Group International, Economic, Social and Cultural Rights: a Guide for Minorities and Indigenous Peoples. pp 55- 68

⁷⁵ Country Reports on Human Rights Practices - 2001 Released by the Bureau of Democracy-Sweden, Human Rights.

training for teachers. Second, start education late and gently—Finnish children are seven before they start formal school. They do not waste energy or money or time on inspections or national seminars as is done in Zambia. Not only is primary and basic education free and a constitutional right in Finland, there are 20 universities as stated above to cater for future and advanced of the children. This is unlike Zambia that has had only 2 big universities since independence.

CHAPTER 5

5. CONCLUSION

The right to education is an overarching right: a human right in itself and indispensable for the exercise of other human rights. Both individual and society are its beneficiaries. Indeed, education has the objective to “prepare the children of the world for the responsibilities of freedom” as UNESCO’s Constitution stipulates. It empowers individuals for full development of human personality, participation in society through acquisition of knowledge, human values and skills. The right to education has close linkage with the right to development, and is a powerful tool in poverty reduction strategies. In this regard, education is instrumental in the realization of other rights such as; social security, the right to work, the right to rest and leisure, the right to an adequate standard of living, the right to shelter, and the right to the benefits of science and culture. It is regarded as the principal legal source. Education promotes social cohesion, integration and stability Education as a right promotes democracy and social progress.

There is need to ensure the protection of all the rights of children. Education provides an enabling environment for and by all people. An attempt to review Zambia’s legislation in this area has appeared to have stalled. Government can ensure that the various conventions and treaties-to which Zambia has already committed itself, are not only signed but put in domestic laws and actively enforced. Currently Zambia faces an economic crisis and lack of education for many Zambians puts a pending crisis. This study marks the effort to develop a comprehensive understanding of how legal

enforcement of a child's right to education can help lessen the economic problems that Zambia is facing.

5. 1 RECOMMENDATIONS

5.2 INTERNATIONAL REFORMS

The international community can be a major participant in the realization of the right to education as it provides support to build the capacity of both governments and individuals. For as long as the countries are not bound by the provisions of the international conventions, most countries will forever use the "lack of resources" excuse to escape the responsibility of providing education for all.

International programmes should include assisting developing countries like Zambia with provision of technical expertise and building capacity to help them meet international standards. They can help in stakeholders' capacity to claim their right through training and support as well as holding states to account on the commitments they have made in ratifying international human rights treaties. The Zambian government should accordingly set aside its reservation against Article 13 (2) (a) of the ICESCR. This will enable the committee on Economic, Social and Cultural rights to effectively monitor the progressive realization of the international educational objectives.

5.3 NATIONAL REFORMS

5.3.1 GENERAL CONSIDERATIONS FOR THE LAW REFORM

The model bill of 2000 is flawed for a number of reasons, and most importantly that this law is supposed to be inferior to the constitution and so, even if it mentions education as a right, it would not have had any legal effect. However, the matter can be resolved through an appropriate legislation both in the constitution and the Education Act which takes into account the following guide principles:

Justiciability: Any human right, is only meaningful if it is justiciable. The responsibility of the Government, at constitutional level, must be recognized and made justiciable. The onus should also be placed on parents/ guardians of the children. There is also need to strengthen the office of investigator-General by making it independent from government interference and ensuring that violations of right to education are to be dealt with properly.

Financial commitment: The Government must provide the bulk of the additional funds required to ensure the Right to Education. Therefore there must be financial provision in the legislation, requiring the government to share the revenues with education, alongside health as priorities and to provide additional resources as required to meet the requirement of ensuring the right to education for all children.

Time frame: The state-policies should specify the period within which universal education of reasonable quality is sought to be achieved, preferably within ten years. The current Zambian policies just have 2015 as a year for achieving universal primary

education but do not provide any time frame for adoption and implementation of the various steps to take so as to achieve this.

Schedule of norms and standards: To ensure a minimum quality of education, it is important to have a schedule of norms for all schools to follow. The 2000 bill does not have such a schedule of norms, and there is no specification of the minimum quality of education that schools should provide. Certain norms regarding infrastructure, number of teachers per school and per student, teaching methods and other facilities must be adhered to as necessary conditions.

Specification for teachers: Since teachers are critical in ensuring the quality of education, laying down well-defined but flexible norms for the minimum qualifications of teachers is particularly important. The 2000 bill has no specification of a teacher, or the qualifications and in-service training needed for them. However, it is necessary to specify norms for teacher qualifications and training.

Redressal mechanism: To ensure justiciability, a redressal mechanism should be outlined and an appropriate procedure must be set in place for students or parents in case the right is not upheld. There is a tribunal proposed under section 55(1) of the 2000 Education Bill which is a necessary instrument in delivering of remedies flowing from the right to education, which was a good consideration. However, an Education Complaints Commission could be established under the same law so as to widen the base

of hearing complaints, whose appeals like the tribunal could lie before the High Court. These would be to address violations of the right to education.

Universal schooling: School education must be provided to all, which necessarily also requires that children of the disadvantaged, landless and minority communities must also be integrated, along with children with disabilities or special needs. This requires there should be no distinction made in terms of the type of schooling provided within the government system, for children from different social, economic and cultural backgrounds.

5.3.2 CONSTITUTIONAL CHANGES

Legislation at the constitutional level is required to affirm the right to education, which is a fundamental right and must be mandated by Part III of the Constitution and not in the Directive Principles⁷⁶ as is the case currently. Provisions of 79(3) of the constitution should be invoked in order to facilitate the alterations of the composition of the bill of rights. Contents of the right to education should include an unconditional, free and compulsory basic education up to Grade 9 or for any child from ages 6-16 whichever comes first.

Once the constitution has been changed to include compulsory education and the above principles taken into account, the proposed Bill of 2000 or the Education Act should also be amended in *toto* to include the proposals below. These proposals if taken into action,

⁷⁶ Article 111 of the Constitution (Chapter 1 of the Laws of Zambia)

can also serve as benchmarks or indicators for monitoring the implementation of the right to education.

5.4 LEGISLATIVE CHANGES: SPECIFIC PROPOSALS IN THE LAW

The new Law should be formulated, in accordance with the Constitution and the actual conditions in Zambia, for the purpose of promoting education and the building of a developed society that is advanced culturally and ideologically as well as materially.

The government should institute a system of nine-year compulsory education. The authorities of provinces, autonomous regions, and municipalities directly under the Central Government should decide on measures to promote compulsory education, in accordance with the degree of economic and cultural development in their own localities. The government should not charge tuition for students receiving compulsory education. It should establish a system of grants-in-aid to support the school attendance of poor students.

The State policy on education must be implemented to improve the quality of instruction and enable children to achieve all-round development - morally, intellectually and physically-so as to lay the foundation for improving the quality of the entire nation and for cultivating well-educated and self-disciplined builders of development with high ideals and moral integrity.

The government, the community, schools and families should, in accordance with the law, safeguard the right to compulsory education of school-age children. All children who have reached the age of six should enrol in school and receive compulsory education for the prescribed number of years, regardless of sex, nationality or race. In rural areas where this could not be possible, the beginning of schooling may be postponed to the age of seven. Schools should promote the use of a local language, which is in common use throughout a particular province so as to enable pupils to express themselves properly, in a language they are used to.

Compulsory education should be divided into two stages: primary school education and basic school education. Once primary education has been made universal, middle basic school education shall follow.

Under the leadership of the Ministry of Education, local authorities should assume responsibility for compulsory education, and it should be administered at different levels. The Ministry should, in accordance with the needs of the Country and with the physical and mental development of children, decide on the teaching methods, the courses to be offered and their content, and the selection of textbooks for compulsory education.

Local people in various provinces should, with financial sponsorship of the government, help establish primary schools and basic schools at such locations that children can attend schools near their homes. Local people should also help establish special schools (or classes) for children who are blind, deaf or retarded. The State should also encourage

enterprises, institutions and other segments of society to establish schools. Appropriate facilities for compulsory education must be included in the budgets for construction and development of both urban and rural areas.

When children have reached school age, their parents or guardians should send them to school to receive compulsory education for the prescribed number of years. If, on account of illness or other special circumstances, school-age children or adolescents need to postpone enrollment or be exempted from schooling, their parents or guardians shall submit an application to that effect to the District Educational Board for approval.

The government and Provincial Offices shall be responsible for raising funds for the operating expenses and capital construction investment needed for the implementation of compulsory education, and the funds must be fully guaranteed.

State appropriations for compulsory education should increase at a faster rate than regular State revenues, and the average expenditure on education per student shall also increase steadily. People at various levels should levy a tax for education, which shall be used for compulsory education. The State should subsidize those areas that are unable to introduce compulsory education because of financial difficulties. The government should encourage individuals and all segments of society to make donations to help develop education.

The State should take measures to strengthen and develop teacher's training schools and colleges in order to accelerate the training of teachers, so as to ensure, in a planned way,

that all primary school teachers have received at least diploma education and that all high school teachers have received at least degree education. The State should encourage teachers to make education their long-term career. Teachers should be respected by the public. The government should safeguard the teachers' lawful rights and interests, and take measures to raise their social status and improve their material benefits. It shall reward outstanding educational workers.

The education boards at various levels must create conditions for all school-age children to enrol in schools and receive compulsory education. In cases where school-age children do not enrol in school and receive compulsory education, with the exception of those who, on account of illness or other special circumstances, are allowed by an education board not to go to school, the state should admonish and criticize the parents or guardians of those children or adolescents, and adopt effective measures to order them to send the children or wards to school.

No organization or individual should employ school-age children who should receive compulsory education. In cases where organizations or individuals employ school-age children or adolescents for work, the government should admonish and criticize them and should order them to stop such employment. In serious cases, the offenders should be fined, ordered to suspend their business operations or have their business licenses revoked.

No organization or individual should be allowed to appropriate, withhold or misuse funds earmarked for compulsory education, disrupt order in education, or occupy or damage school buildings, grounds or facilities. It should be forbidden to inflict physical punishment on students.

No one should be allowed to make use of religion to engage in activities which interfere with the implementation of compulsory education. Persons who violate this, should be subjected to administrative sanctions or penalties depending on the circumstances. In case damage is caused, the offender shall be ordered to make compensation. If the circumstances are serious and a crime is committed, criminal responsibility should be investigated in accordance with the law.

The various municipalities should, in accordance with the higher law and their local conditions, formulate rules for the implementation of compulsory education.

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