

THE RIGHT TO EDUCATION IN ZIMBABWE

Introduction

This bulletin explains the right to education as one of the fundamental human rights. Education is an inalienable, universal and enabling right that enhances the exercise of other fundamental rights. Everyone, regardless of gender, religion, ethnicity or economic status, is entitled to it. Education is vital for sustainable development and is an essential element to the development of individuals, families, local and national communities to which individuals belong. The advancement of any country is solely dependent on the education of its people. As such education must be accessible to all children.

The obligation of the State

The State has an obligation to ensure that education is accessible, adaptable, acceptable and available to those entitled to it. General Comment 13 of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** states that, education in all its forms and levels must demonstrate these four interrelated standards;

Accessibility: This refers to physical and economic accessibility and non-discrimination. Physical accessibility implies that schools must be within the reach of all children of school

going age. The Ministry of Education and Culture in Zimbabwe for instance recommended a radius of three (3) kilometers to the nearest school as a reasonable distance. Any distance of more than three kilometers is a violation of physical accessibility of education. In addition, the principle of accessibility requires the State to ensure that; access to basic education is economically affordable to everyone. The ultimate goal being to ensure that basic education is provided free of charge to every citizen and permanent resident of Zimbabwe.

Availability: Availability entails that adequate educational facilities, infrastructure and services must be made available to the learners. These include, adequate classrooms, adequate teaching staff, and stationery and safe drinking water.

Acceptability: The Special Rapporteur on the Right to Education highlighted that

“The State is obliged to ensure that all schools conform to the minimum criteria which it has developed as well as ascertaining that education is acceptable both to parents and to children”.

It however, remains the obligation of governments to ensure that the form, content and substance of education is acceptable, relevant and of good quality to students. Although the right to basic education is a progressive right, the duty to ensure that education is acceptable is an

immediate duty, which the State must perform. This may be achieved partly by adopting an education policy which takes into account the interests and cultural sensitivities of the learners and their communities.

Adaptability: Education must be flexible so as to adapt to the needs of changing societies and communities. It must also be responsive to the needs of students. The State must develop an education policy, which ensures that the education to be provided in schools is relevant to the present needs of the learners and their communities.

Legislative framework

The right to education is recognised in domestic, regional and international human rights instruments to which Zimbabwe is a State party. The primary responsibility for realising the right to education rests with national governments.

Domestic legislation

Before the coming into effect of the **Constitution of Zimbabwe Amendment (No.20) 2013**, the right to education was a legislative right provided for under the Education Act [Chapter 25:04]. The Education Act provides for compulsory primary education for every child but places the responsibility of education on parents. However, education is now a constitutional right guaranteed under the Declaration of Rights.

The Constitution provides for the right to education for all citizens and permanent residents, and calls for State resources to be made available in order to fulfill this right. Section 75 (a) provides that *“Every citizen and*

permanent resident of Zimbabwe has a right to a basic State-funded education, including adult basic education.” Section 81 (1) (f) also provides that *“Every child, that is to say every boy and girl under the age of eighteen years, has the right to education.”* Further the State must take reasonable legislative and other measures within the limits of resources available to make the right to education progressively realized. This means that the right to free education is dependent largely on the availability of resources and on the deliberate action of the State to put in place policies and measures that protect and promote free education. However, States hide behind availability of resources when it comes to the fulfillment of this right.

The Constitution in Section 75 (2) also recognizes and acknowledges the role of private educational institutions in complementing government efforts in providing education. It states; *“Every person has the right to establish and maintain, at their own expense, independent educational institutions of reasonable standards, provided they do not discriminate on any ground prohibited by this Constitution.”* These private institutions as stated in Section 75(3) must operate within the confines of the law and should be registered by the appropriate authority.

Regional and international legislation

The right to education is a basic right that is binding, recognized, and guaranteed in regional and international law. The **African Charter on Human and Peoples’ Rights (ACHPR)** and the **African Charter on the Rights and Welfare of the Child** protect this right.

At international level, the right to education is protected in Article 26 of the **Universal**

Declaration of Human Rights (UDHR), Articles 13&14 of the **International Covenant on Economic, Social and Cultural Rights**, Articles 28, 29 & 40 of the **United Nations Convention on the Rights of the Child**, Articles 10 & 14 of the **Convention on the Elimination of All Forms of Discrimination Against Women**. The **UDHR** states; *"Everyone has the right to education."* In addition, it says that education shall be free, at least in the elementary stages. Higher education shall be equally accessible to all on the basis of merit, while technical and professional education shall be made generally available.

The **UDHR** also stipulates that education should be directed towards the full development of the human personality and strengthen respect for human rights. Finally, it acknowledges that parents have a prior right to choose the kind of education that shall be given to their children. Article 13 of the **ICESCR** reaffirms this right and states that:

- Primary education shall be compulsory and available free to all.
- Secondary education, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, in particular by the progressive introduction of free education.
- Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, in particular by the progressive introduction of free education.
- Fundamental education shall be intensified for those persons who have not received or completed the whole period of their primary education.
- Systems of schools shall be established and the material condition of teaching staff shall be continuously improved.

- The liberty of parents or guardians to choose for their children schools other than those established by the public authorities, which conform to minimum educational standards, shall be respected.

Article 14 requires each State party that has not been able to secure compulsory primary education free of charge, to *"undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation . . . of compulsory primary education free of charge for all."*

The right to education in Zimbabwe

As highlighted above, the right to education is constitutionally guaranteed. Zimbabwe has two ministries of education; the Ministry of Primary and Secondary Education, which is responsible for education from Early Childhood to the age of 18 as well as adult, and non-formal education; and the Ministry of Higher and Tertiary Education, which is responsible for post high school education. Since 1980, the Government of Zimbabwe embarked on a campaign to increase access to education by adopting policies, which regarded and enhanced education as a basic need and fundamental human right.

In spite of the economic challenges facing the country, the Government has made efforts to ensure that the Ministry of Primary and Secondary Education is among ministries that receive highest budgetary allocations as a way to affirm Government's commitment to providing education. The Government has also put in place safety nets such as the Basic Education Assistance Module (BEAM) to cater for vulnerable and orphaned children. To ensure that the right to education is not compromised by economic challenges, the Ministry has a policy

that prohibits school heads from sending away children from school and withholding examination results over non-payment of fees.

However, some school heads are continuously disregarding the right to education by withholding results over non-payment of school fees and sending children away for failing to pay school fees and levies. It is critical that the Minister of Education urgently issue policy directives to public schools which continue to send children home for failure to pay fees and levies and also to school heads that are withholding results over non-payment of fees. However, until education is completely free, then parents of school going children need to meet their obligation of paying levies and fees so that children are not caught in between.

The Government must also come up with a plan of action to assist in the progressive realisation of

the right to education in particular the fact that primary education is made compulsory and available free of charge; and that secondary education, in its different forms, including technical and vocational secondary education, is made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education

Conclusion

Although the right to education is guaranteed in the Constitution of Zimbabwe and in other international instruments to which Zimbabwe is a State party, it has not been adequately fulfilled. There is need for political will to put in place concrete measures that most effectively promote the right to education for all, and to urgently realign the Education Act with the Constitution in order to give sufficient effect to the right to education.

The Human Rights Bulletin is produced by the Zimbabwe Human Rights NGO Forum ("the Forum") and is distributed **free of charge** through its member NGOs. If you would like to distribute copies, please contact us at;

Suite 4, Number 1 Raleigh Street
P.O. Box 9077, Harare. Telephone (04) 772860 or 770170
email: research@hrforum.co.zw or admin@hrforum.co.zw
www.hrforumzim.com