

JOURNAL OF ANTI-CORRUPTION LAW

2022 Volume 6 Number 1 Pages 97 - 115

VEILED INTENT OR ADVANCING CHILDREN'S RIGHT TO EDUCATION? THE LEGALITY OF PAYMENTS FOR EXTRA LESSONS IN ZIMBABWE'S EDUCATION SYSTEM

Opal M Sibanda*

ABSTRACT

Extra lessons in Zimbabwe were initially designed by the Ministry of Primary and Secondary Education to assist learners with lagging aspects of their formal school learning areas. However, in the past few years, extra lessons have taken a new dimension, including the intent to reinforce a learner's knowledge and ability to understand lessons taught. Although payment for extra lessons in the formal education setting was declared illegal by the government, the practice continues to be a challenge in Zimbabwe as payments are still demanded for extra lessons conducted in and outside the school premises. The situation worsened due to the COVID-19 pandemic which resulted in some teachers taking advantage of the prolonged schools closure and conducting extra lessons in their homes wherein parents and guardians had to pay a certain amount for their children to undertake these extra lessons. Extra lessons have become a mixture of entrepreneurship and exploitation, with many parents failing to afford and some children missing out. Undoubtedly, this has an impact on children's right to education, considering that some children are missing out. Whilst some parents and guardians argue that certain teachers are abusing the practice of extra lessons for personal enrichment, others argue that extra lessons are critical as they enhance their children's knowledge, thus advancing their right to education. This therefore creates a need to examine whether such practice is really corruption or a means to advance children's right to education. This article examines payments for extra lessons from a child rights lens, with a focus on the right to education. The article contextualises corruption from a child rights perspective, followed by a discussion of the international and national legal framework on children's right to education. An examination of the legality of payments for extra lessons in Zimbabwe's education system follows. At its core, the article examines whether the practice

* LL.M, Human Rights and Democratisation in Africa, University of Pretoria, South Africa, sibandaopal@gmail.com Technical Expert, African Committee of Experts on the Rights and Welfare of the Child, Maseru, Lesotho.

is corruption or a means of advancing children's right to education. A conclusion and recommendations follow.

1. INTRODUCTION

A study by the African Union (AU) on the impact of corruption on children's rights notes that corruption is one of the major barriers to Africa's development and the full realisation of children's rights.¹ According to the study, amongst the ways in which corruption manifests in African countries is through informal payments which take the form of outright bribes, gratitude payments or off-the book fees.² In instances where there are legal user fees for services, informal payments beyond the prescribed official fees are requested.³

Informal payments have dominated the public education sector in Zimbabwe where extra lessons were initially designed by the Ministry of Primary and Secondary Education to assist learners with lagging aspects of their formal school learning areas.⁴ Extra lessons have however taken a new dimension as learners are expected to pay for them in a bid to aid their appreciation of the learned concepts from the mainstream classes.⁵ As a result, the continued charge of informal fees has been increasingly prominent in Zimbabwean schools over the past few years. Following the outbreak of the COVID-19 pandemic, some teachers took advantage of the prolonged schools closure and conducted extra lessons with classes that range from USD\$10 to \$20 per month depending on the level and subjects conducted mainly by government teachers.⁶ At this point it should be noted that school fees in public schools were not even paid in foreign currency, until in 2022 when the government allowed schools to secure school fees in United States Dollars.⁷ Extra lessons have thus become a mixture of entrepreneurship and exploitation, with many parents failing to afford and some children missing out.⁸ This raises questions on whether the practice is a way of genuinely advancing children's right to education or is it corruption? Although payment for extra lessons was declared illegal by the government during the pandemic,⁹ the practice continues to be a

1 African Union (2019) "Stolen Futures: The Impact of Corruption on Children in Africa" at 11.

2 African Union (2019) at 11.

3 African Union (2019) at 21.

4 Bukaliya R (2021) "The Impact of Extra Lessons on the Political Environment: A Case Study of the Three Urban Day High Schools in Chegutu, Zimbabwe" 9(2) *African Educational Research Journal* 620 – 629 at 621.

5 Munikwa S & Mutungwe E (2011) "Exploring the Practice of 'Extra' Lessons Offered in Chinhoyi Urban Secondary Schools, Mashonaland West Province, Zimbabwe" at 27.

6 The Citizen Bulletin (2021) "COVID-19 and Access to Education, The Poor Further Marginalised", available at <https://kubatana.net/2021/10/04/covid-19-and-access-to-education-the-poor-further-marginalised/> (visited 10 January 2022).

7 HourlyHits (2022) "Schools Given Go-Ahead to Charge Fees in US Dollars", available at <https://hourlyhits.com/2022/08/06/schools-given-go-ahead-to-charge-fees-in-us-dollars/> (visited 15 August 2022).

8 Munikwa & Mutungwe (2011) at 27.

9 Chitumba P (6 March 2020) "Payment For Extra Lessons Banned" *The Chronicle*, available at <https://www.chronicle.co.zw/payment-for-extra-lessons-banned/> (visited 10 January 2022).

challenge in Zimbabwe. This may be due to the poor remuneration of teachers as reports in 2021 indicated that monthly salaries for teachers had been eroded by 50 per cent due to inflation and the rise of the cost of living in Zimbabwe.¹⁰

Undoubtedly, payments for extra lessons (that are not sanctioned by the government) negatively affect children whose parents are already struggling to pay normal school fees, let alone the costs for extra lessons. Many children end up losing on lessons and this has an impact on the realisation of children's right to education, particularly inclusive education. Whilst there is some literature on extra lessons and payments involved and their increase in the education system in Zimbabwe, the practice from a child rights lens and how it can be linked to corruption remains a grey area.¹¹ In light of these gaps, this article, informed by desk review, examines payments for extra lessons from a child rights lens, with a focus on children's right to education. The article contextualises corruption from a child rights perspective, followed by a discussion of the international and national legal framework on children's right to education. An examination of the legality of payments for extra lessons in Zimbabwe's education system follows. At its core, the article examines whether the practice is corruption or a means of advancing children's right to education. A conclusion and recommendations follow.

2. CONTEXTUALISING CORRUPTION

The UN Convention against Corruption calls upon state parties to criminalise certain acts, for example bribery, embezzlement, trading in influence, abuse of functions and illicit enrichment.¹² While one may not easily link extra lessons, especially in a private setting, to the corruption, the UN Convention on Corruption allows states to have both mandatory and discretionary offences of corruption in their national laws.¹³ The African Union Convention on Preventing and Combating Corruption states that "corruption means the acts and practices including related offences proscribed in this Convention". These acts and practices are provided in article 4 of the Convention and they include among other things:

- a) The solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions; and¹⁴

10 Masenyama M (6 October 2021) "Zimbabwe: Teachers' Salaries Cut By 50 Percent-Union" *All Africa*, available at <https://allafrica.com/stories/202110060229.html> (visited 10 January 2022).

11 The author is not aware of any literature on extra classes and corruption in Zimbabwe.

12 See arts 15- 25 of the UN Convention Against Corruption.

13 See arts 15- 25 of the UN Convention Against Corruption.

14 Art 4(1)(a) of the AU Convention on Preventing and Combating Corruption.

- b) Any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party.¹⁵

It would appear from the foregoing, that the concepts of solicitation or acceptance of a monetary benefit in exchange for the provision of education as a public service is within the bounds of the definition.

The Prevention of Corruption Act of Zimbabwe also follows the position of the UN Convention against Corruption and the AU Convention on Preventing and Combating Corruption as it does not provide a clear definition of corruption. The Act provides for corrupt practices in section 3 and it states that:

(1) If—

(a) any agent corruptly solicits or accepts or obtains, or agrees to accept or attempts to obtain, from any person a gift or consideration for himself or any other person as an inducement or reward—

(i) for doing or not doing, or for having done or not done, any act in relation to his principal's affairs or business; or

(ii) for showing or not showing, or for having shown or not shown, favour or disfavour to any person or thing in relation to his principal's affairs or business...

he shall be guilty of an offence.

One may argue in passing, that a school teacher is an agent of government and as such, the practices of soliciting and accepting unofficial or illegal payments for extra lessons may amount to the commission of the offence of corruption.¹⁶ Although there is no universally accepted definition of corruption under international and national law, most scholars indicate that corruption is usually defined "in terms of individual actions that abuse entrusted power for private gain".¹⁷ Transparency International also defines corruption as the "abuse of entrusted power for private gain".¹⁸ Transparency International goes on to state that "corruption erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis".¹⁹

15 Art 4(1)(c) of the AU Convention on Preventing and Combating Corruption.

16 The challenge lies in the conceptualisation of this notion in the private setting where the prices may be set by the school. Issues of extortion and abuse of the poor education system is a conversation that is beyond the scope of this paper.

17 Williams A (2021) "Corruption Definitions and their Implications for Targeting Natural Resource Corruption" *TNRC Topic Brief*, available at <https://www.u4.no/publications/corruption-definitions-and-their-implications-for-targeting-natural-resource-corruption.pdf> (visited 10 January 2022).

18 Transparency International "What is Corruption?", available at <https://www.transparency.org/en/what-is-corruption> (visited 11 January 2022).

19 *Ibid.*

2.1 Corruption and children's rights

Children are usually disproportionately affected by the discriminatory effects of corrupt activities.²⁰ Children who comprise almost 50 per cent of Africa's population,²¹ rely on public services more than adults and more often lack the power and knowledge to challenge incidents of corruption and the freedom to seek for alternative services.²² Corruption affects children directly when they are required to pay illegal fees to receive education as a public service.²³ Statistics indicate that there is a high number of children directly and indirectly impacted by corrupt practices in Africa. It is estimated that at least 25 million children in primary school are affected by corruption.²⁴

There is a need to mitigate the impacts of corruption on children so as to contribute to the improvement of development outcomes for children in Africa, including Zimbabwe. In terms of article 1 of the African Charter on the Rights and Welfare of the Child (ACRWC), to which Zimbabwe is a state party, state parties have an obligation to take "all necessary measures to implement the Charter". Furthermore, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC/Committee)²⁵ developed General Comment No 5 on state party obligations under article 1 of the ACRWC. The provisions of the General Comment state that "legislation, policies and programmes cannot be implemented without sufficient financial resources being mobilised, allocated and spent in an accountable, effective, equitable, transparent and sustainable manner".²⁶ With regard to the provision of education, the government has an obligation as the duty bearer in the protection and promotion of children's rights to ensure that it mobilises resources to the fullest extent possible, so that the issue of charging illegal fees by schools is practically avoidable. Member states are thus "expected to demonstrate that they have mobilized, allocated and spent budgets to maximise the fulfilment of all children's rights".²⁷ The Committee notes that "resources for the fulfilment of children's rights are frequently diluted or even diverted" and that corruption "dissipates resources that could be available for the fulfilment of children's rights".²⁸

20 African Union (2019) at 12.

21 UNICEF (2017) "Generation 2030 Africa 2.0: Prioritizing Investments in Children to Reap the Demographic Dividend" at 3, available at https://www.unicef.nl/files/Generation_2030_Africa_2.0.pdf (visited 11 January 2022).

22 African Union (2019) at 12.

23 Ibid.

24 African Union (2019) at 9.

25 The ACERWC is a body within the Organization of African Union established in terms of article 32 of the African Charter on the Rights and Welfare of the Child to promote and protect the rights and welfare of the child.

ACERWC "General Comment No 5 (2018) on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection" at 37.

27 African Union (2019) at 12.

28 ACERWC General Comment No 5 (2018) at 8.

Furthermore, article 4 of the United Nations Convention on the Rights of the Child (CRC) to which Zimbabwe is a state party states that member states agree to “undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention ... to the maximum extent of their available resources”. The UN Committee on the Rights of the Child (UN Committee)²⁹ has developed General Comment No 19 on public budgeting for realisation of children’s rights which states that “corruption and mismanagement of public resources in State revenue mobilization, allocation and spending represents a failure by the State to comply with its obligation to use the maximum of available resources”.³⁰ In the General Comment, the UN Committee underlines the importance of states parties allocating resources to prevent and eliminate any corruption affecting children’s rights, in accordance with the United Nations Convention against Corruption.³¹ One can thus infer that reducing corruption is a human-rights obligation and governments have to put in place effective measures to curb corruption and its impacts on citizens, especially children.

2.2 Education corruption: Payments for extra lessons

As Heyneman states, education corruption derives from the more general set of corruption issues, and like other areas, it includes the abuse of authority for material gain.³² The Chr Michelsen Institute (CMI) notes that there are many opportunities for corrupt practices in the education sector as education is the largest or second largest budget item in most countries.³³ According to the CMI, corruption in the education sector takes various forms, some of which are not obvious. It is noted that among the various forms of corruption that take place in the education sector is “private tutoring outside school hours given to paying pupils, reducing teachers’ motivation in ordinary classes, and reserving compulsory topics for the private sessions to the detriment of pupils who do not or cannot pay”.³⁴ In that regard, education which is supposed to be free for all children becomes expensive for poor and disadvantaged families when children are expected to pay for extra lessons or tutoring in order to excel.³⁵ Private extra lessons and tutoring can thus intensify social inequalities especially when they are provided to regular learners outside school hours. A caveat needs to be laid here – it becomes a corrupt activity where teachers intentionally fail to teach during the formal

29 The UN Committee on the Rights of the Child is a body of independent experts who monitor the implementation of the Convention on the Rights of the Child by its state parties.

30 UNCRC, General Comment No 19 (2016) on public budgeting for the realisation of children’s rights (art 4), CRC/C/GC/19 at para 34.

31 Ibid.

32 Heyneman SP (2004) “Education and Corruption” 24(6) *International Journal of Educational Development* at 637 – 648 at 637.

33 Chr Michelsen Institute (CMI) (2006) “Corruption in the Education Sector” U4 Issue 4 at 3, available at <https://www.cmi.no/publications/file/2563-corruption-in-the-education-sector.pdf> (visited 11 January 2022).

34 CMI (2006) at 3.

35 CMI (2006) at 5.

education periods and only show up in full force during the extra lessons. In worst case scenarios, only parts of the curriculum are covered during school periods and learners are forced to pay for the other parts during private extra lessons.³⁶

3. LEGAL FRAMEWORK ON THE RIGHT TO EDUCATION

3.1 International instruments

The right to education is provided for in a number of international instruments. It should be noted that there are some instruments of general application which are applicable to everyone and do not explicitly mention children, and on the other hand, there are child specific instruments which explicitly provide for children's right to education. Regarding instruments of general application, the right to education is provided for under article 26(1) of the Universal Declaration of Human Rights (Universal Declaration), article 13 of the International Covenant on Economic, Social and Cultural Rights (CESCR), and article 17 of the African Charter on Human and Peoples' Rights (ACHPR). Although these instruments do not explicitly mention children, the right to education guaranteed under these instruments is equally applicable to children. State parties to these human rights instruments have obligations to take legislative and other appropriate measures to give effect to the right to education as provided in these instruments.

It is important to highlight that in 1999, the Committee on Economic, Social and Cultural Rights³⁷ developed General Comment No 13 on the right to education provided in its article 13.³⁸ In terms of the General Comment, education has to be available, accessible, acceptable, and adaptable. These can be said to be the four essential elements as far as the right to education is concerned. Regarding availability, the General Comment states that functioning educational institutions and programmes have to be available in sufficient quantity within a country. A number of factors come into play to enable educational institutions to be functional and this involves among other things trained teachers receiving domestically competitive salaries.³⁹ Regarding accessibility, educational institutions and programmes have to be accessible to everyone, without discrimination. This includes physical accessibility⁴⁰ and economic accessibility.⁴¹ Regarding acceptability, "the form and substance of education, including curricula and teaching methods, have to be acceptable (eg relevant, culturally

36 Ibid.

37 The Committee on Economic, Social and Cultural Rights is a body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights.

38 Committee on Economic, Social and Cultural Rights, General Comment No 13 (1999): The Right to Education, E/C.12/1999/10.

39 Committee on Economic, Social and Cultural Rights, General Comment No 13 (1999) para 6 at 2 – 3.

40 Education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (eg a neighbourhood school) or via modern technology (eg access to a "distance learning" programme). See para 6 of the General Comment.

41 Education has to be affordable to all. See para 6 of the General Comment.

appropriate and of good quality) to learners and, in appropriate cases, parents".⁴² Lastly, regarding adaptability, "education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of learners within their diverse social and cultural settings".⁴³ State parties should therefore ensure that these four essential elements are taken into consideration in the realisation of children's right to education.

Regarding child specific instruments, the right to education is provided for in the CRC and the ACRWC. The UN Committee on the Rights of the Child has set out four core principles for the interpretation and implementation of the provisions of CRC. These principles are non-discrimination (article 2(1)); the best interests of the child (article 3(1)); the right to survival and development (article 6(2)); and the views of the child (participation in all matters concerning children) (article 12(1)). The principles also apply in the context of the right to education. The right to education is provided under article 28 of the CRC and states should make primary education compulsory and available for all.

Similarly, the African Children's Charter responds to the realities and unique issues of the children on the African continent and provides for children's right to education. The African Children's Charter imitates the CRC's four basic principles of children's rights in its articles 3, 4, 5 and 7. In all matters concerning children, including education, states are required to give effect to these principles. The African Children's Charter provides for children's right to education in article 11 and just like in the CRC, state parties should provide free and compulsory basic education.⁴⁴ Section 11(3)(e) is noteworthy in this regard as it encourages states to take special measures in respect of female, gifted, and disadvantaged children and to ensure equal access to education for all sections of the community. What is also notable from the CRC and the African Children's Charter is that education should be free and compulsory for all children. In that regard, education should be inclusive and state parties should ensure that there are adequate resources to ensure that children have access to education and to ensure that there are no instances whereby children are deprived of their right to education due to a lack of resources.

It is also important to highlight that in 2013, the AU adopted Agenda 2063 which recognises that Africa will promote the growth of the continent and secure its future by nurturing and nourishing its children, and requires that children should therefore be empowered through the full implementation of the African Children's Charter.⁴⁵ Agenda 2063 is informed by seven broad aspirations and the sixth aspiration calls for "an Africa whose development is people-driven, relying on the potential offered by African people, especially its women and youth,

42 Committee on Economic, Social and Cultural Rights, General Comment No 13 (1999) para 6 at 3.

43 Ibid.

44 Article 11(3)(a) of the ACRWC.

45 African Union (2013) "Agenda 2063: The Africa We Want".

and caring for children".⁴⁶ This informed the adoption of Agenda 2040 by the ACERWC in 2015, to cater for the progressive improvement of the child in the wider framework of Agenda 2063. Agenda 2040 is a 25-year programme that calls for long-term and strategic progress in implementing children's rights in Africa. It provides a child-based focus for the AU's Agenda 2063, which highlights children's rights and welfare concerns in paragraph 53.

Agenda 2040 is guided by ten aspirations and Aspiration 6 provides that every child should benefit from quality education. Of importance to note is that aspiration 6 notes that:

In many parts of Africa, private actors increasingly provide education, giving rise to problems of inferior education due to a lack of regulatory oversight. Education is a public good, of which the quality has to be assured. States should curb the unregulated rise of private actors in education, as a failure to effectively regulate may compromise the quality of education and lead to the exploitation of children.⁴⁷

Further, among other things, aspiration 6 provides that by 2040, primary and secondary education is free, without hidden costs impeding access.⁴⁸ As such, all education sectors should be regulated, including private sectors to ensure that children receive quality education and are not prone to exploitation. Education should be free and there should not be further costs that deny children their right to education.

3.2 The legal and policy framework on the right to education in Zimbabwe

Zimbabwe is a state party to the International Covenant on Economic Social and Cultural Rights, African Charter on Human and Peoples' Rights, Convention on the Rights of the Child, and the African Charter on the Rights and Welfare of the child which all provide for the right to education. Zimbabwe must thus harmonise the legal standards on education set out in these instruments in its laws.

The right to education is enshrined in the Constitution of Zimbabwe⁴⁹ and the Education Amendment Act.⁵⁰ Whilst the right to education is generally protected under section 75 of the Constitution, notably, some provisions explicitly mention children's right to education. Section 19(2)(d) for instance provides that subject to available resources, the state must adopt reasonable policies and measures to ensure that children have access to appropriate education. Further, in terms of section 27(1)(a) – (b), the state must take all practical measures to promote free and compulsory basic education for children and higher and tertiary education. In this regard, girls must be afforded the same opportunities as boys to

⁴⁶ AU Agenda 2063, aspiration 6.

⁴⁷ ACERWC (2015) "Africa's Agenda for Children 2040" aspiration 6 at 13 – 14.

⁴⁸ ACERWC Agenda 2040 (2015) at 14.

⁴⁹ Constitution of Zimbabwe Act 20 of 2013.

⁵⁰ Education Amendment Act 15 of 2019.

obtain education at all levels.⁵¹ Section 81 which provides for children's rights states that every child shall have the right to education.⁵² In all issues concerning children, the best interests of the child is the paramount consideration⁵³ and this also applies to the education of children. In the Education Amendment, section 5 provides that every child has a right to compulsory basic state-funded education.⁵⁴ In that regard, the government should protect children's right to education and allocate resources to ensure that children have access to free education.

The provisions of the Constitution of Zimbabwe and the Education Amendment Act are notable as they impose an obligation on the state to ensure that every child has access to free and compulsory education at all times, thereby ensuring the realisation of the right to education. To ensure the implementation of the constitutional provisions, the government of Zimbabwe launched the Basic Education Assistance Module (BEAM) in 2000. The programme was launched in response to "worsening social conditions in the country that were causing the poor to suffer deepening multiple shocks (escalating prices of basic commodities, retrenchments and high unemployment rates, high drop outs of school children and high interest and inflation rates)".⁵⁵ The programme is the largest form of educational assistance in the country. Whilst this is notable, it is argued that financing education generally in Zimbabwe, and primary education more particularly remains a challenge especially in the remote and rural areas where most families are poor and cannot afford to finance their children's education.⁵⁶

Zimbabwe's education thus "continues to suffer through the decade of economic collapse and political violence, starved of funding, abandoned by teachers, who left children to fend for themselves without much opportunity for learning".⁵⁷ Furthermore, many children have not benefitted from the BEAM programme. According to the evaluation report by the Training and Research Support Centre with the Zimbabwe Teachers Association in 2012, it was noted that out of the 2.8 million primary school going children, an estimated 28 per cent were in need of fund assistance, but only 16 per cent received the funds in the previous year.⁵⁸ The

51 Sec 27(2) of the Constitution of Zimbabwe.

52 Sec 81(f) of the Constitution of Zimbabwe.

53 Sec 81(2) of the Constitution of Zimbabwe.

54 Sec 5 of the Education Amendment Act 15 of 2019.

55 Marongwe N (2007) "Observatory Case Studies: The Basic Education Assistance Module (BEAM) in Zimbabwe" United Nations and partners (Alliance on Orphans and Vulnerable Children (OVC)), available at <https://catalog.ihsn.org/citations/7801> (visited 11 January 2022).

56 Mapako FP & Mareva R (2013) "The Concept of Free Primary School Education in Zimbabwe: Myth or Reality" 1(1) *Educational Research International* 135 – 145 at 136.

57 Simbo C (2019) "A Legal Analysis of the Constitutional Right to Basic Education in Zimbabwe and South Africa" DPhil thesis, University of Zimbabwe at 183.

58 Training and Research Support Centre (TARSC) & Zimbabwe Teachers Association (ZIMTA) (2012) "Tracking the Governance and Accountability of the Basic Education and Assistance Module (BEAM) in Ten Districts of Zimbabwe" at 2, available at <https://www.tarsc.org/publications/documents/BEAM%20rep%20final.pdf> (visited 11 January 2022).

ACERWC has also noted that education remains a challenge in Zimbabwe as there are increasing rates of school dropouts and low rate of secondary education as a result of lack of funds to pay school fees among other things.⁵⁹ Education for children in Zimbabwe is thus neither accessible nor available to many children despite the provision of constitutional safeguards for free and compulsory education.

4. EXTRA LESSONS IN ZIMBABWE'S EDUCATION SYSTEM

In Zimbabwe, extra lessons are understood to be additional school lessons offered by teachers to a learner or a group of learners for an extra fee charged by the teacher. In some instances, the fee is charged by a particular school's administration system.⁶⁰ This problem is exacerbated where teachers are less productive during formal school hours. Usually, the parties involved in the arrangements for extra lessons are the parents or guardians or a learner and a teacher at the school.⁶¹ However, in some cases, parents can arrange with a qualified or unqualified teacher outside the school which is not attended by their child. The extra lessons are usually "conducted at makeshift schools usually at the teacher's private place of residence or in the case of one on one lessons, at the learner's house".⁶² In some cases, extra lessons take place at school.

Extra lessons being provided to learners is not a new phenomenon in the Zimbabwean education sector. According to Munikwa and Mutungwe, "extra lessons in Zimbabwe were established over 20 years ago as an approach to working with children having learning and behavioural difficulties on a one to one with professionally trained practitioners".⁶³ It is therefore implied that extra lessons were normally designed for assisting learners with special needs and individual tuition was envisaged to maximise the gains of the exercise.⁶⁴ In the past, learners waiting to sit for their national exams (Grade 7, Ordinary Level and Advanced Level) were the only ones considered to take extra lessons.

Nowadays, however, extra lessons are taking part in every level of education, as parents feel that their children need to go for extra lessons due to the gradual reduction in the quality of the formal education provided in schools.⁶⁵ What can be deduced from this is that extra lessons are meant to supplement learning of school related material in a bid to increase the learner's chances of doing well in public examinations.⁶⁶ In Zimbabwe, extra lessons have also

59 ACERWC (2015) "Concluding Observations and Recommendations on the Republic of Zimbabwe Report on the Status of implementation of the African Charter on the Rights and Welfare of the Child" at para 39.

60 Pindula (2021) "Extra Lessons in Zimbabwe", available at https://www.pindula.co.zw/Extra_Lessons_In_Zimbabwe (visited 14 January 2022).

61 Ibid.

62 Ibid.

63 Munikwa & Mutungwe (2011) at 28.

64 Ibid.

65 Pindula (2021).

66 Munikwa & Mutungwe (2011) at 28.

served as an additional income generating initiative for teachers at government schools as they usually earn smaller salaries.⁶⁷

Extra lessons by schools were banned in 2013 but the ban was lifted in 2014 and the government indicated that they were for classes that would sit for public examinations towards the end of the year and classes that had lost learning time due to unforeseen circumstances.⁶⁸ It was also indicated that schools that wanted to conduct extra lessons had to seek permission from the Ministry of Education.⁶⁹

4.1 A new dimension of extra lessons: Corruption or advancing children's right to education?

In the past few years, the conduct of extra lessons has taken a new dimension, raising questions as to whether private extra lessons are really a way of ensuring children's right to education or are they now a corrupt practice, wherein some teachers are conducting such as a way to gain more money privately? As will be shown in this article, extra lessons are now being conducted as a way of getting extra money, with or without the knowledge of the school administration. This is probably as a result of a number of problems that have crippled the education sector in Zimbabwe.

In 2008, UNICEF reported that Zimbabwe's education system which was once the best in Africa was facing a number of challenges and had been left tottering on the brink of collapse as a result of depletion of teachers in schools, transport and food problems faced by teachers as well as lack of resources.⁷⁰ UNICEF further reported that public financing of the education sector was diminishing and there was an increase of school fees, beyond the reach of many citizens. Further, teachers were decreasing whilst the remaining had low morale as a result of poor remuneration.⁷¹ This is still a problem to date as in July 2021 a publication by the Consumer Council of Zimbabwe revealed that an average family of six in Zimbabwe required \$40 680 for their monthly requirement compared to \$35 877 in April 2021.⁷² On the other hand, reports indicated that at that period, a senior teacher in the country was earning a salary of \$22 000 which is equivalent to US\$169 on the black market. The amount would be expected to cover rentals, bills, groceries and other monthly expenses.⁷³ In order to survive

67 Ibid.

68 Chitumba (6 March 2020).

69 The Sunday News (3 August 2014) "Govt lifts ban on extra lessons", available at <https://www.sundaynews.co.zw/govt-lifts-ban-on-extra-lessons/> (visited 14 January 2022).

70 UNICEF (2008) "Zimbabwe education system in a state of emergency", available at <https://reliefweb.int/report/zimbabwe/zimbabwe-education-system-state-emergency> (visited 14 January 2022).

71 UNICEF (2008).

72 NewZimbabwe.com (2021) "Zimbabwe: Teachers Cash-in On Private Online Lessons As Covid-19 Keeps Schools Closed", available at <https://allafrica.com/stories/202107130197.html> (visited 14 January 2022).

73 NewZimbabwe.com (2021).

in the prevailing dire economic situation in Zimbabwe and supplement their low salaries to sustain their families, teachers have been engaging in extra lessons and demanding extra payments from learners. Indeed, there have been many allegations to the effect that the main reason why teachers are demanding pupils to pay for extra lessons is because they are not adequately remunerated.⁷⁴

It is also noted that with recent developments such as the COVID-19 pandemic, most primary and secondary school teachers have been taking advantage of the prolonged closure of schools through conducting online lessons.⁷⁵ The increase in the number of COVID-19 cases in 2020 forced the government to close schools as a way of containing and preventing the virus. When the COVID-19 virus began to spread in Zimbabwe in March 2020, the government imposed a nationwide lockdown, which included the closure of schools.⁷⁶ Schools in Zimbabwe were closed from March 2020 to mid-September 2020. By the end of March 2020, 9 500 schools were closed in Zimbabwe, affecting more than 4.6 million children.⁷⁷ Schools were later on partially reopened from mid-September to October, and then fully reopened again from November to December 2020. From January 2021 to March 2021 schools were partially reopened and were fully opened at the beginning of April 2021.⁷⁸ The increase in the number of cases however led to the closure of schools in June 2021. At the beginning of August 2021, schools remained closed and were opened on 30 August 2021 for examination classes and on 6 September 2021 for non-examination classes.⁷⁹ In January 2022, owing to the surge in COVID-19 infections, the President of Zimbabwe decided to defer the opening of schools which had been scheduled for 10 January 2022.⁸⁰

It is reported that some teachers took advantage of the situation and set up private online lessons targeting their learners as well as learners from other schools.⁸¹ In some instances, teachers were conducting lessons in their homes. According to a snap survey undertaken by NewZimbabwe.com in 2021, it was revealed that teachers were charging an average of US\$15

74 Bewu C (2011) "Zimbabwe: Extra Lessons Cripple Education Sector" *The Herald*, available at <https://allafrica.com/stories/201103141064.html> (visited 14 January 2022).

75 NewZimbabwe.com (2021).

76 See for instance the Public Health (COVID-19 Prevention, Containment & Treatment) Regulation, 2020 (SI 77 of 2020) which prohibited public gatherings and also the Public Health (COVID-19 Prevention, Containment & Treatment) (National Lockdown) Order, 2020 (SI 83 of 2020) which provided that all schools were to remain closed in section 4(1)(e).

77 Moshiri L et al (2020) "Children's learning and welfare should be at the center of decisions around school re-opening" UNICEF, available at <https://www.unicef.org/zimbabwe/stories/childrens-learning-and-welfare-should-be-centre-decisions-around-school-re-opening> (visited 14 January 2022).

78 Rwezuya S et al (2021) "Providing a solution for learning for millions of in and out of school children in Zimbabwe" UNICEF, available at <https://www.unicef.org/zimbabwe/stories/providing-learning-solution-millions-and-out-school-children-zimbabwe> (visited 14 January 2021).

79 Ministry of Primary and Secondary Education, available at <http://mopse.co.zw/> (visited 14 January 2022).

80 Ibid.

81 NewZimbabwe.com (2021).

per month for primary school learners, US\$10 per subject for Ordinary Level Learners and US\$15 per subject for Advanced Level Learners. Of particular importance to note is that in most cases, no receipts are given for these payments. It is therefore not in dispute that this extra income is going a long way in sustaining teachers' livelihoods.⁸²

Some parents have argued that extra lessons are critical as they enhance their children's knowledge, thus advancing their right to education. This is evidenced by an article in the Zimbabwe Mail in 2021 which revealed that most parents in Mutare, Rusape, Chipinge, Buhera and Nyanga support the whole idea of private tutoring, arguing that the lessons are necessary for improving their children's understanding of key concepts.⁸³ The author indeed agrees that extra lessons are important as they go a long way in ensuring that children understand some key concepts and pass at school, thus enjoying their right to education. However, what has become problematic is the way these extra lessons are being conducted, which raises questions whether they are a genuine means of ensuring that the right to education is realised or it is just a money making scheme. Also, as will be more fully shown hereunder, the way in which they are conducted is tantamount to corruption.

In 2021, reports from *NewsDay* alleged that some teachers were absent from work, reporting for work only two days per week, highlighting that that they were incapacitated following salary talks with government that reached a deadlock. It was noted from a survey carried out by *NewsDay* that some teachers have established makeshift schools at their homes, where they charge between US\$5 and US\$10 per subject for secondary school pupils and up to US\$5 for primary school learners per month.⁸⁴ Other reports alleged that some teachers charge at least US\$12 per month per pupil, at some schools, 70 per cent of the money goes to the teacher and 30 per cent goes to the administration.⁸⁵ At this point it is important to note that school fees in public schools was not paid in foreign currency at that time. One then wonders why learners were expected to pay in foreign currency, when they did not even pay normal fees in foreign currency and most of their parents' income is not in foreign currency. The establishment of makeshift schools also becomes a matter of concern as the author is of the view that it can also be identified as "private actors increasingly providing education" highlighted in aspiration 6 of the ACERWC's Agenda 2040. A teacher who conducts services outside school hours and premises and accepts off the book fees becomes a private actor in

82 Ibid.

83 Staff reporter (18 June 2021) "Teachers defy holiday lessons ban" *The Zimbabwe Mail*, available at <https://www.thezimbabwemail.com/education/teachers-defy-holiday-lessons-ban/> (visited 14 January 2022).

84 Mangwaya M (7 May 2021) "Teachers Unions Ban Extra Lessons" *Newsday*, available at <https://www.newsday.co.zw/2021/05/teachers-unions-ban-extra-lessons/> (visited 14 January 2022).

85 Tshili N (25 February 2020) "Government Crafts Laws to Criminalise Extra Lessons ... ZACC Probes Forex Schools" *Chronicle*, available at <https://www.chronicle.co.zw/government-crafts-law-to-criminalise-extra-lessons-zacc-probes-forex-schools/> (visited 14 January 2022).

this instance. There is no doubt that there is a lack of regulatory oversight in these makeshift schools thereby putting children's education and welfare at risk.

Furthermore, complaints have been raised on how teachers abuse the practice of extra lessons for personal enrichment. It has been observed that teachers have created an impression that the syllabus cannot be properly covered during normal school periods hence parents are persuaded that undertaking extra lessons is in the best interests of learners.⁸⁶ This is supported by some reports that have indicated that some teachers are conducting paid extra lessons after hours while some are absconding normal working hours to prioritise children who would have paid cash only.⁸⁷ In some instances, learners have alleged that teachers are not rendering proper services in class as they always point out that they need to attend extra lessons. During extra lessons, wherein huge sums of money are paid, surprisingly, teachers are rendering proper tutorials.⁸⁸

There have been reported incidents of teachers who are neglecting their main duties and victimising learners whose guardians could not pay for the extra lessons.⁸⁹ This seems to have been the practice for many years as the article by Munikwa and Mutungwe indicates that from the interviews conducted in Chinhoyi Urban Secondary Schools in 2011, it was observed that teachers either temporarily attended normal lessons and retreated to their bases or did not bother attending, preferring to cater for learners who attended extra lessons. It was further observed that teachers respected their schedules for after school extra lessons, as opposed to their schedules during normal school hours.⁹⁰ In some instances, it was observed that extra lessons were being undertaken during normal school hours, disrupting normal school schedules and thereby having serious implications on the activities of the main stream education system. Some school heads were aware of the practice of extra lessons but did not take any intervention measures.⁹¹

It can thus be implied that that some teachers are not putting much effort during normal school hours, and are channelling their resources towards extra lessons. As Munikwa and Mutungwe state, one can conclude that in Zimbabwe's public schools, education has been

86 Ndlela D (24 July 2009) "Students Feel the Heat of Crumbling System" *The Financial Gazette*, available at <http://www.davidcoltart.com/2009/07/students-feel-the-heat-of-crumbling-system/> (visited 10 January 2022).

87 Sunday Mail reporter (16 May 2021) "ZACC Descends on Schools over Extra Lessons" *The Sunday Mail*, available at <https://www.sundaymail.co.zw/zacc-descends-on-schools-over-extra-lessons> (visited 14 January 2022).

88 The Herald (23 April 2013) "Extra lessons or extortion?", available at <https://www.herald.co.zw/extra-lessons-or-extortion/> (visited 14 January 2022).

89 *The Zimbabwe Mail* (18 June 2021).

90 Munikwa & Mutungwe (2011) at 32.

91 Munikwa & Mutungwe (2011) at 33.

turned into a private good determined by market forces.⁹² Tarisayi *et al* sum the whole practice as follows:

Extra lessons have become more of a business activity than an honest endeavour aiming to improve the pass rate of learners. Extra lessons – initially put forward as a stop-gap measure to help learners cope with their studies – have been commercialised.⁹³

It is argued that this kind of practice by teachers and some schools amounts to corruption. As highlighted in section 2.2, rendering private lessons to paying learners outside school hours, reducing teachers' enthusiasm in normal classes and reserving critical topics for the private lessons to the detriment of learners who cannot pay is a form of education corruption. Furthermore, as stated in article 4(1)(c) of the AU Convention on Preventing and Combating Corruption, corrupt practices involve any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party. An analysis of how these extra lessons are conducted clearly indicates that some teachers are neglecting their normal duties (which is an act of omission in the discharge of their duties) forcing learners to pay for extra lessons so they can cover essential parts of their subjects (illicitly obtaining benefits), thereby amounting to corruption, as opposed to advancing children's right to education.

Whilst efforts have been made by the government to curb the practice, such efforts have been fruitless. According to the Ministry of Education, parents should not pay for their child to be taught outside normal school hours or on weekends.⁹⁴ Sometime in 2017, the Ministry of Education pronounced that conducting extra lessons for a fee was declared illegal. The pronouncements were however not made legal as no statutory instrument was enacted.⁹⁵ In 2020, it was reported that the Zimbabwe Anti-Corruption Commission (ZAAC) was crafting a law to criminalise charging a fee for extra lessons by schools.⁹⁶ ZAAC was advocating for the criminalisation of extra lessons for a fee considering that government policy indicates that extra lessons should be conducted for no fee but as a catch-up mechanism for classes that are behind in covering their syllabi.⁹⁷ In the same month, ZAAC was conducting investigations

92 Munikwa & Mutungwe (2011) at 29.

93 Tarisayi KS et al (2020) "Micro commercialisation the new threat to teacher collegiality in Masvingo district" 15(1) *The Independent Journal of Teaching and Learning* 91 – 100 at 95.

94 Munga M (19 September 2021) "Teachers Busted For Holding Extra Lessons but Accuse Parents of Begging Them To Do It" *Mbare Times*, available at <https://mbaretimes.com/2021/09/teachers-busted-for/> (visited 14 January 2022).

95 Dube C (2021) "ZACC Moves To Arrest Teachers Doing Extra Lessons", available at <https://savannanews.com/zacc-moves-to-arrest-teachers-doing-extra-lessons/> (visited 14 January 2022).

96 Africa Press (25 February 2020) "ZAAC Crafting Law To Criminalize Charging a Fee for Extra Lessons", available at <https://www.africa-press.net/zimbabwe/all-news/zacc-crafting-law-to-criminalize-charging-a-fee-for-extra-lessons> (visited 14 January 2022).

97 Pindula (2021).

for schools that were demanding foreign currency as a form of payment for extra lessons and about six teachers had been paid but were ordered to reimburse the parents or guardians that had paid.⁹⁸ It has thus been emphasised that schools that want to conduct extra lessons should make an application to the Ministry of Education justifying the need and only conduct extra lessons upon approval by the Ministry.⁹⁹ At the time of writing this article, the author however did not come across any information about teachers that had been arrested so far for demanding payments for extra lessons. Furthermore, interestingly, focus has been on conducting of extra lessons by schools and nothing is being said about crafting a law that criminalises the provision of extra lessons teachers. There is no information pointing out to the fact that ZAAC is investigating teachers who have established makeshift schools in their homes, charging extra fees in foreign currency. This gap therefore needs to be addressed and the law should regulate extra lessons both in and outside school premises.

4.2 The impact on 'extra lessons' on the right to education

A number of essential services for children, for instance education, are supposed to be provided freely, yet corrupt practices often result in children and their parents having to incur further costs, paying for the services.¹⁰⁰ Payments required for extra lessons conducted by teachers threaten children's rights and welfare in numerous ways. Poor households are the most affected as they have an increased financial burden to raise funds for informal payments.¹⁰¹ Children whose parents, guardians and caregivers cannot afford to pay for extra lessons risk receiving further knowledge on various subjects. This in turn reduces children's access to quality education as children from poor households miss out on such lessons. The same sentiments have been shared by the president of the Amalgamated Rural Teachers Union of Zimbabwe who noted that children from poor backgrounds whose parents and guardians could not afford to pay the required amount for extra lessons were being left out from the education system.¹⁰² Undoubtedly, the practice promotes elitism and unequal access to education, which is not in line with the provisions of the African Children's Charter which stresses the need to ensure equal access to education for all sections of the community. It is also not in line with the provisions of aspiration 6 of Agenda 2040 which emphasises that there should be no hidden costs impeding children's right to education.

Furthermore, private and unregulated extra lessons may have impacts on other children's rights which in turn impedes their right to education. It has been observed that some children who undergo these extra lessons have been susceptible to sexual abuse. In November 2019, *The Chronicle* newspaper reported that a teacher from Premier High School in Bulawayo was

98 Tshili (2020).

99 The Sunday News (3 August 2014).

100 African Union (2019) at 23.

101 Ibid.

102 Mangwaya (2021).

sentenced to 15 years in prison for raping a 12-year-old girl that he was giving English extra lessons to. The incident happened at the girl's home.¹⁰³ In July 2021, *The Herald* newspaper reported that a teacher from Zimbabwe Republic Police High School was accused of raping a 15-year-old pupil who was attending Ordinary level physics extra lessons in the school's laboratory. It is alleged that the child suggested that they find a warmer room as it was cold and the teacher suggested that they go to his office, where he raped the teenager.¹⁰⁴ Further in September 2021, *NewsDay* reported that a private tutor hired by a family in Filabusi appeared in court for allegedly raping three minor pupils he was supposed to mentor. The pupils were aged 7, 9 and 12.¹⁰⁵ These cases are a cause for concern as they show how children will continue being exposed to exploitation and abuse if the practice of unregulated extra lessons continues. As is well known, rights are interdependent and interrelated¹⁰⁶ and the infringement of one right leads to the infringement of another. Sexual abuse has a host of negative physical, emotional, psychological, and educational repercussions on survivors. It can undermine the development of children's competencies and skills. It can further lead to unwanted pregnancies which results in children dropping out of school,¹⁰⁷ thereby encumbering children's right to education.

5. CONCLUSION AND RECOMMENDATIONS

A closer look at corruption in the education sector reveals that among the corrupt practices in education is the practice of private tutoring or extra lessons during or outside school hours wherein learners are expected to pay a certain amount to receive lessons. An analysis of the practice of extra lessons in Zimbabwe thus reveals that payment for extra lessons is a corrupt practice as some learners are expected to pay in foreign currency, even in instances where they do not even pay school fees in foreign currency. Further, the practice reveals that some teachers are not putting much effort in during normal school hours, and are channelling their resources towards extra lessons which is a form of corruption (abuse of entrusted power for private gain). This practice continues to take place despite that payment for extra lessons was declared illegal by the government. Whilst some may argue that extra lessons are a way of advancing children's right to education as they get to understand some critical concepts, the article notes that whilst this is true, payment for extra lessons impedes children's right to education as those children who cannot afford are left out. Undoubtedly, the practice

103 Buwerimwe S (11 November 2019) "15 Years Jail for Pupil Rape Teacher" *The Chronicle*, available at <https://www.chronicle.co.zw/15-years-jail-for-pupil-rape-teacher/> (visited 16 January 2022).

104 Court reporter (21 July 2021) "Teacher Accused of Raping Pupil" *The Herald*, available at <https://www.herald.co.zw/teacher-accused-of-raping-pupil/> (visited 16 January 2022).

105 Nkala S (2 September 2021) "Private Tutor Rapes 3 Minors" *NewsDay*, available at <https://www.newsday.co.zw/2021/09/private-tutor-rapes-3-minors/> (visited 16 January 2022).

106 United Nations Human Rights Office of the High Commissioner "What are Human Rights?", available at <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx> (visited 16 January 2022).

107 Kabo D (2018) "Sexual Abuse of Children in Schools: The Need for Social Work Intervention" 8(1) *African Journal of Social Work* 3 – 13 at 9.

promotes elitism and unequal access to education. This is against international norms and standards on the right to education which emphasise that education should be free and compulsory, as well as available and accessible to every child. "The provision of education and other basic services should be inclusive to deal with the challenge of inequality in the society. Public education should be well supported to guarantee quality of service delivered."¹⁰⁸

In light of that, it is recommended that the government, as the main duty bearer should ensure that the education sector is adequately resourced. Particularly, the root cause for demanding payments for extra lessons (poor remuneration) should be addressed. As indicated by CMI, "the importance of adequate remuneration to ensure an honest civil service is widely recognised in the international discourse on civil service and pay reform".¹⁰⁹ Further, as stated by the Committee on Economic, Social and Cultural Rights, for an education system to be functional, teachers should receive competitive salaries. The government should therefore ensure that teachers are adequately remunerated so they are able to sustain themselves and not be pushed to demand payments for extra lessons as a way of getting extra income. There should also be clear codes of conduct for school personnel to ensure certain standards for professional ethics that are not explicitly covered by law. The codes must be clear on the practice of extra lessons both in and outside the school premises. Furthermore, there should be laws criminalising the practice of conducting extra lessons for a fee. The codes of conduct and laws should be widely disseminated to ensure that school personnel are aware of what is required of them.

108 Mangwaya (2021).

109 CMI (2006) at 10.