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The Clerk of Parliament  
Attention: Portfolio Committee on Primary and  
Secondary Education  
P.O. Box CY 298  
Causeway  
Harare  
Zimbabwe



HRW.org

#### Open Letter

May 9, 2019

#### RE: Human Rights Watch comments regarding Education Amendment Bill of 2019

Dear Ms. Misihairabwi-Mushonga,

Please accept our regards on behalf of Human Rights Watch.

Human Rights Watch is an independent nongovernmental organization dedicated to defending and protecting human rights, working on more than 90 countries around the world.

We are writing to provide comments during the period for open consultations with citizens and civil society on the Education Amendment Bill, first gazetted in February 2019.

Human Rights Watch would like to take this opportunity to support the adoption of an amended education bill that guarantees the equal realization of the right to education for all in Zimbabwe.

We are encouraged by the bill's inclusion of legal guarantees on state-funded basic education, protection from corporal punishment and other forms of inhuman and degrading treatment, as well as specific protections for key groups of vulnerable children: those who are economically vulnerable, children with disabilities, and those who become pregnant while at school.

However, we believe that the bill should be strengthened in several areas, and are making concrete recommendations below in that regard.

Based on our human rights research and evidence on barriers to the right to education in over 40 countries, including Zimbabwe, we have provided comments on specific parts of the bill, and included references to international law to indicate Zimbabwe's international and regional human rights obligations.

We hope Zimbabwe's parliament will adopt a robust amendment to the Education Act that guarantees everyone's right to education, and brings Zimbabwe's laws in line with its international and regional human rights obligations.

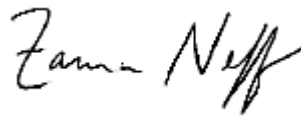
We thank you for taking these recommendations into account, and look forward to engaging with members of parliament in the next stages of this bill.

Please do not hesitate to contact Elin Martinez, [martine@hrw.org](mailto:martine@hrw.org) or Dewa Mavhinga, [mavhind@hrw.org](mailto:mavhind@hrw.org) for further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dewa Mavhinga', with a long horizontal line extending to the right.

Dewa Mavhinga  
Southern Africa director

A handwritten signature in black ink, appearing to read 'Zama Neff', with a long horizontal line extending to the right.

Zama Neff  
Children's rights executive director

## Human Rights Watch’s comments on Education Amendment Bill, by section

### **Basic State-Funded Education (section 5)**

We are encouraged that the Education Amendment Bill explicitly entitles every child to “basic state funded education,” including from early childhood to lower secondary education. The amended Act should provide the basis for Zimbabwe to guarantee the right to free education. We therefore remain concerned that the bill does not explicitly eliminate fees for primary and secondary schooling.

In 2018, Human Rights Watch published research on hazardous child labor in Zimbabwe’s tobacco sector, based on interviews conducted in five provinces of Zimbabwe.<sup>1</sup> We found that many families had to pay fees or levies for their children to go to public schools. Nearly everyone we interviewed—including parents, children, teachers, and worker advocates—said that school fees posed a barrier to children’s education, and many interviewees said the fees became prohibitively expensive for their families, particularly in secondary school. Though, at the time of writing, the government had stated that children should not be sent home from school for non-payment of fees, some interviewees said school administrators sent children home, or refused to provide end-of-year exam results, if school fees were unpaid. Interviewees also described how indirect educational costs for things like books and uniforms posed a challenge for many families. Some interviewees told Human Rights Watch that uniforms cost around \$15, and books cost from \$0.20 to \$6 each, depending on the subject and grade level.

While the proposed creation of a Basic Education Fund could help some vulnerable students cover such fees, the government should articulate a plan for removing school fees to ensure the right to education for all learners. We therefore recommend that in accordance with international and regional law, the bill should reflect that primary education of all learners, including learners with disabilities, is free and immediately realizable. Further, Human Rights Watch believes the Zimbabwean government should take measures to ensure that secondary education is available and accessible to all free of charge. It should also encourage and intensify “fundamental education” for those persons who have not received or completed the whole period of primary (or basic) education.<sup>2</sup>

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<sup>1</sup> Human Rights Watch, “*A Bitter Harvest*”: *Child Labor and Human Rights Abuses in Tobacco Farms in Zimbabwe*, April 2018, <https://www.hrw.org/report/2018/04/05/bitter-harvest/child-labor-and-human-rights-abuses-tobacco-farms-zimbabwe>.

<sup>2</sup> International Covenant on Economic, Social and Cultural Rights (1966), <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, art. 13 (2)(a) - (d); UN Convention on the Rights of the Child (1989), <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, art. 28 (1)(a) -e); African Charter on the Rights and Welfare of the Child (1990), <http://www.achpr.org/instruments/child/#a11>, art. 11 (3).

While we acknowledge current budgetary restrictions, we urge members of parliament, through budgetary and legislative processes, to ensure the government allocates sufficient public resources for education. At a minimum, with international support, Zimbabwe should meet the global benchmark of allocating at least 15 to 20 percent of the national budget to education; and preferably meet the 22 percent benchmark set by members of the South African Development Community (SADC).<sup>3</sup>

We support calls for the government to ensure adequate resources support the full spectrum of basic education, from early childhood to secondary education, and that budget allocations address disparities in funding to secondary education that limit transition to and enrollment in secondary education.<sup>4</sup> The government should ensure primary and secondary schools are adequately funded, so that they can cover gaps in school budgets that were previously covered through tuition fees, indirect costs, and family contributions.

We strongly believe that fully guaranteeing free primary and secondary education will ensure more young people will complete compulsory basic and secondary education. Across the African continent, countries like Ghana and Tanzania recently joined the group of African countries that guarantee free primary and secondary education, taking forward their national and international human rights obligations. Both countries have significantly increased enrollment in secondary education following the removal of school fees. We believe this is a crucial reform in order to ensure that all young people, regardless of their location or circumstances, have an equal right to primary and secondary education.

### **Pupils with Disabilities (section 68B)**

We welcome the bill's inclusion of specific rights for learners with disabilities.<sup>5</sup> However, we strongly encourage members of parliament to ensure the bill explicitly protects the right

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<sup>3</sup> UNESCO et al., Education 2030 – Incheon Declaration and Framework for Action for the implementation of Sustainable Development 4;

[http://uis.unesco.org/sites/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en\\_2.pdf](http://uis.unesco.org/sites/default/files/documents/education-2030-incheon-framework-for-action-implementation-of-sdg4-2016-en_2.pdf), p. 9; UNICEF Zimbabwe, “Primary and Secondary Education 2018 Budget Brief,” April 2018, <https://www.unicef.org/esaro/UNICEF-Zimbabwe-2018-Education-Budget-Brief.pdf>.

<sup>4</sup> UNICEF Zimbabwe, “Primary and Secondary Education 2018 Budget Brief,” April 2018, <https://www.unicef.org/esaro/UNICEF-Zimbabwe-2018-Education-Budget-Brief.pdf>.

<sup>5</sup> For more information on Human Rights Watch research on government's obligations on the right to inclusive education, see Human Rights Watch, “*Complicit in Exclusion*”: South Africa's Failure to Guarantee an Inclusive Education for Children with Disabilities, August 2015,

<https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children>;

Nepal: Barriers to Inclusive Education, Segregation, Lack of Accessibility for Children with Disabilities, September 2018,

<https://www.hrw.org/news/2018/09/13/nepal-barriers-inclusive-education>; “*I Would Like to Go to School*”: Barriers to

Education for Children with Disabilities in Lebanon, March 2018,

<https://www.hrw.org/report/2018/03/22/i-would-go-school/barriers-education-children-disabilities-lebanon>.

to inclusive education, and that this right is embedded in the bill, explained in Section 2 to replace “special needs education” and included as a standalone section in the main Act.

“Inclusive education” is the practice of educating children with disabilities in mainstream schools in their neighborhood with the provision of supplementary aids and services, known as reasonable accommodations, where necessary. Inclusive education is a fundamental right of all learners. It has been acknowledged by experts as the most appropriate means for governments to guarantee universality and nondiscrimination in the right to education. In addition, inclusive education is a prerequisite for full inclusion and participation of people with disabilities in the community, and for countering their isolation and segregation.

In particular, the bill should be guided by the legal obligations enshrined in the United Nations Convention on the Rights of Persons with Disabilities (CRPD), which Zimbabwe ratified in 2013.<sup>6</sup> The CRPD in article 24(2) obligates states to ensure that:

- a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c) Reasonable accommodation of the individual’s requirements is provided;
- d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

We wish to draw the committee’s attention to the explanatory note to section 68B of the amended bill, which stipulates “the rights of persons with disabilities to be provided with special facilities for their education.” We believe draft section 68B (1), which currently stipulates that “Every registered school shall provide infrastructure, subject to availability of resources, suitable for use by pupils with disabilities,” provides a more accurate reflection of Zimbabwe’s international obligation to ensure learners with disabilities are

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<sup>6</sup> Convention on the Rights of Persons with Disabilities (2006), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

fully included and supported to learn in mainstream schools, rather than in specialized settings.

We support the draft bill's articles in section 68B (2) and (3) stipulating obligations on the secretary of education to monitor how the rights of pupils with disabilities are taken into account during teaching and learning, and the requirement for every registered school to submit a plan highlighting how the school advances the rights of pupils with disabilities. We would encourage members of parliament to insert an additional clause that provides an obligation on schools to ensure that "effective individualized support measures are provided in environments that maximize academic and social development" of all learners, including those with specific learning needs and with disabilities.

We would also recommend including children with disabilities in clause in section 10 (2) to the effect that "Every child of school going age, including children with disabilities, shall be entitled to be enrolled at the primary or secondary school, as the case may be, nearest to the place where he or she is ordinarily resident."

In addition, the right to inclusive education includes an obligation to provide reasonable accommodation and guarantee accessibility in all schools to ensure children with disabilities can benefit from education on an equal basis. Provisions of the CRPD in article 24(3) prescribe the following appropriate measures:

- a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

Section 62(3) should therefore include a specific clause that outlines the government's duty to provide reasonable accommodation, as well as accessible materials for learners who require them in order to learn on an equal basis.

#### **Pregnant pupils (section 68D (1))**

We commend Parliament for including a provision that guarantees that no child shall be discriminated against on the basis of pregnancy. We note that over 24 percent of

adolescents ages 15-19 become mothers, according to the United Nations Population Fund, and most drop out of school.<sup>7</sup> We therefore believe the bill should include more provisions that protect the right to education of pregnant pupils and those who become parents while at school.

Human Rights Watch has conducted extensive research on African governments' treatment of pregnant learners and learners who are parents. In 2018, we published [Leave No Girl Behind in Africa](#), a report that details laws and policies that address pregnancy and parenthood in education, including good practices, in African countries. Our report outlines several key recommendations that governments need to adopt to ensure they have rights-compliant pregnancy management laws and policies in place. Please find a copy enclosed with this letter.

Our research has found that it is crucial for governments to protect pregnant and parent learners' rights in national law and policy. In addition to legislation, governments should adopt a robust policy that aims to fully protect the right to education of adolescent mothers and fathers and prevent teenage pregnancies, in compliance with their human rights obligations.

We have also found that good laws and policies focus on providing the right to continue education, rather than restricting conditions for learners' return to school. Laws and policies framed in this way also clarify schools' positive obligations to adopt measures to support learners who become parents.

We therefore recommend that the bill includes a specific section on pregnant learners and parents of school-going age. Such provisions should expand the existing protection of not excluding a pupil on the basis of pregnancy, articulated in section 68D (1), and state learners' positive right to remain in school and resume education once they decide they are able to resume classes. This clause could also specify that learners will not be barred from taking examinations.<sup>8</sup>

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<sup>7</sup> UN Population Fund and Ministry of Women Affairs, Gender and Community Development, "Facing the Challenge of Adolescent Pregnancy in Zimbabwe," 2016,

<https://zimbabwe.unfpa.org/sites/default/files/pub-pdf/UNFPA%20FACING%20CHALLENGE%20OF%20ADOLESCENT%20PREGNANCY%20STORYLINE%20for%20Web.pdf>.

<sup>8</sup> For more examples on laws that articulate this right, see Human Rights Watch, *Leave No Girl Behind in Africa: Discrimination in Education against Pregnant Girls and Adolescent Mothers*, June 2018,

<https://www.hrw.org/report/2018/06/14/leave-no-girl-behind-africa/discrimination-education-against-pregnant-girls-and>,

pp. 30–41.

Although girls are overwhelmingly affected by exclusion and social and economic barriers when they become mothers, boys who become fathers while at school may also face barriers. We therefore encourage using language that reflects learners' roles as parents.

By including a specific protection, Zimbabwe would adhere to regional obligations to protect the rights of pregnant and parent learners under the African Charter on the Rights and Welfare of the Child, and the African Youth Charter.<sup>9</sup>

Zimbabwe would also join other SADC member states, which generally have a law or national policy in place that outlines schools' obligations to safeguard the right to education of pregnant learners and mothers, and in some cases, fathers who are also learners.<sup>10</sup> For example, Lesotho's Children's Protection and Welfare Act of 2011 includes a provision to the effect that: "No child shall be expelled or denied the right to education by any educational institute on account of pregnancy, initiation or other cultural rituals."<sup>11</sup>

### **Safety of Students in Schools (section 68A)**

We commend parliament for including in the Education Amendment Bill a legal obligation to ensure children are not subject to any form of physical or psychological torture, or to cruel, inhuman or degrading treatment at school, including an explicit prohibition from beating students. This ensures the bill adheres to Zimbabwe's international obligations under the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.<sup>12</sup>

However, we recommend that parliament adopt additional protections to ensure the Act covers other forms of school-related gender-based violence defined as "acts or threats of sexual, physical, or psychological violence occurring in and around schools, perpetrated as a result of gender norms and stereotypes and enforced by unequal power dynamics."<sup>13</sup>

Putting a ban on corporal punishment into effect is essential to protect children from violence in schools. Many of the children and young adults whom Human Rights Watch

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<sup>9</sup> African Charter on the Rights and Welfare of the Child (1990), art. 11 (6); African Youth Charter (2006), [https://au.int/sites/default/files/treaties/7789-treaty-0033\\_-\\_african\\_youth\\_charter\\_e.pdf](https://au.int/sites/default/files/treaties/7789-treaty-0033_-_african_youth_charter_e.pdf), art. 13 (4) (h).

<sup>10</sup> This group includes Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mozambique, Namibia, South Africa, and Zambia.

<sup>11</sup> Kingdom of Lesotho, "Children's Protection and Welfare Act, Act. No. 7 of 2011, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106492/130667/F-2038271001/LSO106492.pdf>, art. 11(4).

<sup>12</sup> UN Convention on the Rights of the Child (1989), art. 19 (1), and art. 34 (1); African Charter on the Rights and Welfare of the Child (1990), art. 11 (5), and art. 16 (1).

<sup>13</sup> UN Girls Education Initiative, A Whole School Approach to Prevent School-Related Gender-Based Violence: Minimum Standards and Monitoring Framework, <http://www.ungei.org/srgbv/files/Whole-School-Approach-to-Prevent-SRGBV-Minimum-Standards-Framework-UNGEI.pdf>.



interviewed for our 2018 report on hazardous child labor in tobacco farming said they were exposed to corporal punishment at school, despite the 2017 ruling by the High Court of Zimbabwe that corporal punishment for children was unconstitutional.<sup>14</sup> Children described being beaten by teachers for arriving late, missing class, or misbehaving. Children said they or other students were beaten with sticks on their hands, arms, legs, or backs, or slapped across the face. “We were beaten for being absent,” said one 15-year-old girl, saying her teacher made her put her head through the open back of a chair, and then beat her on the back with a stick.<sup>15</sup>

Based on our research in some countries in Southern and Eastern Africa, and numerous global studies and evidence on good practices, Human Rights Watch strongly believes governments should tackle and prevent all forms of school-related sexual and gender-based violence, which affects millions of students.<sup>16</sup> In particular, we note that millions of girls are often exposed to sexual violence in schools – which largely goes unreported due to stigmas, taboos and lack of confidential reporting mechanisms.<sup>17</sup> A Unicef-sponsored study on violence against children in Zimbabwe showed that among authority figures, teachers were the primary perpetrators of physical violence against girls and boys. Data gathered shows that both groups were exposed to sexual violence in schools.<sup>18</sup>

We therefore encourage members of parliament to insert an overall commitment to preventing all forms of violence in schools in the preamble, as well as an article that expands provisions in section 68A to clearly state the government’s, and all schools’, duty to protect learners from all forms of school-related gender-based violence. The Act could also mandate a duty for government to adopt a policy against all forms of school-related gender-based violence, including corporal punishment, sexual violence, exploitation and

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<sup>14</sup> Dewa Mavhinga (Human Rights Watch), Zimbabwe: Mnangagwa Government Should Address Barriers to Education, *NewsDay*, December 21, 2017,

<https://www.hrw.org/news/2017/12/21/zimbabwe-mnangagwa-government-should-address-barriers-education>.

<sup>15</sup> Human Rights Watch, “A Bitter Harvest:” *Child Labor and Human Rights Abuses in Tobacco Farms in Zimbabwe*.

<sup>16</sup> See, for example, Human Rights Watch, *The Education Deficit – Failures to Protect and Fulfill the Right to Education in Global Development Agendas*, June 2016,

<https://www.hrw.org/report/2016/06/09/education-deficit/failures-protect-and-fulfill-right-education-through-global#a0d549>, “Violence in Schools,” pp. 36-48; Plan International and University of Toronto, “A girl’s right to learn without fear: Working to end gender-based violence at school,”

<https://plan-international.org/publications/girls-right-learn-without-fear>; Unicef, “Half of world’s teens experience peer

violence in and around school,” September 5, 2018,

<https://www.unicef.org/press-releases/half-worlds-teens-experience-peer-violence-and-around-school-unicef>.

<sup>17</sup> Unicef, *An Everyday Lesson – End Violence in Schools*, September 2018,

[https://www.unicef.org/publications/files/An\\_Everyday\\_Lesson-ENDviolence\\_in\\_Schools.pdf](https://www.unicef.org/publications/files/An_Everyday_Lesson-ENDviolence_in_Schools.pdf).

<sup>18</sup> Unicef, *ZimStat and the University of Edinburgh*, “Understanding Determinants of Violence in Childhood: A secondary analysis of the national baseline survey of the life experiences of adolescents in Zimbabwe,” 2016,

<https://www.unicef.org/zimbabwe/media/321/file>.

psychological violence; and secure a process to monitor that schools abide by this policy.<sup>19</sup>

### **Sexual and Reproductive Health in Schools (section 64)**

We support the draft bill's inclusion of section 64(k) to the effect that sexual and reproductive health personnel will be appointed to schools.

Research in various countries across Africa, including Zimbabwe, shows that many governments lack a concerted approach, whether in law, policy or implementation, to ensure adolescent children and young adults have access to accurate and scientific information on sexual and reproductive health and rights, including through comprehensive sexuality education in schools.<sup>20</sup>

We would highly encourage members of parliament to use this opportunity to discuss the inclusion of comprehensive sexuality education in the curriculum, in line with international guidance issued by UNESCO and other UN agencies,<sup>21</sup> and in compliance with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the African Youth Charter, and other regional commitments.<sup>22</sup>

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19 UN Convention on the Rights of the Child (1989), art. 19 (2); African Charter on the Rights and Welfare of the Child (1990), art. 11 (5), and art. 16 (2); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 12 (1)(c).

20 United Nations Population Fund, "Harmonizing the Legal Environment for Adolescent Sexual and Reproductive Health and Rights – A review of 23 Countries in East and Southern Africa," September 2017, [http://esaro.unfpa.org/sites/default/files/pub-pdf/2017-08-Laws%20and%20Policies-Digital\\_o.pdf](http://esaro.unfpa.org/sites/default/files/pub-pdf/2017-08-Laws%20and%20Policies-Digital_o.pdf); see Human Rights Watch, *Leave No Girl Behind in Africa*, pp. 23 – 25; Human Rights Watch, "*I Had a Dream to Finish School*" – Barriers to Secondary Education in Tanzania, February 2017, <https://www.hrw.org/report/2017/02/14/i-had-dream-finish-school/barriers-secondary-education-tanzania>.

21 UNESCO, United Nations Population Fund et al, "International technical guidance on sexuality education – An evidence informed approach," 2018, <http://unesdoc.unesco.org/images/0026/002607/260770e.pdf>; see "Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern Africa (ESA)," December 7, 2013, <https://hivhealthclearinghouse.unesco.org/sites/default/files/resources/ESACCommitmentFINALAffirmedon7thDecember.pdf>.

22 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 14(1); African Youth Charter (2006), art. 13 (3) (f), and art. 16 (2)(b) –(e).