



UNIVERSITY of LUSAKA

Passion for Quality Education: Our Driving Force

SCHOOL OF LAW

**A HUMAN RIGHTS PERSPECTIVE ON THE EFFICACY OF THE EDUCATION ACT
2011 IN RELATION TO FREE EDUCATION POLICY 2022: LESSONS DRAWN FROM
KENYA.**

By:

MBAO MADALISO

LLB22112520

**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN
PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE
BACHELOR OF LAWS (LLB) DEGREE.**

2025

DECLARATION

I **MBAO MADALISO**, do hereby declare that this dissertation titled “**A HUMAN RIGHTS PERSPECTIVE ON THE EFFICACY OF THE EDUCATION ACT 2011 IN RELATION TO FREE EDUCATION POLICY 2022: LESSONS DRAWN FROM KENYA**” which is hereby submitted to the School of Law at the University of Lusaka as part of the requirements for the award of the Bachelor of Laws (LLB) Degree, is my original work and has not been previously submitted for the award of a degree at this institution or elsewhere to the best of my knowledge.

I understand what plagiarism entails and I am aware of the policy of the university in this regard. Other people’s works have been indicated and sources used in this study have been acknowledged as complete references.



Signature:

Date: 12th November, 2025.....

SUPERVISORS RECOMMENDATION

I **TABITHA MUKUKA**, do recommend that this dissertation titled '**A HUMAN RIGHTS PERSPECTIVE ON THE EFFICACY OF THE EDUCATION ACT 2011 IN RELATION TO FREE EDUCATION POLICY 2022: LESSONS DRAWN FROM KENYA**' authored by **MBAO MADALISO** was done under my supervision, be admitted by the University. I have checked it carefully and I am satisfied that it meets the requirements related to format as laid down by the University Regulations governing directed research.



MS TABITHA MUKUKA

(supervisor)

12th November, 2025

(Date)

ACKNOWLEDGEMENTS

First and foremost, I would like to thank God Almighty for guiding and helping me throughout my law school journey. I wouldn't have reached this far without his grace and favor, may his name be glorified and praised forever.

I would like to give special thanks to my loving parents for their love, support, encouragements and sacrifices for they have been my source of strength. My heart is full of gratitude.

My heartfelt thanks to Ms. Mukuka my supervisor, for her expertise and patience throughout my research. Her guidance, correction and support have contributed to the success of my dissertation.

I would also like to thank my siblings Nancy, Patience and Dixon Mba. My uncle Isaac Mba, my grandmothers and my late aunty Charity Mwenge Mba for encouraging me through my law school journey.

And I would like to extend my gratitude to all my friends for they have really been a blessing through my law school journey, namely Sungwe Maria Banda, Nalwimba Melo, Mwiza Kaonga, Tembo Kabangu, Kombe Chikamba, Grace Kasaka, Sandra Masaya, Catherine Phiri and all those that I haven't mentioned.

And lastly I would like to appreciate members of church St Joseph Parish, especially the Catholic Charismatic Renewal Movement Members, I really appreciate their spiritual guidance, love and support.

DEDICATION

This dissertation is dedicated to God almighty and Parents Dickson Mbao and Rhoda Chibulaluko Mbao my inspirations.

Table of Contents

DECLARATION	ii
SUPERVISORS RECOMMENDATION.....	iii
DEDICATION.....	v
TABLE OF STATUTES	ix
TABLE OF CASES.....	x
ABSTRACT.....	xi
CHAPTER ONE	1
1.0 INTRODUCTION	1
1.1 BACKGROUND.....	1
1.2 STATEMENT OF THE PROBLEM.....	2
1.3 RESAERCH OBJECTIVES	4
1.4 RESEARCH QUESTIONS.....	4
1.5 SIGNIFICANCE OF STUDY	4
1.6 SCOPE OF STUDY.....	5
1.7 DEFINITION OF KEY TERMS	5
1.9 METHODOLOGY	10
1.10 RESEARCH APPROACH	10
1.12 STUDY TYPE.....	10
1.13 STUDY POPULATION.....	10
1.14 RESEARCH TYPE.....	10
1.15 SAMPLING TECHNIQUE	10
1.16 DATA COLLECTION TECHNIQUES	10
1.17 DATA ANALYSIS	10
1.18 ETHICAL CONSIDERATIONS	10
CHAPTER TWO.....	11
2.0 TO EVALUATE THE EFFICACY OF THE EDUCATION ACT IN SUPPORTING THE IMPLEMENTATION OF FREE EDUCATION POLICY PARTICULARLY AT SENIOR SECONDARY SCHOOL.....	11
2.1 INTRODUCTION	11
2.2 THE HISTORY AND EVALUATION OF THE EDUCATION ACT IN ZAMBIA.....	12
2.3 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND THE EDUCATION ACT IN IMPLEMENTING FREE SENIOR SECONDARY EDUCATION IN ZAMBIA.....	13

2.4 JURISPRUDENTIAL PERSPECTIVES ON THE EDUCATION ACT AND FREE EDUCATION; POSITIVISM THEORY.....	15
2.5 CONCLUSION	17
CHAPTER THREE.....	19
3.0 EVALUATING THE EFFECTIVENESS OF THE FREE EDUCATION POLICY AT SENIOR SECONDARY SCHOOLS IN ZAMBIA	19
3.0.1 TO EXAMINE THE CURRENT AND POTENTIAL CHALLENGES FACED BY THE GOVERNMENT SCHOOLS	19
3.1 INTRODUCTION	19
3.2 CLASSROOM OVERCROWDING, HIGH TEACHER-PUPIL RATIO AND SHORTAGE OF TEACHERS	19
3.2.0 FINDINGS ON CLASSROOM OVERCROWDING, HIGH TEACHER-PUPIL RATIO AND SHORTAGE OF TEACHERS	21
3.3 INADEQUATE INFRASTRUCTURE AND LEARNING MATERIALS.....	23
3.3.0 FINDINGS ON INADEQUATE INFRASTRUCTURE AND LEARNING MATERIALS.....	25
3.4 INADEQUATE AND DELAYED FUNDING OF SENIOR SECONDARY SCHOOLS	25
3.4.0 FINDINGS ON INADEQUATE AND DELAYED FUNDING OF SENIOR SECONDARY SCHOOLS	27
3.5 DECLINE IN QUALITY AND LEARNING OUTCOMES	30
3.5.0 FINDINGS ON DECLINE IN QUALITY AND LEARNING OUTCOMES	31
3.6 FINDINGS ON HEALTH AND ENVIROMENTAL CHALLENGES	31
3.7 CONCLUSION	31
CHAPTER FOUR.....	33
DRAWING LESSONS FROM KENYA ON STRUCTURED LAWS GOVERNING FREE EDUCATION.....	33
4.0 INTRODUCTION	33
4.1 THE CONSTITUTIONAL FOUNDATION OF FREE EDUCATION IN KENYA	33
4.3.0 THE BASIC EDUCATION ACT AND THE REALISATION OF FREE AND COMPULSORY EDUCATION IN KENYA	34
4.3.1 OBLIGATIONS OF THE STATE AND PARENTAL RESPONSIBILTY	35
4.4 INSTITUTIONAL MECHANISMS FOR THE IMPLEMENTATION AND OVERSIGHT OF FREE EDUCATION IN KENYA	37
4.4.1 THE NATIONAL EDUCATION BOARD	37
4.4.2 THE EDUCATION STANDARDS AND QUALITY ASSURANCE COUNCIL.....	38
4.4.3 THE COUNTY EDUCATION BOARD	38
4.5.0 LESSONS FOR ZAMBIA	39

4.5.1 CONSTITUTIONAL ENSHRINMENT AND ENFORCEMENT OF FREE EDUCATION	39
4.5.2 LEGISLATIVE BACKING AND SCOPE OF FREE EDUCATION.....	39
4.5.3 CLEAR ALLOCATION OF RESPONSIBILITIES BETWEEN THE GOVERNMENT AND PARENTS OR GUARDIANS	40
4.5.4 INSTITUTIONAL MECHANISMS AND OVERSIGHT.....	40
4.6 CONCLUSION	41
CHAPTER FIVE	42
CONCLUSIONS AND RECOMMENDATIONS	42
5.0 INTRODUCTION	42
5.1 GENERAL CONCLUSION	42
5.3 SUMMARY OF CHAPTERS.....	43
5.3.1 CHAPTER ONE	43
5.3.2 CHAPTER TWO.....	43
5.3.3 CHAPTER THREE.....	44
5.3.4 CHAPTER FOUR.....	44
5.4 RECOMMENDATIONS.....	45
5.4.1 CONSTITUTIONAL INCLUSION OF THE RIGHT TO EDUCATION AND RIGHT TO FREE EDUCATION	45
5.4.2 REVIEW AND AMENDMENT OF THE EDUCATION ACT TO PROVIDE FREE SENIOR SECONDARY EDUCATION.....	45
5.4.3 CREATION OF SPECIALIZED INSTITUTIONS TO COORDINATE AND IMPLEMENT FREE EDUCATION	46
5.4.4 ENHANCING BUDGETARY PROVISION AND RESOURCE MANAGEMENT FOR FREE EDUCATION	46
5.5 RECOMMENDATIONS FROM THE RESEARCH PARTICIPANTS	46
BIBLIOGRAPHY	47

TABLE OF STATUTES

Constitution of Zambia (Amendment) Act No 2 of 2016

Education Act no. 23 of 2011

Ratification of International Agreements Act NO. 34 of 2016

The Kenyan Constitution 2010

The Basic Education Act No.14 of 2013

TABLE OF CASES

WJ and Another v Astarikoh Henry Amakoah and 9 others [2015] ECLR, Petition No 331 of 2011

ABSTRACT

This research was premised on a Human rights perspective on the efficacy of the Education Act in relation to the free education policy 2022 with lessons drawn from Kenya. The purpose of this study was to critically examine the legal gap between Zambia's free education policy and its existing legislation particularly the exclusion of senior secondary education from the Education Act and to highlight the implications of this gap on the enforceability and sustainability of the policy with lessons from Kenya on how it has structured laws governing free education. The objectives of this study included the evaluation of the efficacy of the Education Act in supporting the implementation of free education policy, particularly at senior secondary, evaluating the effectiveness of the free education policy at senior secondary schools in Zambia and to examine the current and potential challenges faced by government schools and lastly, to draw lessons from Kenya on how it has structured laws governing free education.

The methodology of this research was as follows; this research was a qualitative mode of research as data was collected from both primary and secondary sources which include local and foreign legislation, journal and articles, internet sources, reports, thesis, textbooks. Additionally, data was collected from selected secondary schools in Zambia. The research design used is phenomenological design.

The major findings of the research were that Zambia does not have a law that backs free education policy at senior secondary school and it doesn't have well-structured laws that govern how free education should be regulated. As such, the policy has come with challenges such as overcrowding, high teacher-pupil, inadequate or delayed funding, poor infrastructure and inadequate learning materials

CHAPTER ONE

1.0 INTRODUCTION

Free Education is considered as key catalyst for economic growth, social and political development and reducing the inequality gap¹. Zambia aspires to become a middle income and prosperous nation by 2030 (Government Republic of Zambia 2006). One of the ways in which this could be achieved is through investing in Human capital in line with its vision of promoting lifelong education and training for all by 2030. In 2022, the United party for National Development (UPND) Government introduced free education for Pre-school to Secondary level to fulfil its campaign promise.

However, the implementation of Free Education policy can be hindered by lack of clear legislation framework. Without a legal framework the Free Education Policy (FEP) can be vulnerable to political whims, inadequate funding and inconsistent implementation.

Furthermore, many jurisdictions have laws structured in such a way as to encompass free education in clear and transparent forms and ways, such as enshrining the laws pertaining to free education allowing proper understanding and application of the law. Therefore, this study shall make reference to the Kenyan jurisdiction in order to fully appreciate the laws of free education. And examine whether the national laws of Zambia, the Education Act, No. 23 of 2011 effectively mirrors the intention of education of free education.

1.1 BACKGROUND

In Zambia, the provision of free education started after achieving its independence in 1964. The government under the United National Independence Party leadership started offering free education from primary to university and passed the Education Act 1966 to establish free public schools and abolish the dual education system. However, the global economic slump of the 1970s and low copper prices disrupted the provision of free education. The Government under the leadership of the Movement for Multi-Party Democracy (MMD) struggled to provide free education after inheriting the falling economy and implement user fees in the early 1990s. Learner enrollment increased after the government introduced free primary education policy in 2002 but secondary education

¹ <http://zambia.actionaid.org/publications/2023/parliamentary-submission-free-education-policy-zambia>

which is from grade 8 to 12 was not free due to the cost sharing. In the late 2021, the government under the UPND leadership declared free primary and secondary education through the announcement of 2022 National budget².

The provision of education as a fundamental human right has been recognized both internationally and nationally. In Zambia the Education Act N0. 23 of 2011 was enacted to regulate the provision of accessible, equitable and quality education. However, this Act does not provide for free education at senior secondary level. Section 15 of the Act only guarantees a child's right to free basic education from early childhood to grade 9. This creates a significant gap between policy and law, especially in light of the current Zambian government free education policy which extends to grade 12.

Historically, Zambia's experience with free education dates back to the 1965 policy, which similar to the current one was not legally binding and free education at secondary level was easily done away with due to the economic crisis in the 1990's when the government only announced free education at primary school level in 2002³. The reflection of this legislative oversight underscores the need to examine the legal structures surrounding free education in the country. Without reform Zambia risks continuing a cycle where well-meaning policies lack the necessary legal instruments to ensure longevity and effectiveness.

This study therefore, explores the limitation of Zambia's current Education Act in addressing the legal framework for free education particularly at senior secondary school level. By drawing lessons from Kenya's model, the research, aims to explore how Zambia can strengthen its legal framework to ensure that the right to free education particularly at senior secondary level is legally protected, enforceable and effectively implemented.

1.2 STATEMENT OF THE PROBLEM

The Education Act, despite being enacted to regulate the provision of accessible, equitable and qualitative education, does not provide for free education at senior

² Mwelwa,k, Bwalya, T and Chibwili, E (2023) Effects of Free Education Policy on the provision of Primary and Secondary Education in Zambia. East African journal of Education and Social Sciences 4(6), 80-93 Doi; <https://doi.org/10.46606/eajes2023v416336>.

³ Mwelwa,k, Bwalya, T and Chibwili, E (2023) Effects of Free Education Policy on the provision of Primary and Secondary Education in Zambia. East African journal of Education and Social Sciences 4(6), 80-93 Doi; <https://doi.org/10.46606/eajes2023v416336>

secondary level. **Section 15 of the Education Act**⁴, provides that a child has a right to free basic education in Zambia. Section 2 of the Act defines free basic education as education from early childhood to grade nine. This is the main legal provision that provides for free education in Zambia but it does not include secondary schools and therefore does not cater for the current free education policy because it includes education from preschool to grade twelve level which is senior secondary. In as much as there is a policy which is like a guide to free education, Zambia lacks a proper legal framework that regulates free education to ensure that it is a fundamental right. This is because a policy not backed by the law can lead to lack of enforceability, inconsistency in several ways such as the policy may be open to multiple interpretations which can lead to confusion among citizens leading to inconsistent application, limited accountability on the Government, inadequate protection, it may be vulnerable to political abuse for example if there is change of Government is the policy going to have the same standing? Lastly without a framework, a policy may be unclear on who is responsible for implementing and enforcing that policies, in as much as a policy may serve as a guide, a policy that is codified and enacted in legislation can help establish expectations, promote fairness, and ensure compliance with legal requirements⁵.

Various scholars such as **Bwembya** and **Daka**⁶ have observed that the enactment of free education policy into law would sustain the free education provision in the country, they were of the view that education policies in Africa change with the change of governments. Thus, turning free education into policy into law through the Act of parliament would ensure continuity of free education provision which has become useful to the vulnerable in society.

The purpose of this study is to critically examine the legal gap between Zambia's free education policy and its existing legislation, particularly the exclusion of senior secondary education from the Education Act, and to highlight the implications of this gap on the enforceability and sustainability of the policy. By drawing lessons from Kenya where legal

⁴ Act No 23 of 2011

⁵ <http://www.linkedin.com/pulse/pitfalls-inconsistent-under-policies-procedures-o1sfe>

⁶ Bwembya Ireen and Harrison Daka, 'The Provision of Free Education and Its Sustainability: The Zambian Scenario' (2024) 4(3) journal name 2955 <https://www.researchgate.net/publication/381613597>

reforms have been more aligned with education policies, the study aims to identify practical legal strategies that Zambia can Adopt to strengthen its legal framework. This will ensure that free education is not only a policy directive but also a protected right, promoting equity, accountability and long-term stability in the education sector.

1.3 RESAERCH OBJECTIVES

1. To evaluate the efficacy of the Education Act in supporting the implementation of free education policy, particularly at senior secondary school
2. To evaluate the effectiveness of the free education policy at senior secondary schools in Zambia and to examine the current and potential challenges faced by government schools.
3. To draw lessons from Kenya in order to understand how they have structured their laws governing free education.

1.4 RESEARCH QUESTIONS

1. How effective is the Education Act in facilitating the implementation of free education policy, particularly at senior secondary school and what challenges do government schools currently face or risk encountering in the future?
2. How effective is the current free education policy at senior secondary schools in Zambia and what challenges do government schools currently face or risk encountering in the future?
3. What lesson can be drawn from Kenya in order to understand how their laws have been structured regarding free education?

1.5 SIGNIFICANCE OF STUDY

This study is significant because it addresses the critical gap between Zambia's free education policy and the legal framework that should support it. While the Education Act provides for free education only up to grade 9, the current free education policy implemented by the government extends to grade 12. This study is essential in advocating for establishment of robust legal structure that not only supports the current free education but ensures continuity, clarity and fairness. It contributes to the broader discourse on educational reform, legal accountability, and the realization of education as a fundamental right for all children in Zambia and it also seeks to contribute to the development of a comprehensive legal framework.

1.6 SCOPE OF STUDY

This study will focus on examining the legal framework surrounding free education in Zambia and will assess how absence of a legal framework affects the implementation, sustainability and enforcement policy. This study will be limited to government schools in Lusaka, Zambia.

1.7 DEFINITION OF KEY TERMS

Education: means the full development of an individual, judgement, personality, talents, mental and physical ability⁷.

Free Education: refers to the years or grades during which children and young people entitled to education which is free of tuition fees⁸.

Legal Framework: a legal framework is a structured set of principles and rules and enforced by the governmental entities to regulate behavior and ensure order in society they are created through legislation and has a binding legal force and if violated legal consequences follow⁹.

Human Rights: human rights are basic rights and freedoms that belong to every person in the world, from birth to death¹⁰. They are standards that that recognise and protect dignity of all human beings¹¹.

1.8 LITERATURE REVIEW

Theoretical framework serves as a foundational guide for the entire research process, shaping supporting study by outlining a clear structure for the philosophical, methodological, and analytical approaches to be used in the dissertation to discuss various theories, models and definitions of key concepts

This literature review examines scholarly perspectives on the importance of a legal framework underpinning the free education policy in Zambia, particularly at the senior secondary schools. Existing research reveals a consensus on the vulnerability of education policies that lack statutory backing, especially in politically dynamic environments.

⁷ Education Act No. 23 of 2011

⁸ <https://uis.UNESCO.org/node/3297499>

⁹ <https://www.via.com/en-us/explanations/law/comparative-law/legalframework>

¹⁰ <https://www.equalityhumanrights.com>

¹¹ <https://www.unicef.org>

Bwembya and **Daka**¹² argued that the enactment of free education policy into law would sustain the free education provision in the country. Similarly, **Mashala**¹³ was of the view that education policies in Africa change with the change of governments. Thus, turning free education into policy into law through the Act of parliament would ensure continuity of free education provision which has become useful to the vulnerable in society. This would ensure funds are made available to and would become the concern of all involved. This study agrees with the mentioned authors as they show that there is need for a legal framework governing free education to ensure that there is enforceability, sustainability and clarity in its implementation.

Sule, Folorunsho, Ugiagbe and **soleye**¹⁴, emphasized the critical role legal frameworks play in promoting educational equity and access. The intersection of law and education provides a foundation for protecting the rights of marginalized learners, ensuring that access to education is not left to policy discrimination but embedded in enforceable statutes. This study agrees with what has been mentioned by the author in that it will look at the importance of legal framework governing the current free education policy at senior secondary level showing the intersection of law and education.

Moumne and **Saudemont**¹⁵ stated that the right to education is a fundamental human right and a primary responsibility for the state even though it can be provided by non-state actors. According to the General Comment No.13 (21st session 1999) of the committee on Economic, Social and Cultural Rights, that there are three types of obligations on states; to respect, protect and fulfil right to education. The obligation to fulfil incorporates both an obligation to provide and to facilitate and requires the state to take measures to enable and assist individuals and communities to enjoy right to education. This research will build on the aforementioned writing as it will provide for the ways in which the right to

¹² Bwembya Ireen and Harrison Daka, ' The Provision of Free Education and Its Sustainability: The Zambian Scenario' (2024) 4(3) journal name 2955 <https://www.researchgate.net/publication/381613597> > Accessed on 17th February, 2025

¹³ Mashala Lameck Yusuph, The Impact of implementation of Free Education Policy on Secondary Education in Tanzania,2019 <https://www.researchgate.net/publication/332607737>

¹⁴ Jacob O. Sule, Femi Emmanuel folorunsho and Uyiosa Osarumen Ugiagbe and Adedoyin Soley, Bridging Education and Law: Examining the role of Legal frameworks in Shaping Educational Equity and Access, International journal of Education (IJE), 5(2) 2024, p14-25, <https://iae.com/Home/issue/IJE?volume=5&Issue=2>

¹⁵ Overview of the role of private providers in education in light of the existing internal legal framework. Investment in private education: undermining or contributing to the full development of education? UNESCO working papers on education policy N1, Moumne R and Saundemont, C.O UNESCO,2015

education can be actualised which is through the need of providing a legal framework for the free education policy in Zambia for senior secondary schools.

Mwelwa, Bwalya and Chibwili¹⁶ stated that implementing the free education policy has led to several developments in providing free community, primary and secondary schools. First, the free education policy increased learner enrollment which led to high teacher pupil ratios and overcrowded classrooms. Additionally, **Brudevold-Newman**¹⁷ stated that countries are now expanding education systems to include free secondary education. He argued that motivation for free education policies are positive social returns to education, education as a basic human right. He argued that in as much as these policies have been shown to increase education access and attainment often among most vulnerable populations, countries might face more muted demand response at secondary level such as opportunity of schooling is likely to be high, returns to education maybe low or perceived to be low and incentives of parents and children may not align. Furthermore, **Mutisya**¹⁸ mentioned that free education led to high enrolment rates in secondary schools, but the government funding facilities were inadequate. The study also shows that free education also leads to understaffing, inadequate books and student indiscipline. Lastly, **Sihubwa and Bowa**¹⁹ emphasized on the financial implications of the free education policy and if fully taken up, the government spending on education transfers doubles, this partly due to the need of more infrastructure and personnel to handle the rising enrolment. The mentioned authors highlight the challenges that are being faced as a result of free education policies, in contrast this study seeks to explore the role of legal frameworks in mitigating challenges arising from free education policy.

Machinyise, Kasebula and Chabu²⁰ highlighted the positive impact of free education policy on access to tertiary education in Zambia. The authors argued that the enrolment

¹⁶ Mwelwa, k, Bwalya, T and Chibwili, E (2023) Effects of Free Education Policy on the provision of Primary and Secondary Education in Zambia. East African journal of Education and Social Sciences 4(6), 80-93 Doi; <https://doi.org/10.46606/eajes2023v416336>

¹⁷ Andrew Brudevold-Newman, The Impacts of Free Secondary Education: Evidence from Kenya (American Institute for research, Nyer, Kenya, December 2017)

¹⁸ Martin Muindi Mutisya, Impact of free secondary Education in Katangi, Yatta District- Machakos country, Kenya. Master's thesis, Kenyatta University 2011

¹⁹ Sydney Sihubwa and Jones M Bowa, Accessing the Impact of Free Education Policy on poverty and inequality in Zambia, November 2023 <https://www.wider.unu.edu>> Accessed 11th April, 2025

²⁰ Machinyise. E, Kasebula. F and Chabu M. (2023). The impact of free Education policy on the Provision of Quality Education and Access to tertiary Education Zambia. A case study of selected schools and colleges of Livingstone

levels have slightly improved in colleges as most parents are able to save money for college tuition due to fees relief in primary and secondary schools. Similarly, **Duflo, Dupas and Kremer**²¹ analysed the impact of free education at secondary schools in rural areas. They stated that free education significantly increases secondary school completion rates, particularly among women, and leads to improvements in learning, health behaviors, and delayed fertility and marriage. Additionally, free education results in modest increase in tertiary education enrolment and the likelihood of women securing formal employment, particularly in public sector. This research will look at the need of a legal framework backing the free education policy at senior secondary school in Zambia. In conclusion, based on the literature reviewed, it is evident that while scholars have extensively discussed the benefits and challenges, and implications of free education policies, there is a noticeable gap concerning the role of a legal framework in sustaining and regulating these policies particularly at the senior secondary level in Zambia. Although several authors emphasize the need for continuity and protection of the right to education through legal mechanisms, none of the studies specifically focus on how the absence of a legal binding framework affects the implementation, sustainability and quality of free education at this level. This study seeks to fill the gap by exploring how enshrining the free education policy into law can address existing implementation challenges, ensure enforceability and strengthen access to education for vulnerable groups, thereby contributing to a more equitable and sustainable education system in Zambia.

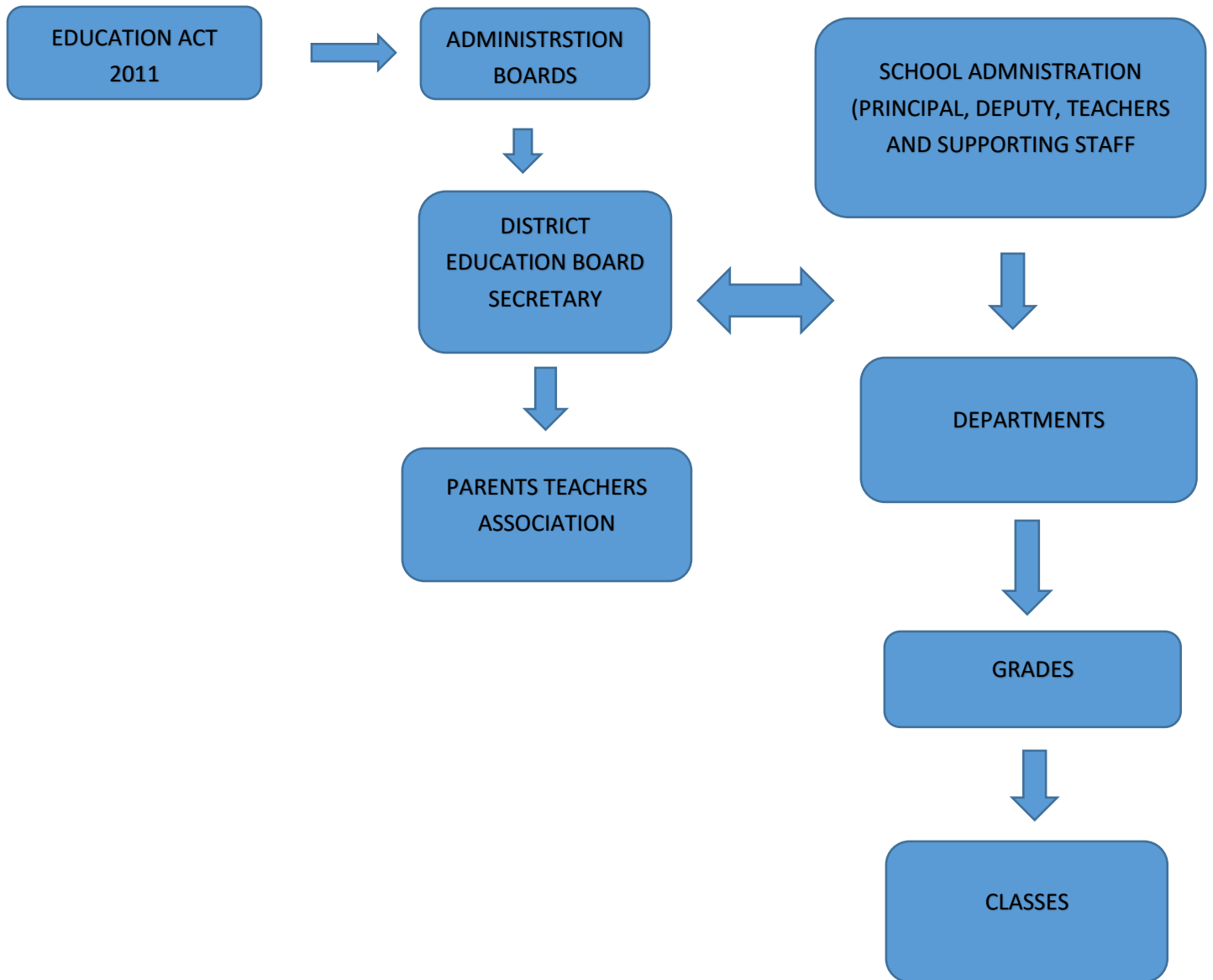
District. Zambia Association of Public Universities and Colleges (ZAPUC) conference, 3(1), 124-134. Retrieved from <https://ictjournal.icit.org.zm/index.php/zapluc/article/view232>

²¹ Esther Duflo, Pascaline Dupas and Michael Kremer, The Impact of Free Secondary Education: Experimental Evidence from Ghana (National Bureau of Economic research, working paper No. 28937, June 2021) <https://www.nber.org/papers/w28937>> accessed 15th April 18, 2025

Conceptual framework, it is visual representation of the complex interplay among independent and dependent variables.

INDEPENDENT VARIABLES

DEPENDENT VARIABLES



1.9 METHODOLOGY

1.10 RESEARCH APPROACH

The research approach to be used is a qualitative research. This is an approach for exploring and understanding the meaning of individuals or groups ascribe to social or human problem. It involves merging questions and procedures, data typically collected in the participants setting, data analysis inductively building from particulars to general themes, and the researcher making interpretations of the meaning of the data²².

1.12 STUDY TYPE

The phenomenological design will be used for this study. This design describes the lived experiences of people from their own perspective.

1.13 STUDY POPULATION

The participants of this study will include teachers, pupils, parents, domestic and administrative staff within schools.

1.14 RESEARCH TYPE

The research type will be descriptive

1.15 SAMPLING TECHNIQUE

Purposive sampling is best suited for the research approach being used, which is qualitative approach.

1.16 DATA COLLECTION TECHNIQUES

In this study data will be collected through various sources, i.e. statutes legislative works, scholarly works, articles, internet sources, academic papers. Data will also be collected through qualitative interviews.

1.17 DATA ANALYSIS

The data analysis method to be employed is the interpretive phenomenological analysis, which entails drawing interpretations from the information collected by the researcher.

1.18 ETHICAL CONSIDERATIONS

Permission to carry out this research will be sought from the University of Lusaka so as to ensure compliance with the academic community's standards. Thus, the researcher will ensure that no information will be used in the study without consent of the informants, and that all information and knowledge that will be obtained in confidence during the research shall be confidential and be free from misrepresentation and misuse to the

²² John W. Creswell, research Design: Qualitative, Quantitative and Mixed Approaches (4th edition University of Nebraska-Lincoln 2014)

disadvantage of the source of information. For purposes of ensuring the highest ethical standards, the researcher commits to the use of OSCOLA referencing style to acknowledge the works of other authors so that their copyright is protected.

CHAPTER TWO

2.0 TO EVALUATE THE EFFICACY OF THE EDUCATION ACT IN SUPPORTING THE IMPLEMENTATION OF FREE EDUCATION POLICY PARTICULARLY AT SENIOR SECONDARY SCHOOL.

2.1 INTRODUCTION

This chapter explores the legal and policy context of Zambia's education system, with a focus on how national laws and policies relate to the implementation of free education at senior secondary school level and the risks of a policy that is not backed by the law while evaluating the Education Act in the subheadings of this chapter. It begins with a historical overview of the evolution of the education legislation in Zambia, highlighting how changes from the 1966 Education Acts culminated in the Education Act 2011. The chapter also provides a critical analysis of the Education Act 2011, assessing its provisions in relation to access, compulsory education, inclusivity and the absence of explicit legal backing for free senior secondary education.

Additionally, in line with Zambia's international commitments, this chapter also adopts a human rights perspective by considering the country's obligations under instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). This chapter will identify the need for a legal reform that fully domesticates Zambia's educational obligations and transform policy aspirations into enforceable rights.

In addition to the historical, legal and international analysis of the Education Act, this chapter concludes by examining the Education Act and Free Education Policy through jurisprudential perspectives with particular focus on the positivist theory of law. By doing so it will explore the extent to which Zambia's education legislation conforms to the positivist view that derives its validity from proper enactment by recognized authority rather from moral or policy considerations and how this affects practical implementation of free Education at senior secondary schools.

2.2 THE HISTORY AND EVALUATION OF THE EDUCATION ACT IN ZAMBIA

After Zambia gained independence in 1964, there was a change in government including education policy. During the period before independence in Northern Rhodesia, there was a dual system of education, that of Africans and non-Africans which mainly comprised of Europeans. The black African Education was inferior with no proper care by the white rulers. After independence, education became a central tool for national development. The Education Act 1966 Chapter 134 was the major legislation to formalize the education system under a unified framework. The bill for this Act was passed in April 1966 and it was enacted on 3rd September, 1966 and repealed and replaced the 1956 African Education Ordinance under which the federal education system ran²³.

The main objectives of this Act was to provide for the establishment and operation of a national council of education for the republic and regional local councils of education, to provide for the promotion, development and control of schools, educational institutions and services to provide for the transfer to the board of Governors of Northern Technical College of certain properties, moneys and assets as presently vested in the trustee of the charitable foundation known as Copperbelt Technical Foundation; and to provide for matters incidental to or connected with the foregoing²⁴.

This Act was repealed and this is because it was passed after Zambia attained its independence, and reflected the priorities of a state that was newly independent. By the 1990's, Zambia had moved towards centralization and more community participation in education management, which the 1966 Act did not adequately provide for. Furthermore, the government adopted new education policies such as Education Reform 1977, Focus on Learning 1992 and Educating Our Future 1996²⁵. These could not be effectively implemented under the 1966 legal framework because it only implicitly supported rights, leaving policy goals without legal backing. The Act lacked clear provisions on Teacher professional standards, curriculum authority and flexibility, education financing and accountability mechanisms.

²³ [https://www.scribd.com/document/582087214/HISTORY-AND-PHILOSOPHY-MODULE-2utm](https://www.scribd.com/document/582087214/HISTORY-AND-PHILOSOPHY-MODULE-2utm%3Fid%3D1&utm_campaign%3Dshare_from_pdf_viewer&utm_medium%3Dpdf_viewer) < 31st July, 2025>

²⁴ Education Act 1966 Chapter 135

²⁵ <https://www.scribd.com/document/486176389/Equality-of-Education-A-comparative-study-of-Edu-pdf>

The 1966 Act was formally repealed by the Education Act no. 23 of 2011. The Education Act 2011 was assented to on 12th April, 2011, it provided a modern legislative framework that covered pre-primary to tertiary education, governance structures and stakeholders' roles. Not only did it repeal the Education Act of 1966 but also repealed the African Education Act, 1951 a pre-1964 colonial legislation which had still lingered in some statutory references even though it was largely dormant.

In conclusion, the history and evolution of Zambia's education legislation from the centralized framework of the Education Act 1966 to the rights oriented framework which is the Education Act 2011 Shows that our national laws align with international human rights principles. However, the omission of a statutory guarantee for free education at senior secondary level demonstrates a continuing gap. Examining this evolution is therefore critical to this dissertation as it shows that despite progressive reforms, the right to free education at secondary level remains vulnerable to policy changes and lacks the enforceable legal protection necessary to secure universal access in line with human rights standards.

2.3 INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND THE EDUCATION ACT IN IMPLEMENTING FREE SENIOR SECONDARY EDUCATION IN ZAMBIA.

An assessment of the effectiveness of the Education Act in Zambia must take into account the country's obligations under international human rights law. Zambia has ratified several global and regional treaties that recognise education as a fundamental right and require states to ensure that secondary school is accessible to all and progressively made free. Examining the following instruments alongside the Education Act reveal where the Education Act adequately reflects Zambia's treaty commitments and whether it provides a sustainable legal basis for implementing the free education policy at senior secondary level.

The Universal Declaration of Human Rights(UDHR), adopted by the United Nations General Assembly in 1948, declares in article 26 that everyone has right to education and that elementary education should be free. Although the universal Declaration of Human Rights is not legally binding it sets a foundation for other treaties and international norms in relation to the right to education.

Furthermore, article 13(2)(b) of the *International Covenant on Economic, Social and Cultural Rights*²⁶ states that states parties to the present covenant recognise that, with a view to achieve the full realization of this right; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education. Zambia ratified this covenant on 10th April 1984, it places Zambia under an international duty to take deliberate steps to make secondary school free, accessible and compulsory overtime. Additionally, Article 28(1)(b) of the *Convention on the Rights of a Child*²⁷ provides that state parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall in particular; encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as introduction of free education and financial assistance in the case of need. This directly supports the need of policies like Zambia's free education policy to be grounded in enforceable law.

Importantly, regionally, in the *African Charter on the Rights of the and Welfare of the Child* (ACRWC), which Zambia ratified on the 2nd of November 1992 provides for in Article 11(3)(b)²⁸ for state parties to encourage development of secondary education in its different forms and to progressively make it free and accessible to all. This treaty amplifies the importance of aligning domestic laws like the Education Act with international standards on education.

Zambia follows a dualist approach and the status of international treaties in the national legislative framework is that international treaties are only enforceable if they are ratified and domesticated so that they become part of the domestic or municipal law²⁹. To grant enforceable effect to international obligations, Zambia must enact legislation that mirrors

²⁶ International Covenant on Economic, Social and Cultural Rights (1966)

²⁷ Convention on the Rights of a Child (1989)

²⁸ African Charter on the Rights of the and Welfare of the Child (1990)

²⁹ Sambwa Simbyakula-Chilembo, 'The Role of Networks in Facilitating International Cooperation in Criminal Matters: Mutual Legal Assistance' (Presentation, Ministry of Justice, Kenneth Kaunda Conference Centre, 16 September 2024)

such treaty commitments. Section 12(2) of the *Ratification of International Agreements Act*³⁰ provides for five methods in which an international agreement can be domesticated. The following are the methods, an Act sets out the international agreement in a schedule; setting out salient provisions of the international agreement, in the substantive part of an Act, that will require specific interventions or measures to be undertaken, and annexing the international agreement to the Act; rephrasing the terms of the international agreements in an Act and annexing the agreement to the Act; or adopting in an Act, the terms of the international Agreement in its entirety and lastly the use of any other enforceable means where applicable. Despite the variations in form, each method ensures that international obligations are transformed into binding domestic law through legislation, thereby granting them legal effect in Zambia.

However, the Education Act which forms the principle legal framework in Zambia, does not incorporate these international obligations in full, particularly regarding free education at secondary school level. The current free education policy, introduced through executive policy measures has no legislative backing in the Act for secondary education, meaning it remains a non-binding administrative directive rather than an enforceable legal right. Consequently, without amending the Education Act to expressly provide for free education at secondary school level in line with Zambia's international commitments, the policy remains vulnerable to change or withdrawal and cannot be claimed as a legal entitlement in domestic courts.

2.4 JURISPRUDENTIAL PERSPECTIVES ON THE EDUCATION ACT AND FREE EDUCATION; POSITIVISM THEORY.

This dissertation utilises legal positivism theory to analyse the effectiveness and legal grounding of the Education Act in implementing Free Education Policy. Legal positivism is a theory in jurisprudence that asserts that the validity of law is not dependent on its moral content but rather on the authority of the state to create and enforce. This theory was developed by Jeremy Bentham and was formalized by John Austin in the 19th century and was later expanded other philosophers³¹. To further understand the application of

³⁰ NO. 34 of 2016

³¹ Karen Chabala, Examining the interplay of Religious beliefs and professional conduct: A comprehensive Analysis of Brenda Kachasu v Mwelwa Manda and others Appeal No 163 of 2021 [2023] ZMCA: Lessons from Kenya and South Africa (LLB dissertation University of Lusaka.

positivism to the Education Act in Zambia, it is essential to examine views of leading positivists in evaluating the Education Act's role in giving legal backing to Zambia's free education policy a senior secondary.

John Austin (1790-1859); following Jeremy Bentham's lead Austin attempted to work out what he believed to be the legal and logical implications of sovereignty as viewed by legal positivist. He defined law as a command issued by a sovereign, backed by sanctions. He was known for his command theory. To conceive of law as command invites the questions who issued it? And when? And with what Authority³²? Hart regards the concept of command as relevant to law, authority or legislation so far as it refers to a normative attitude and not mere "habit of obedience". Such an attitude arises where the mere issue of the command functions as a peremptory reason for doing the commanded, independently of the nature and character of the Act to be done. But only with the development of effective law applying and law enforcing agencies will such a normative command situation lead to a legal system in force. The courts will then function by construing what is said or done by certain persons as constituting peremptory reasons for actions, and thus law making events³³.

In summary, Hart is saying that law isn't just orders from the powerful, its orders recognized as binding rules, a structured system where commands are issued as authoritative reasons and where official bodies uphold and enforce them. Applying Harts concept of normative commands reveals that Zambia's Free Education policy, while operational in schools does not constitute a legally enforceable right under the Education Act, highlighting the gap between policy and law. Under Harts framework, Zambia's policy is more of a habit of obedience (people follow it because the government has declared it but, but it is not a legal right recognised by the courts) than a normative command (law). Without statutory legal backing, courts have no authority to enforce the policy or protect it if its withdrawn.

Hans Kelsen (1881-1973) he advanced his legal positivism with pure law theory, a theory which aims to separate law from politics, morality and sociology. He argued that the

³² M.D.A. Freeman, Lloyd's Introduction to Jurisprudence (9th Edition) Published by Thomson Reuters) Professional Limited trading as Sweet & Maxwell 2014) 204

³³ H.L.A. Hart, Essays in Jurisprudence and Philosophy (1982, Clarendon Press. OXFORD

validity of legal norms depends on their derivation from higher norms, not on their moral content. His description of legal process as a hierarchy as a hierarchy of norms, with the grundnorm as the basic foundation of a legal system. The validity of every norm (apart from the basic norm) rests upon a higher norm. The relation between a higher and a lower norm lies in the validity of one norm grounding, in one way or another, validity of another norm³⁴. Applying Hans' concept, in Zambia the constitution the supreme law of the land as provided for in Article 1(1) of the Constitution of Zambia (Amendment)³⁵ , therefore the grundnorm here can be presupposed as the constitution. The Education Act is a statutory law enacted by parliament under the powers given by the constitution in Article 62(3) and 63 (1), therefore the Education Act derives its validity from the constitution. Since the constitution is silent on the secondary free education policy and the education Act is also silent on secondary free education, it exists at the at the lowest tier of the hierarchy. This hierarchy of norms demonstrates that for free education to have binding force it must be embedded in the Education Act, thereby aligning with the higher grundnorm.

2.5 CONCLUSION

The analysis in this chapter has shown that while Zambia's education laws have evolved from the centralized framework of Education Act 1966 to the more rights-oriented Education Act 2011, the legislative framework still falls short in guaranteeing free education at senior secondary level and therefore leaving the policy vulnerable to political shifts and administrative withdrawal.

From an international perspective it can be stated that, Zambia's ratification of instruments such as the ICESCR, CRC and ACRWC imposes binding obligations to progressively make secondary school free and accessible. However, due to the dualist approach in Zambia's legal system, these commitments require domestication through legislation. The failure of the Education Act 2011 to incorporate these obligations underscores a significant legal gap between Zambia's international commitments and its domestic legal framework.

³⁴ M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence* (9th Edition) Published by Thomson Reuters) Professional Limited trading as Sweet & Maxwell 2014) 279 & 799

³⁵ No. 2 of 2016

Jurisprudentially, applying the theories of Austin, Hart and Kelsen demonstrates that the Free Education policy, lacking statutory recognition, cannot be regarded as law in the positivist sense. Instead, it exists as a government directive with no enforceable legal status. This means that the learners and parents cannot claim it as a legal right in court, which weakens both accountability and sustainability.

In conclusion, putting free senior secondary education into the Education Act is not only a matter of policy sustainability but a legal necessity for transforming the educational access in Zambia from a political promise into a protected right.

CHAPTER THREE

3.0 EVALUATING THE EFFECTIVENESS OF THE FREE EDUCATION POLICY AT SENIOR SECONDARY SCHOOLS IN ZAMBIA

3.0.1 TO EXAMINE THE CURRENT AND POTENTIAL CHALLENGES FACED BY THE GOVERNMENT SCHOOLS.

3.1 INTRODUCTION

The main objective for introducing free education by the Zambian government in 2022 was to eliminate school fees and exam fees for all learners from early childhood through to senior secondary education. This move has significantly increased access to education across the country reducing inequality and ensuring that learners from disadvantaged backgrounds are also accorded an opportunity to complete senior secondary school without finances being a barrier.

This chapter focuses on various challenges encountered in the implementation of the free education policy at senior secondary school level in Zambia such as overcrowding, shortage of teachers, high pupil-teacher ratio, inadequate school infrastructure and learning materials. The chapter will explore these and other challenges in detail.

To address this gap, this chapter combines literature with fieldwork findings to provide a comprehensive analysis. This literature review presents insights from previous studies and policy reports while fieldwork will comprise of interviews with head teachers, teachers and learners and photographic documentation. These sources will help determine the extent to which the policy is achieving its intended goals and what risks may undermine its long term sustainability. The following are some of the challenges in detail that have emerged as a result of free education policy.

3.2 CLASSROOM OVERCROWDING, HIGH TEACHER-PUPIL RATIO AND SHORTAGE OF TEACHERS.

The introduction of free education policy has significantly increased enrolment at senior secondary level. While this expansion has promoted access and equity, it has also resulted in overcrowding classrooms and strained teacher pupil ratio. Overcrowded classrooms occur when the number of students exceeds the ideal capacity for effective teaching and learning, presenting a significant challenge in the global education

landscape. These classrooms are identified by limited physical space, inadequate resources and imbalances teacher pupil ratio that complicates the delivery of high quality education. This environment disrupts effective teaching, as many teachers encounter issues of discipline, limited facilities and challenges in assessing learner performance³⁶. The pupil teacher ratio refers to the total number of learners allocated to a single teacher. It is typically expressed as a ratio, such as 30:1 meaning there are 30 students for every teacher, and it is an important measure of teaching and learning quality³⁷. The BBC report highlights the impact of Zambia's free education which has enabled two million additional children to attend state run schools without paying fees and this report emphasizes that while enrolment has increased significantly, challenges such as overcrowded classrooms and limited teacher attention threaten the quality of education³⁸.

Existing literature through studies conducted reveals that the introduction of free education policy had created pressure on school resources and facilities due to high teacher pupil ratio which also led to overcrowding of classrooms. For instance, in a study conducted by **Chibwili, Bwalya** and **Mwelwa** the learners complained of overcrowding and inadequate desks and this aligned with the observations by the National Action for Quality Education in Zambia (NAQEZ) that the introduction of free education in Zambia resulted in overcrowding, thus creating a shortage of desks. And in this study it was evident that the free education policy had increased the teacher pupil ratio to unprecedented levels. The high teacher pupil ratios made teaching, classroom management and assessment increasingly difficult for teachers to manage classrooms and the inability to use learner-centered approaches in teaching and give personalized attention to learners. The increased teacher pupil ratio has resulted in teachers' burnout, leading to high levels of stress and reduced motivation. Learners were too many and thus, marking classwork

³⁶ Vakili R, Vakili S, Ajilian Abbasi M, Masoudi S H. Overcrowded Classrooms: Challenges, consequences, and collaborative Solutions for Educators: A Literature Reviewed. Med Edu Bull 2024; 5(2): 961-72 DOI 10.22034/MEB.2024.492269.1103

³⁷ <https://www.educationadvanced.com/blog/student-to-teacherratio>

³⁸ <https://www.bbc.com/news/articles/cek9n3yv0110>

was also becoming a big challenge for many teachers there by affecting the quality of teaching and learning in schools³⁹.

Furthermore, **Phiri** investigated the effect of the pupil-teacher ratio on learner academic performance in four secondary schools in Sinda District. The study revealed that the high pupil-teacher ratios in government schools, caused by over enrolment and shortage of teachers led to overcrowded classrooms and declining academic performance. Overloaded classrooms made it difficult for teachers to provide quality instructions and individualized attention, while shortage of teaching and learning resources further compromised outcomes. In some schools, administrators resorted to multi-grade teaching as a coping mechanism, which worsened overcrowding. In contrast, the study found that mission schools with lower ratios recorded outstanding results⁴⁰.

3.2.0 FINDINGS ON CLASSROOM OVERCROWDING, HIGH TEACHER-PUPIL RATIO AND SHORTAGE OF TEACHERS

From the fieldwork data gathered at Kabulonga Girls Secondary School, teachers reported that classes have almost doubled since 2022. One teacher explained "I used to teach about 50 learners, but now I have 70 or more in a single class. It's very hard to give individual attention". Another teacher added, "I am negatively affected as a teacher, in a class of 30 learners I now have 93 and 63 learners. By the time I check every book, the lesson is over. I end up marking outside class, and sometimes I can only manage a few books per period". This shows that due to an increase in enrolment the teacher pupil is 1:70, 1:63 and 1:93.

Similarly, at Chilenje B Secondary School, the Deputy Head Teacher noted, "our enrolment has gone up tremendously, there is overcrowding, they are accommodating everyone, some learners are sitting on the floor during class and some write while standing because we don't have enough desks". Although this was reported rather than

³⁹ Mwelwa K, Bwalya T and Chibwili E. (2023) Effects of Free Education Policy on the provision of Primary and Secondary Education in Zambia. East African Journal and Social Sciences 4(6), 80-93 Doi; <https://doi.org/10.46606/eajes2023v416336>

⁴⁰ Fackson Phiri, 'The Effect of Pupil-Teacher Ratio on learner Academic Performance in selected Schools in Sinda District, Zambia (MEd Dissertation, University of Zambia in Collaboration with Zimbabwe Open University, 2018)

observed directly, the classrooms I visited were visibly overcrowded. learners themselves expressed frustration. One stated that “The classes are too full. Teachers only pay attention to a few students. One teacher added that “the average teacher-pupil ratio is about 1:85 and with so many pupils I can’t give each individual attention within 40 minutes in a single period and even in the 80 minutes’ periods which is the maximum, I just focus on the general explanations. Teachers also linked overcrowding to indiscipline and absenteeism, arguing that it is difficult to maintain order in such classes.

Both schools acknowledged that the shortage of teachers has worsened the situation. The deputy head teacher at Chilenje B revealed that there is a shortage of teachers especially in subjects such as Mathematics and Sciences and she also mentioned that there two teachers employed under PTA and they are being paid by the school.

This situation reflects the findings of the studies above, these findings show that while free education achieved access, it has come with serious strain in resources: class sizes have grown, the number of teachers has not always risen in proportion, and classrooms, laboratories and other learning spaces are often beyond capacity. Overcrowding reduces teacher student interaction, limits assessment opportunities and contributes to fatigue among both learners and teachers.



Figure 1: An overcrowded classroom at Chilenje B Secondary School.

3.3 INADEQUATE INFRASTRUCTURE AND LEARNING MATERIALS

Free education policy in senior secondary schools is designed to remove financial barriers and increase access to education. One of the major challenges facing senior secondary schools in Zambia is the inadequate of infrastructure and learning materials. School infrastructure refers to things like school buildings, playgrounds, public amenities, libraries, laboratories and other facilities which contribute to a positive learning environment⁴¹. And learning materials refers to all the resources both print and non-print that are used by teachers and learners to facilitate the teaching and learning process. They include textbooks, workbooks, teacher's guides, exercise books, science laboratory

⁴¹ Mgimba, AE & Mwila P (2022) Infrastructure Challenges Influencing Academic Performance in Rural Public Secondary Schools in Iringa District Tanzania. *Journal Research Innovation and Implications in Education*, 6(2), 17-24

equipment, ICT tools such as computers, charts and other instructional aids that support the curriculum delivery.

Chibwili, Bwalya and Mwelwa observed that many schools lack enough desks and classroom space, forcing multiple students to share a single desk. Some classrooms and specialized facilities like laboratories have been repurposed as classrooms or offices, to accommodate learners. From findings, educational resources had not matched the number of increased learners. The pupils, teachers and head teachers reported a shortage of learning materials which had put a strain on limited materials. There is a high textbook to pupil ratio, with some schools having one textbook shared among nine or more learners. Science laboratories, computer labs, libraries and other specialized facilities are under pressure or unavailable. In most schools that were surveyed the number of toilets being shared by learners was far less by minimum set standards of 1:25 boys and 1:20 for girls by the Ministry of Education in Zambia (Ministry of General Education 2023). The inadequate provision of toilet facilities and lack of access to clean and safe drinking water in most schools posed serious health threats to lives of learners and teachers in case of an outbreak of waterborne diseases⁴².

Furthermore, according to **Machinyise, Kasebula and Chabu**, the introduction of free education has placed pressure on physical facilities and teaching staff. In order for teaching and learning to take place smoothly, there is need for some good sanitary facilities for the people involved. These facilities include toilets, water, classes and sporting facilities. In schools visited both in Livingstone and Kazungula districts, the provision of toilets was found inadequate. 50% of the schools had no well-ventilated staff toilets and without running water. Although, all schools had boys and girl's toilets, they were not adequate⁴³.

⁴²Mwelwa K, Bwalya T and Chibwili E. (2023) Effects of Free Education Policy on the provision of Primary and Secondary Education in Zambia. *East African Journal and Social Sciences* 4(6), 80-93 Doi; <https://doi.org/10.46606/eajes2023v416336>

⁴³ Machinyise. E, Kasebula. F and Chabu M. (2023). The impact of free Education policy on the Provision of Quality Education and Access to tertiary Education Zambia. A case study of selected schools and colleges of Livingstone District. Zambia Association of Public Universities and Colleges (ZAPUC) conference, 3(1), 124-134. Retrieved from <https://ictjournal.icit.org.zm/index.php/zapluc/article/view232>

3.3.0 FINDINGS ON INADEQUATE INFRASTRUCTURE AND LEARNING MATERIALS

From the interviews conducted at Kabulonga Girls, a teacher shared that “we only have 50 bibles for over 1000 learners doing Religious Education,” adding that this makes it difficult for all learners to actively participate in lessons. Another teacher teaching Civic Education shared that “we don’t have enough learning materials such as textbooks and also stated that we only have 32 civic education textbooks for all the learners in 8 classes”. Another student explained the practical challenges in Agriculture Science saying, “we don’t have tools like hoes. We have to bring them from home. Some of us can’t afford to buy, and carrying them to school for those can afford is quite difficult”. Learners also mentioned that computers were few, and some were not functional. One explained, “we have computers, but some are not working, and we don’t have enough for use”.

At Chilenje B Secondary, the Deputy Head Teacher described the poor state of infrastructure: “We don’t have a science laboratory, so experiments are done in classrooms. We don’t have a library, and the toilets are inadequate for the current population.” A teacher also expressed a concern over the shortage of Bibles and how it impacts the academic performance, stating that “because learners don’t have bibles, their performance in Religious Education is not very good.” We don’t have a library, and the toilets are inadequate for the current population”. Learners shared that we don’t have enough textbooks and because of that we make groups of 4 or 8 per group sharing one textbook.

The fieldwork findings are consistent with the observations from the authors in the studies above. The lack of materials and infrastructure limits the delivery of practical lessons especially in sciences and technical sciences. It undermines the introduction of ICT based learning envisioned in the policy.

3.4 INADEQUATE AND DELAYED FUNDING OF SENIOR SECONDARY SCHOOLS

The implementation of free education at senior secondary level in Zambia requires adequate support and timely financial support. While the policy has removed school fees,

government schools continue to depend on state allocations to cover operational costs, teaching materials, staff salaries and infrastructure development. Studies and reports indicate that funding is often insufficient or delayed, which affects the schools' ability to function effectively. Delayed disbursement of grants, underfunding of teaching and learning materials, and limited financial planning exacerbate existing challenges such as overcrowding, shortage of learning materials, and inadequate infrastructure. Without sufficient and timely funding, the objects of free education to provide equitable and quality learning opportunities are at risk of being undermined.

The Bank of Zambia report stated that the implementation of Free Education for All (FEA) policy faces significant financial challenges. While the policy eliminates school fees across all levels of education, increasing access for children, the government's current budget allocation is insufficient to meet the associated costs. Analysis indicates that achieving EFA goal would require allocating approximately 21% of the national education budget to education, creating an annual financing gap of around four billion kwacha (K4 000 000 000) over the next decade. Thus, inadequate funding, coupled with inefficiencies in utilization, poses a major barrier to successful implementation of Education For All⁴⁴.

The study revealed that although finding to schools increased following the introduction of free education policy in 2022, it became inadequate to meet the full range of school requirements. Grants were primarily allocated to towards operational capital expenses, such as purchasing books rather than capital projects such as improving facilities or renovating classrooms and providing desks. Many head teachers noted that while the funds are received regularly, they were insufficient particularly with the rising enrolments. In addition, several schools reported lacking alternative sources of income since cost sharing with communities and user fees were abolished. This overreliance on the government allocations raised concerns over sustainability, especially during periods of delayed or inconsistent disbursements⁴⁵.

⁴⁴ <https://blogs.worldbank.org/en/african/brinding-fiancing-gap-achieving-education-for-all-in-zambia-afe-0824>

⁴⁵ Mwelwa K, Bwalya T and Chibwili E. (2023) Effects of Free Education Policy on the provision of Primary and Secondary Education in Zambia. East African Journal and Social Sciences 4(6), 80-93 Doi; <https://doi.org/10.46606/eajes2023v416336>

3.4.0 FINDINGS ON INADEQUATE AND DELAYED FUNDING OF SENIOR SECONDARY SCHOOLS

However, findings from fieldwork revealed that both Kabulonga Girls and Chilenje B Secondary Schools face serious funding challenges despite the free education policy.

At Kabulonga Girls, the teacher explained that “government grants are not sufficient, the school rely on income generating activities such as a school garden and tuck shop, where they get some funds to support the school”. The author observed and photographed the garden and boxes of tomatoes ready for sale, which the school uses for additional funds for operational needs.

At Chilenje B Secondary, the Deputy Head Teacher stated that “the funds are inadequate” and elaborated that even when funds are disbursed, “they come with strict conditions which usually inconvenience, we can’t buy certain things from local sellers because the government policy requires us to buy from registered suppliers with certificates. There is a garden but there is need for manure and seeds, so even when we find seeds or manure at a good price we can’t use grant to buy them”. She also noted that the “tuck-shop also provides minimal income, which is used for small scale expenses such as photocopying and printing”. Despite these efforts, the schools continue to struggle to sustain operations as government grants remain insufficient.

Furthermore, the government’s school feeding program though well intentioned has been hindered by lack of resources. At Kabulonga Girls, a teacher explained, “We can’t feed everyone at once because we don’t have enough pots. Learners are divided in two groups for meals and each day one group eats.” At Chilenje B, the Deputy Head Teacher confirmed that the feeding program is slow because of inadequate cooking equipment and volunteer cooks from the community who fails to show up.”

The situation observed on the ground shows underscores that that without adequate and timely funding, schools are unable to maintain essential services, provides adequate materials, or improve learning environments, making sustainability a major challenge under the free education policy.



Figure 2: A school garden at Kabulonga Girls Secondary School used as an income generating activity to supplement inadequate government funding.



Figure 3: Tomatoes harvested from Kabulonga Girls School Garden.



Figure 4: A tuck shop at Chilenje B Secondary school.

3.5 DECLINE IN QUALITY AND LEARNING OUTCOMES

The rapid surge in enrolments following the abolition of fees has strained available resources, resulting in overcrowded classrooms, high pupil teacher ratios, inadequate infrastructure and insufficient learning materials. These factors have contributed to a noticeable decline in the quality of teaching and learning, ultimately affecting learners' outcomes.

In the study conducted, heads of school made serious observations on the increase enrolment with inadequate learning resources. This according to teachers has seriously

compromised the quality of education as teachers are unable to offer individualized attention to learner⁴⁶.

3.5.0 FINDINGS ON DECLINE IN QUALITY AND LEARNING OUTCOMES

A recurring theme across interviews was that free education has indirectly affected discipline and motivation among learners. Teachers reported that since parents no longer pay fees, many have withdrawn their involvement in their children's education. One teacher at Kabulonga Girls commented, "learners are coming to school anytime they feel like, giving lame excuses because they don't feel the impact of paying anything." Another added, "when we summon parents, some don't even come. They have left everything to teachers." Teachers linked this behavior to declining performance, as some learners no longer feel accountable. A teacher noted, "When they are suspended they know that will just go to another school. There is no sense of responsibility."

3.6 FINDINGS ON HEALTH AND ENVIRONMENTAL CHALLENGES

Increased enrolment has also placed stress on the sanitation and water supply systems. At Chilenje B, learners reported that water shortages are common and sometimes. One student said, "we sometimes rarely have water especially when there is no power and because of that we dodge classes." Such conditions expose learners to health risks and affect attendance. Overcrowded and poorly ventilated classrooms also pose challenges in maintaining hygiene.

3.7 CONCLUSION

In conclusion, the findings review that in as much as free education policy has greatly increased enrolment in senior secondary schools, it has created certain challenges that threaten its effectiveness. Schools such as Kabulonga Girls and Chilenje B secondary school face overcrowded classrooms, high teacher-pupil ratios, inadequate infrastructure, and shortages of learning materials, which negatively affect the quality of teaching and learning. Insufficient funding has forced schools to rely on small income generating activities like gardens and tuck shops to meet operational needs such as printing.

⁴⁶ Machineryse, E, Kasebula, F and Chabu M. (2023). The impact of free Education policy on the Provision of Quality Education and Access to tertiary Education Zambia. A case study of selected schools and colleges of Livingstone District. Zambia Association of Public Universities and Colleges (ZAPUC) conference, 3(1), 124-134. Retrieved from <https://ictjournal.icit.org.zm/index.php/zapluc/article/view232>

Additionally, issues of learner discipline, absenteeism, and reduced parental involvement have emerged, highlighting that the policy's implementation lacks adequate support mechanisms. Without a clear legal and financial framework, the sustainability and quality of free education at senior secondary level remains at risk despite its noble intentions.

CHAPTER FOUR

DRAWING LESSONS FROM KENYA ON STRUCTURED LAWS GOVERNING FREE EDUCATION

4.0 INTRODUCTION

This chapter explores Kenya's legal framework on free education with the aim of drawing lessons that can inform Zambia's education system. Kenya is chosen a case study because it has developed a legal foundation that supports access to free and compulsory education. The discussion focuses on how Kenya has structured its laws, policies, and institutions to promote education as a right, how these measures ensure sustainability and accountability.

Furthermore, this chapter will identify key lessons from Kenya's experience that could guide Zambia in establishing a comprehensive framework because Kenya's legal framework offers a valuable example of how free education can be protected through a coherent system of constitutional and statutory provisions.

4.1 THE CONSTITUTIONAL FOUNDATION OF FREE EDUCATION IN KENYA

Kenya has ratified most international treaties that protect the right to education, which form part of the country's laws. Kenya's commitment to education as a right is firmly embedded in **article 43(f)**⁴⁷ which provides for a right to education, which marked a shift from policy based provisions to legally enforceable rights. The Constitution of Kenya in **article 53(1)(b)** states that every child has a right to free and compulsory basic education. This clause goes beyond access, imposes a duty on the state and parents to ensure that every individual is accorded an opportunity to access education and also ensure school attendance. Furthermore, **article 55(a)** states that the state shall take measures, including affirmative action programs, to ensure that the youth access the relevant education and training. Therefore, according to the constitution, education for children is an obligation that can be enforced⁴⁸.

⁴⁷ Constitution of Kenya 2010

⁴⁸ Dr O. Ekundayo, 'Legal and Policy Considerations in the Realisation of Right to free and compulsory education in Kenya' (Vol 71,2018)

The inclusion of free and compulsory education in the Bill of Rights makes it justiciable and individuals can seek legal remedies when this right is violated. **Article 22(1)**⁴⁹ states that every person has the right to institute court proceedings claiming that a right or a fundamental freedom in the bill of rights has been denied, violated or infringed or has been threatened. The High Court's interpretation of article 22(1)⁵⁰ and article 23(1)⁵¹ read with article 165⁵² in the case of **WJ and Another v Astarikoh Henry Amakoah and 9 others**⁵³ held that it has the jurisdiction to hear a matter where issues of violations of constitutional rights have been raised. The courts reliance on article 22(1) and 23(1) demonstrates that the judiciary plays a major role in holding the state accountable in fulfilling its educational obligation and ensuring that constitutional promises such as the right to free and compulsory education is legally enforceable.

In a nutshell, Kenya's constitution provides a strong legal basis for free and compulsory education right rather than a policy. The framework has clearly placed a responsibility on the government to make education available and this approach shows a clear constitution foundation can make the right to free education more practical, accountable and sustainable.

4.3.0 THE BASIC EDUCATION ACT AND THE REALISATION OF FREE AND COMPULSORY EDUCATION IN KENYA

The constitution of Kenya lays a foundation for the right to free and compulsory education basic education, while the **Basic Education Act**⁵⁴ operationalizes these legal mandates through regulations on resource distribution and quality assurance.⁵⁵ The Act establishes the legal duties of the state and parents, it defines the scope of basic education and provides mechanisms to ensure access, quality and accountability within the education system. The Act begins with a preamble that states that ' It is an Act of parliament to give effect to Article 53 of the constitution and other enabling provisions to promote and

⁴⁹ The Kenyan Constitution 2010

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² The Kenyan Constitution 2010

⁵³ [2015] EKLK, Petition No 331 of 2011

⁵⁴ No. 14 of 2013

⁵⁵ I Temba and S. A Ouko 'Assessment of the Adequacy of Legal and Policy Frameworks in Management of Educational Resources in Kenya' (Vol 12 issue 11 2025)

regulate free and compulsory education, to provide for accreditation, registration, governance and management of institutions of basic education, to provide for the establishment of education standards and quality assurance commission, and the County Board and for connected purpose'.⁵⁶

Section 28(1) of the Basic Education Act⁵⁷ states that the Cabinet secretary shall implement the right to of every child to free and compulsory education, furthermore **section 29(1)** of the Basic Education Act⁵⁸ states that no public school shall charge or cause any parent or guardian to pay fees for or on behalf of any pupil in the school. **Section 2** of the Act defines basic education as the educational programs offered and imparted to a person a person in an institution of basic education and includes adult basic education and education offered in pre- primary educational institutions and centres. This definition broadens the scope and extent of the state's duty to provide education that is both free and compulsory. It extends beyond primary level, it includes pre-primary, secondary and adult basic education. These provisions signify a deliberate effort by the state to ensure that education is not left to political good will but instead enshrined within the law and enforceable through judicial mechanisms.

4.3.1 OBLIGATIONS OF THE STATE AND PARENTAL RESPONSIBILITY

Section 39 (a) ,(b), (d) , (e), (f), (h) and (i) of the Basic Education Act⁵⁹ provides for the responsibility of the government, it states that it shall be the duty of the Cabinet Secretary to provide free and compulsory basic education to every child, to ensure compulsory admission and attendance of children of compulsory school age at school or an institution offering basic education, provide human resource including adequate teaching and non-teaching staff according to the prescribed staffing norms, provide infrastructure including schools, learning and teaching equipment and appropriate financial resources, ensure quality basic education conforming to the set standards and norms, ensure compulsory admission, attendance and completion of basic education by every pupil, monitor the

⁵⁶ The Basic Education Act No.14 2013

⁵⁷ NO. 14 2013

⁵⁸ ibid

⁵⁹ ibid

functioning of schools and to advise the national government in financing of infrastructure development for basic education.

Together these duties demonstrate that Kenya's legislative framework treats free education as a justiciable right rather than a policy objective. They ensure that free education is accessible, compulsory and of high quality. They create a legal framework where the government is not only responsible from removing financial barriers but also providing human, material and institutional resources necessary for meaningful learning. By codifying these responsibilities, the Act strengthen the accountability and provides a model of how statutory law can operationalize free education in a comprehensive and enforceable manner.

The Basic Education Act recognizes effective realization of free and compulsory education requires active participation not only by the government but also parents and guardians. Section 30 provides for compulsory primary and secondary education, it stipulates that every parent whose child is Kenyan or resides in Kenya shall ensure that the child attends school or any institution that authorized by the cabinet secretary to provide for the child's physical, mental, intellectual and social development. It further states that a parent who fails to his child to school commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year or both. Subsection provides an exception where a parent presents a reasonable justification for a child's absence to the satisfaction of the County Director of Education. This balance ensures that enforcement is fair while maintaining mandatory school attendance as a legal requirement.

Furthermore, **section 31(1)(2)** of the Basic Education Act⁶⁰ provides for the duty of parents and guardians. It states that it shall be a responsibility of every parent or guardian to present for admission or cause to be admitted his or her child to a basic education institution, defaulting this duty is also an offence, carrying a more severe penalty of a fine not exceeding one thousand shillings or imprisonment for a period not exceeding two years or both. The provisions ensure that free education is not merely theoretical. By

⁶⁰ No.14 of 2013

legally mandating parental involvement, the Act addresses potential gaps and enrolments which may arise. The law is also allowing education authorities to hold parents accountable and thereby protect rights of children.

By combining the governments duty and parental responsibilities, Kenya establishes a holistic legal framework for free and compulsory education. This framework ensures that access, attendance and quality are all enforceable, making free education practical justiciable right rather than a policy aspiration.

4.4 INSTITUTIONAL MECHANISMS FOR THE IMPLEMENTATION AND OVERSIGHT OF FREE EDUCATION IN KENYA

The Basic Education Act 2013 establishes several bodies that collectively ensure the effective delivery, coordination and quality insurance of free education across the country. These include the National Education Board, Education Standards and Quality Assurance Council and the County Education Board. This shows the success of Kenya's free education framework does not only depend on constitutional and statutory provisions but also on institutions established to implement, regulate and monitor compliance with these provisions.

4.4.1 THE NATIONAL EDUCATION BOARD

Section 5(1) of the **Basic Education Act**⁶¹ provides for its establishment and one of its functions is in subsection 2 which is to advise the Cabinet Secretary on matters of education policy. Through this advisory function, the National Education Board ensures that national policies align with the constitutional obligation under **Article 53 (1) (b)** to provide free and compulsory education. **Section 5 (3)** of the **Basic Education Act** states that the Board shall generate and cause to be published an annual report on the state of education and service delivery in the country. This shows that the Board also monitors implantation and reports on the progress made in fulfilling the state's obligation. This serves as an institutional link between policy formulation and on the ground implementation.

⁶¹ No 14 of 2013

4.4.2 THE EDUCATION STANDARDS AND QUALITY ASSURANCE COUNCIL

This Council is established under **Section 64 (1)** of the **Basic Education Act**⁶². The functions of the council are provided for in subsection 2 which states that it shall ensure standards and maintain quality institutions of basic education, administer policies and guidelines set for basic education, supervise and oversee curriculum implementation and delivery, monitor and evaluate standards and quality in basic education.

In the context of free education, the Education Standards and Quality Assurance Council, ensures that the removing of school fees does not compromise the standard of learning and that the right to free education is not only about access to education but also about the delivery of meaningful and quality learning. It reinforces the constitutional principles that free education must still be effective and beneficial to the learner.

4.4.3 THE COUNTY EDUCATION BOARD

It is established under **Section 17 (1)** of the **Basic Education Act**. Section 18 of the aforementioned Act outlines its functions and one of its functions is to oversee in consultation with the county government the operation and management of education, to coordinate and monitor education, interpret national policies in education based on the county's needs and monitor the curriculum implementation in basic education in the county.

This Board serves as decentralised arms of the national government, ensuring that free and compulsory education policies are effectively implemented at the local level.

In conclusion, these institutions form a comprehensive framework that supports the coordination between the national and county governments, ensuring that free education is not merely a policy but statement but a legally enforceable right. The institutional framework in Kenya demonstrates that free education requires not only legal guarantees to be effectively realised but also administrative systems that can monitor, evaluate and enforce compliance.

⁶² ibid

4.5.0 LESSONS FOR ZAMBIA

Zambia can draw lessons from Kenyan legal framework for free and compulsory education for transforming a policy declaration into a legally enforceable right. Kenya demonstrates that constitutional recognition, legislative authority and statutory institutions are critical in ensuring that free education is not merely inspirational but a right that is justiciable. Zambia which currently provides free education only up to junior secondary level, lacks a legal framework that backs up senior secondary school level can draw from Kenya's experience to establish a right based system.

By examining Kenya's model, Zambia can identify key elements necessary to transform its policy into a legally binding and right based system.

4.5.1 CONSTITUTIONAL ENSHRINMENT AND ENFORCEMENT OF FREE EDUCATION.

Zambia can learn that anchoring the right to free education within the constitution not only provides permanence but also enables enforcement and accountability. Kenya's constitution explicitly recognizes education as a fundamental right under **article 43(1)(f)** and further obliges the state under **article 53(1)(b)** to provide free and compulsory basic education to every child. This creates a clear legal enforceable obligation rather than a policy. In addition, **article 22(1)** of Kenya's constitution allows individuals to enforce the right to free and compulsory education through courts.

One key lesson that Zambia can draw from Kenya is that constitutional recognition of free education would create a legally enforceable right especially at senior secondary school level. If the right to free education was violated, threatened or denied individuals as well as civil society organisations would be able to seek judicial remedies, ensuring accountability and compliance.

4.5.2 LEGISLATIVE BACKING AND SCOPE OF FREE EDUCATION

Kenya's Basic Education Act no 14 of 2013 operationalises the constitutional right into a practical framework, defining basic education to include pre-primary, primary, secondary school levels and also includes adult basic education.

Zambia can learn that a clear legislative definition of the scope of free education is essential. The Zambian Basic education Act 2011 provides for free education in section 15 and it is only up to junior secondary school, leaving senior secondary school outside the legal guarantee. Extending this right through legislation would align Zambia's framework with its policy goals.

4.5.3 CLEAR ALLOCATION OF RESPONSIBILITIES BETWEEN THE GOVERNMENT AND PARENTS OR GUARDIANS

Zambia can also learn from Kenya's detailed allocation of duties between the government and parents. The Kenyan framework legally obliges the government to provide free education, infrastructure, adequate staffing and learning materials, while parents are required to ensure that children attend school. These duties are enforceable through statutory penalties for non-compliance.

Zambia can draw from this the importance of codifying obligations for both the government and parents as far as free education is concerned. While Zambia has institutions such as District Education Boards (DEBs), without legal obligations on the government and parents, these institutions and stakeholders may not be held accountable to ensure free education is delivered. Statutory duties would ensure that free education is provided not as a policy but as a legal requirement.

4.5.4 INSTITUTIONAL MECHANISMS AND OVERSIGHT

Kenya establishes several statutory institutions to monitor and implement free education and those institutions ensure that education is delivered systematically, monitored effectively, and maintained at prescribed quality. Zambia already has existing structures such as District Education Boards (DEBs) but their mandate is largely administrative and policy based.

Zambia can learn that statutory empowerment of institutions is crucial to ensure not only the delivery of education but also the enforcement of free education. Zambia can draw another key lesson which is clearly outlining the roles that institutions will play in the implementation of free education.

4.6 CONCLUSION

Kenya's legal framework shows that free education becomes effective when it is constitutionally guaranteed, supported by legislation, and reinforced through empowered institutions. Zambia can draw lessons on constitutional entrenchment, legislative clarity, enforceable obligations, institutional oversight and quality assurance. Implementing these lessons would transform Zambia's free education policy into a legally enforceable right ensuring accountability, sustainability and inclusive access to education at all levels.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This chapter presents a summary of key discussions and critical analyses from preceding chapters provided. This chapter also provides recommendations on issues raised, being lack of legislation backing the free education policy at senior secondary school level for purposes of aiding in the resolution of the problem identified in the thesis.

5.1 GENERAL CONCLUSION

In Zambia, the free education policy has played an important role in expanding access to basic education and secondary education which has enabled more children especially those from disadvantaged backgrounds. However, this thesis has revealed the policy's impact has been limited by the absence of being statutory recognised particularly at senior secondary. The Education Act does not explicitly provide for free education at senior secondary school level and therefore creates a legal gap, leaving implementation of the policy to largely depend on political will rather than legal obligation. The research further revealed that as a result of free education access has improved and the policy has brought several challenges such as overcrowded classrooms due to poor infrastructure and high enrolment levels, inadequate resources in schools because of inadequate resources in schools because of delayed or inadequate funding and pressures on educational quality.

Lastly, in this study lessons have been drawn from Kenya, showing that a legal recognition of free education and dedicated institutions that implement free education are essential to achieving policy objectives. Overall, the research shows that there is need for Zambia's free education policy to be grounded in law for it to be effective and sustainable, it should be adequately funded, and implemented through coordinated and legally accountable institutions that ensure both access and quality.

5.3 SUMMARY OF CHAPTERS

This dissertation analysed five chapters which all analysed the problem relating to lack of legislation governing free education at senior secondary school level and lessons were drawn from Kenya.

5.3.1 CHAPTER ONE

This chapter identified the legal problem, which therefore laid a foundation for this particular study. This chapter highlighted the background of free education in Zambia and the statement of the problem which identified the legal issue which is the lack of legislation governing free education policy at senior secondary school level. This chapter further identified the research objectives which are, firstly to evaluate the efficacy of the Education Act in supporting the implementation of free education, particularly at senior secondary school level, secondly to evaluate the effectiveness of free education at senior secondary schools in Zambia and lastly, to analyse and draw lessons from the legal framework governing how free education has been structured in Kenya.

This chapter includes a detailed review of relevant literature which critiques earlier findings and reveals a key research gap. It further discusses the significance of this research paper which is to address the critical gap between Zambia's free education policy and existing legal framework, particularly the exclusion of senior secondary education from the Education Act and to highlight the implications of this gap on the enforceability and sustainability of the policy.

5.3.2 CHAPTER TWO

This chapter focused on evaluating the efficacy of the Education Act in implementing free education. The chapter discusses the history and evolution of the Education Act in Zambia beginning from the period when Zambia gained its independence till date. It looked at how Zambia's education legislation has evolved from a centralized framework of the Education Act 1966 to the Education Act 2011 (which repealed and replaced the Education Act 1966) which is a more rights oriented framework as it aligns with international human rights principles. An analysis of this evolution showed that despite progressive reforms, free education at senior secondary school level remains a policy rather than a right enforceable at law.

Additionally, this chapter analysed regional and international human rights instruments such as the Universal Declaration of Human Rights (UDHR), International Convention on Economic, Social and Cultural Rights (ICESCR), Convention the Rights of a Child (CRC) and regionally the African Charter on the Rights of the and Welfare of the Child (ACFRWC). These international treaties were analysed because Zambia has ratified them and they recognise education as a right and states are to ensure that secondary school is accessible and made free.

Lastly, the chapter explores a jurisprudential perspective informed by the legal positivist theory, which is of the view that law is valid only if it has been created by a recognised authority through proper procedures such as an act of parliament. By applying the theories of Austin, Hart and Kelsen the chapter highlighted that free education at senior secondary school level lacking recognition cannot be regarded as law in the positivists sense.

5.3.3 CHAPTER THREE

This chapter focused on various challenges encountered in the implementation of the free education policy at senior secondary school level in Zambia such as classroom overcrowding, High teacher-pupil ratios, shortage of teachers, inadequate infrastructure and learning materials, inadequate and delayed funding and decline in the quality of and learning outcomes. Interviews were conducted at Kabulonga Girls Secondary School and at Chilenje B Secondary School and the findings revealed that in as much as free education has greatly increased enrolment in senior secondary schools, it has created the challenges earlier mentioned and they might threaten its effectiveness and without a clear legal and financial framework the sustainability and quality of free education at senior secondary school level remain at risk.

5.3.4 CHAPTER FOUR

This chapter discussed the lessons to be drawn from Kenya's legal framework on how it has structured its laws governing free education, which establishes free education as a constitutional right and provides for its effective delivery through comprehensive legislation which is The Basic Education Act 2013. The chapter concluded by identifying key lessons that Zambia can draw from Kenya Such as incorporating free education in the constitution, clear legislative definition of the scope of free education by extending this

right up to senior secondary school level in the Education Act and statutory empowerment of institutions to ensure delivery and enforcement of free Education.

5.4 RECOMMENDATIONS

5.4.1 CONSTITUTIONAL INCLUSION OF THE RIGHT TO EDUCATION AND RIGHT TO FREE EDUCATION

The right to education in Zambia is provided for in several pieces of legislation such as the Children's Code Act and the Education Act. However, the omission of this right from the constitution means the right lacks full constitutional protection making its enforcement less effective. The constitution is the supreme law of the land and functions as a grundnorm and in as much as pieces of legislation recognise education as a right, constitutional entrenchment is necessary to ensure its enforceability and sustainability and that the right to education enjoys its highest level of protection and will promote a balanced framework ensuring that both rights are given equal recognition and status. Its inclusion would mean that it will become part of the bill of rights and it cannot not easily be done away with due to political whims or in instances of economic crisis.

The right to free education is provided for in the Education Act but it does not extend to senior secondary level which is grade 10, 11 and 12. Its inclusion in the constitution would make free education a fundamental right rather than a policy that could be altered or withdrawn at the will of the government and individuals would be able to enforce this right if it is denied or threatened or even violated.

5.4.2 REVIEW AND AMENDMENT OF THE EDUCATION ACT TO PROVIDE FREE SENIOR SECONDARY EDUCATION.

It is recommended that the Education Act No 23 of 2011 should be reviewed and amended to explicitly provide for free education at senior secondary school level. The Act should also clearly define the responsibilities and duties of the government, parents, institutions and schools in the implementation of free education. By doing so, the Act will ensure that free education is not only accessible but well coordinates, monitored and sustained because the obligations will be legally mandated. This will promote accountability, improve on resource allocation and provide a clear legal framework to guide in the delivery of free education.

5.4.3 CREATION OF SPECIALIZED INSTITUTIONS TO COORDINATE AND IMPLEMENT FREE EDUCATION.

The District Education Board (DEBs) play an important role in coordinating education at local level, their capacity alone is insufficient to effectively and monitor free education. It is therefore recommended that additional specialized institutions be established with a clear legal mandate to monitor, oversee, regulate and give reports on free education to ensure accountability in the delivery of free education.

5.4.4 ENHANCING BUDGETARY PROVISION AND RESOURCE MANAGEMENT FOR FREE EDUCATION.

To ensure that free education is sustained and effective, it is recommended that the government allocate sufficient and predicable funding specifically for education. This could be achieved through the establishment of a dedicated Free Education Fund within the National Budget of each year to prevent diversion to other sectors.

5.5 RECOMMENDATIONS FROM THE RESEARCH PARTICIPANTS

Research participants such as some teachers at Kabulonga Girls Secondary School recommended that more teachers should be employed to match with the high enrolment due which has caused high teacher-pupil ratios. A teacher also recommended that parents should also be made to contribute a little as this will lead them to encourage children to attend classes because free education has also led to absenteeism as learners can show up for classes any time they feel like. Furthermore, the deputy head teacher at Chilenje B Secondary school recommended that more classroom blocks should be built and removal of certain restrictions that come with funds that are disbursed to schools such as they can only buy from places that give receipts such as ShopRite and other enterprises which in some way it is inconvenient and makes it hard to find suppliers for things like manure for gardens or even end up getting them at excessive prices when they can be gotten at cheaper prices from the locals.

BIBLIOGRAPHY

INTERNATIONAL INSTRUMENTS

African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 (1990)

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990)

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)

BOOKS

Creswell, John W. Research Design: Qualitative, Quantitative and Mixed Approaches (4th edition University of Nebraska-Lincoln 2014

HLA Hart, Essays in Jurisprudence and Philosophy (Clarendon Press 1982)

MDA Freeman, Lloyd's Introduction to Jurisprudence (9th edn, Thomson Reuters (Professional) Ltd trading as Sweet & Maxwell 2014) 204,279,799

JOURNAL ARTICLES

Andrew Brudevold-Newman, The Impacts of Free Secondary Education: Evidence from Kenya (American Institute for research, Nyer, Kenya, December 2017

Bwembya Ireen and Harrison Daka, ' The Provision of Free Education and Its Sustainability: The Zambian Scenario' (2024) 4(3) journal name 2955
<https://www.researchgate.net/publication/381613597> > Accessed on 17th February, 2025

Dr O. Ekundayo, 'Legal and Policy Considerations in the Realisation of Right to free and compulsory education in Kenya' (Vol 71,2018

Duflo Esther , Dupas Pascaline and Michael Kremer, The Impact of Free Secondary Education: Experimental Evidence from Ghana (National Bureau of Economic research, working paper No. 28937, June 2021) <https://www.nber.org/papers/w28937>> accessed 15th April 18, 2025

I Temba and S.A Ouko 'Assessment of the Adequacy of Legal and Policy Frameworks in Management of Educational Resources in Kenya' (Vol 12 issue 11 2025)

Jacob O. Sule, Femi Emmanuel folorunsho and Uyiosa Osarumen Ugiagbe and Adedoyin Soley, Bridging Education and Law: Examining the role of Legal frameworks in Shaping Educational Equity and Access, International journal of Education (IJE), 5(2) 2024, p14-25, <https://iae.com/Home/issue/IJE?volume=5&Issue=2>

Machinyise. E, Kasebula. F and Chabu M. (2023). The impact of free Education policy on the Provision of Quality Education and Access to tertiary Education Zambia. A case study of selected schools and colleges of Livingstone District. Zambia Association of Public Universities and Colleges (ZAPUC) conference, 3(1), 124-134. Retrieved from <https://ictjournal.icit.org.zm/index.php/zapluc/article/view232>

Mashala Lameck Yusuph, The Impact of implementation of Free Education Policy on Secondary Education in Tanzania, 2019 <https://www.researchgate.net/publication/332607737>

Mgimba, AE & Mwila P (2022) Infrastructure Challenges Influencing Academic Performance in Rural Public Secondary Schools in Iringa District Tanzania. Journal Research Innovation and Implications in Education, 6(2), 17-24

Moumne R and Saundemont, C.O UNESCO, 2015 Overview of the role of private providers in education in light of the existing internal legal framework. Investment in private education: undermining or contributing to the full development of education? UNESCO working papers on education policy No.1

Mwelwa, k, Bwalya, T and Chibwili, E (2023) Effects of Free Education Policy on the provision of Primary and Secondary Education in Zambia. East African journal of Education and Social Sciences 4(6), 80-93 Doi; <https://doi.org/10.46606/eajes2023v416336>

Sydney Sihubwa and Jones M Bowa, Accessing the Impact of Free Education Policy on poverty and inequality in Zambia, November 2023 <https://www.wider.unu.edu>> Accessed 11th April, 2025

Sambwa Simbyakula-Chilembo, 'The Role of Networks in Facilitating International Cooperation in Criminal Matters: Mutual Legal Assistance' (Presentation, Ministry of Justice, Kenneth Kaunda Conference Centre, 16 September 2024)

Vakili R, Vakili S, Ajilian Abbasi M, Masoudi S H. Overcrowded Classrooms: Challenges, consequences, and collaborative Solutions for Educators: A Literature Reviewed. Med Edu Bull 2024; 5(2): 961-72 DOI 10.22034/ MEB.2024.492269.1103

DISSERTATIONS

Fackson Phiri, 'The Effect of Pupil-Teacher Ratio on learner Academic Performance in selected Schools in Sinda District, Zambia (MEd Dissertation, University of Zambia in Collaboration with Zimbabwe Open University, 2018)

Karen Chabala, Examining the interplay of Religious beliefs and professional conduct: A comprehensive Analysis of Brenda Kachasu v Mwelwa Manda and others Appeal No 163 of 2021 [2023] ZMCA: Lessons from Kenya and South Africa (LLB dissertation, University of Lusaka)

Martin Muindi Mutisya, Impact of free secondary Education in Katanga, Yatta District-Machakos country, Kenya. Master's thesis, Kenyatta University 2011

INTERNET SOURCES

Convention on the Rights of the Child
<https://www.scribd.com/document/486176389/Equality-of-Education-A-comparative-study-of-Edu-pdf> accessed 31 July 2025

Equality and Human Rights, what are Human rights
<https://www.equalityhumanrights.com>
<https://www.bbc.com/news/articles/cek9n3yv0110>
<https://blogs.worldbank.org/en/african/brinding-fiancing-gap-achieving-education-for-all-in-zambia-afe-0824>

<https://www.educationadvanced./blog/student-to-teacherratio>

International Covenant on Economic, Social and Cultural Rights
<https://www.scribd.com/document/582087214/HISTORY-AND-PHILOSOPHY-MODULE-2utm> accessed 31 July 2025

LinkedIn, 'Pitfalls of inconsistent HR policies and Procedures' <http://www.linkedin.com/pulse/pitfalls-inconsistent-under-policies-procedures-o1sfe>

Parliamentary Submission Free Education Policy in Zambia
<http://zambia.actionaid.org/publications/2023/parliamentary-submission-free-education-policy-zambia>

UNESCO Institute for Statistics, Education and Literacy (UIS UNESCO, 2024)
<https://uis.UNESCO.org/node/3297499>

UNICEF, UNICEF <https://www.unicef.org>

VIA Legal Framework –Comparative <https://www.via.com/en-us/explanations/law/comparative-law/legalframework>

13.83%

SIMILARITY OVERALL

11.29%

POTENTIALLY AI

SCANNED ON: 6 NOV 2025, 3:51 PM

Similarity report

Your text is highlighted according to the matched content in the results above.

IDENTICAL 0.45% CHANGED TEXT 13.38% QUOTES 0.62% REFERENCES 0.2%

AI Detector Results

Highlighted sentences with the lowest perplexity, most likely generated by AI.

LIKELY AI 0.00% HIGHLY LIKELY AI 11.29%

Report #29776271

14 SCHOOL OF LAW A HUMAN RIGHTS PERSPECTIVE ON THE EFFICACY
OF THE EDUCATION ACT 2011 IN RELATION TO FREE EDUCATION
POLICY 2022: LESSONS DRAWN FROM KENYA. 3 7 8 11 12 13 14 15 16 19 22 23 31 32 34
By: MBAO MADALISO LLB22112520 AN OBLIGATORY ESSAY SUBMITTED
TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE. 2 4 5 6 7 8 9
10 11 12 14 15 16 17 19 21 22 23 24 25 26 29 31 32 34 2025 DECLARATION I
MBAO MADALISO, do hereby declare that this dissertation titled
"A HUMAN RIGHTS PERSPECTIVE ON THE EFFICACY OF THE EDUCATIO
N ACT 2011 IN RELATION TO FREE EDUCATION POLICY 2022:
LESSONS DRAWN FROM KENYA" which is hereby submitted to the
School of Law at the University of Lusaka as part of the
requirements for the award of the Bachelor of Laws (LLB)
Degree, is my original work and has not been previously
submitted for the award of a degree at this institution or
elsewhere to the best of my knowledge. 2 7 8 12 15 16 19 I understand
what plagiarism entails and I am aware of the policy of
the university in this regard. 5 6 14 22 29 Other people's works have
been indicated and sources used in this study have been
acknowledged as complete references. Signature..... 5 Date
..... SUPERVISORS RECOMMENDATION I TABITHA MUKUKA,



UNIVERSITY
OF LUSAKA
Passion for Quality Education - One Inspiring Future

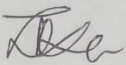
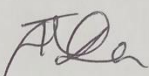
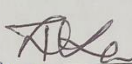
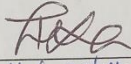
SCHOOL OF LAW

L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: MBAO MADAKISO STUDENT NUMBER: LLB22112520
SUPERVISOR: Ms. TABITHA MUKUKA TOPIC: A HUMAN RIGHTS PERSPECTIVE OF THE EFFICACY OF THE EDUCATION ACT 2011 IN RELATION TO FREE EDUCATION POLICY 2002: LESSONS DRAWN FROM KENYA

Stage	Supervisor's Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	Approved Research Proposal	30 th July, 2025 	30 th July, 2025
Chapter 1 – Introduction	Approved chapter, proceed and correct lesson to lessons on the 3 rd objective.	7 th August, 2025 	7 th August, 2025
Chapter 2 –	Spell check, work on numbering and chapter didn't have a conclusion. Corrections were made. Proceed to chapter three	1 st September, 2025 	1 st September, 2025
Chapter 3 –	The chapter title was too long. Corrections were made, proceeded to chapter four	17 th October, 2025 	17 th October, 2025
Chapter 4 –	Justify your work properly. Bibliograph needs to start on a new page. Chapter Approved	30 th October, 2025 	30 th October, 2025

Chapter 5 – Conclusions & Recommendations	Proceed to Send the first draft	4 th November, 2025 	4 th November, 2025 
Abstract, Table of Contents, Bibliography and Appendices	Approved	6 th November, 2025 	6 th November, 2025 
First Draft	Proof read the work and fix the typographical mistakes	6 th November, 2025 	6 th November, 2025 
Second Draft	Approved	11 th November, 2025 	11 th November, 2025 
Final Draft	Approved	12 th November, 2025 	12 November, 2025 

***NOTE:** Please attach this form to the back of your dissertation at the end of the research, before submission of the dissertation via the Moodle e-learning platform.