

Constitutional Obligation: Funding Basic Education for Quality Education in South Africa

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KEYWORDS

ABSTRACT The Constitution of the Republic of South Africa of 1996 is the supreme law of the country. No any other law is above the Constitution. Education and Ordinary Parliamentary Legislations were promulgated within the confines of the Constitution. Therefore, whoever contravenes the Constitution of the Republic of South Africa and other legislations is liable for the action. The Minister of (Basic) Education has prerogative power of formulating policy on funding education in the Republic of South Africa according to law. The Constitution of the Republic of South Africa directs about how education should be offered and other legislations direct on how education should be funded. It directs on who should receive education and how education should be administered and funded to all citizens of the Republic regardless of race, colour, gender or creed. This paper examines on whether South Africa as a state particularly the Department of Basic Education is adhering and playing its role and/or the constitutional mandate of the Republic of South Africa, National Education Policy Act, South African Schools Act and Norms and Standards for Funding Policy when funding for quality education in South Africa since 1994.

INTRODUCTION

Since 1994, South African government has promulgated several pieces of legislation; amongst them is the Constitution which is the supreme law of the country. All laws in the republic of

South Africa are within the confines of the Constitution. In the interest of development of the country, the parliament promulgated what Roos, Oosthuizen and Smit (2011) call parliamentary education legislation. Parliamentary education legislations are, but for this paper we are going to discuss about National Education Policy Act 27 of 1996 and The South African Schools Act 84 of 1996 (SASA):

- National Education Policy Act 27 of 1996;
- The South African Schools Act 84 of 1996 (SASA);
- Employment of Educators Act 76 of 1998; and
- South African Council of Educators Act 31 of 2000.

Together with legislations, there are policies and regulations which regulate the management and administration of education in South Africa. Discussion in this paper will be based much on the Constitution of the Republic of South Africa, parliamentary education legislations and policy, the Norms and Standards for School Funding.

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 108 OF 1996

In terms of Section 9 (3) of the Constitution of the Republic of South Africa on **Equality**, it states that the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. In comparison to other sections, we find Section 9 (3) of the same Constitution more interesting and we perceive it as one of the cornerstones of South African education. Notwithstanding the regrettable South African history which we just left behind, schools continue to discriminate children due to some of the differentiating factors such as their race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth as well as socio-economic/class. We argue that schools in South Africa are supposed to admit all learners from different backgrounds and diversity irrespective of the above distinctions.

Section 10 of the Constitution states that everyone has inherent dignity and the right to have their dignity respected and protected.

Section 29 (1) (a-b) and (2) (a-c) of the Constitution states that everyone has the right to a basic education, including adult basic education; and to further education, which the state, through reasonable measures, must make progressively available and accessible. Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account equity; practicability; and the need to redress the results of past racially discriminatory laws and practices.

PARLIAMENTARY EDUCATION LEGISLATION

Education is one of the functional areas of concurrent national and provincial legislative competence listed in Schedule 4 of the Constitution. This means that both parliament and the provincial legislatures may enact legislation dealing with education matters. Roos et al. (2009) state that parliamentary education legislation refers to parliamentary laws that are promulgated by parliament.

National Education Policy Act 27 of 1996

We undertake to discuss Education legislations in particular the National Education Policy Act 27 of 1996. Section 2 of the National Education Policy Act is significant for the following reasons:

- To empower the national Minister of Education to determine national education policy in terms of certain principles.
- To provide an infrastructure which requires consultation with a wide variety of bodies.

In terms of Section 3 (1)-(4) (c) of the same Act, the Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act. In determining national policy for education at education institutions, the Minister shall take into account the competence of the provincial legislatures in terms of Section 126 of the Constitution, and the relevant provisions of any provincial law relating to education. Whenever the Minister wishes a particular national policy to prevail over the whole or a part of any provincial law on education, the Minister shall inform the provincial political heads of education accordingly, and make a specific

declaration in the policy instrument to that effect. Subject to the provisions of subsections, the Minister shall determine national policy for the planning, provision, financing, staffing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system, and without derogating from the generality of this section, may determine national policy for-the organisation, management and governance of the national education system; facilities, finance and development plans for education, including advice to the Financial and Fiscal Commission; the ratio between educators and students; the organisation, management, governance, funding, establishment and registration of education institutions; facilities, finance and development plans for education, including advice to the Financial and Fiscal Commission the ratio between educators and students.

Section 4 (a) (i) and (iv), (c) and (n) is the policy contemplated in Section 3 shall be directed toward-the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right- of every person to basic education and equal access to education institutions; of every child in respect of his or her education, achieving equitable education opportunities and the redress of past inequality in education provision, achieving the cost-effective use of education resources and sustainable implementation of education services. The policy contemplated in Section 3 shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.

Section 5 of the Act has got bodies such as representative of the organized teaching profession, a national council of college rectors, a national council representative of students and a national council representative of parents.

- To ensure the publication and implementation of the national education policy.
- To ensure the evaluation and monitoring of education in South Africa.

The South African Schools Act 84 of 1996 (SASA)

Besides the Schools Act preamble which says that it wants to devise uniform norms and standards for the education of learners in South Africa and to build education system that does not discriminate anyone. It also contains the most important provisions for the restructuring, governance and management of public schools; the establishment, registration and subsidizing of independent schools as well as conditions for home schooling.

Other essential principles of SASA are:

- o Eliminating poverty through proper education;
 - o Establishing a human rights culture to advance the democratic transformation of society;
 - o Ensuring respect for and protection and advancement of various cultures and languages;
- and
- o Establishing a partnership between all stakeholders who have an interest in education, i.e. the state, parents, learners, educators and other members of the community in the vicinity of a school (Joubert and Prinsloo 2008).

Following are the Sections which are found in the South African Schools Act:

In terms of Sections 34 (1)-(3), 35, 36, 37 (1-6) (a-d) of South African Schools Act, following are the responsibilities of the State:

The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision. The state must, on an annual basis, provide sufficient information to public schools regarding the funding referred to in subsection (1) in order to enable public schools to prepare their budgets for the next financial year. Norms and standards for school funding of public schools subject to the Constitution and this Act, the Minister must determine norms and minimum standards for the funding of public schools after consultation with the Council of Education Ministers, the Financial and Fiscal Commission and the Minister of Finance.

Responsibilities of governing body:

A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the state in order to improve the quality of education provided by the school to all learners at the school.

School funds and assets of public schools:

The governing body of a public school must establish a school fund and administer it in accordance with directions issued by the Head of Department (HOD). Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund. The governing body of a public school must open and maintain a banking account. Money or other goods donated or bequeathed to or received in trust by a public

school must be applied in accordance with the conditions of such donation, bequest or trust. All assets acquired by a public school on or after the commencement of this Act are the property of the school. The school fund, all proceeds thereof and any other assets of the public school must be used only for:

- Educational purposes, at or in connection with such school;
- Educational purposes, at or in connection with another public school, by agreement with such other public school and with the consent of the Head of Department;
- The performance of the functions of the governing body; or another educational purpose agreed between the governing body and the Head of Department.

Some principles of SASA are:

- o Eliminating poverty through proper education; and
- o Establishing a human rights culture to advance the democratic transformation of society.

Norms and standards for school funding policy

The Minister of Education is given the mandate by the National Education Policy Act (NEPA) 27 of 1996 in terms of Section 3 (4) (c) of determining national policy for financing education. That is why a 'National Norms and Standards for School Funding' is set out in Section 35 of the South African Schools Act (SASA), 84 of 1996. This section sets out the national and minimum standards for school funding, and Section 3(4) (g) of NEPA also states that the Minister may determine national policy for the organization, management, governance funding, establishment and registration of the education system.

Considering both these pieces of legislation, the Minister determined the 'National Norms and Standards for School Funding' as gazetted in October 1998 and this became national policy on 1 April 1999 with implementation in 2000 (Nicolaou 2002; Karisson Mcpherson and Pampallis 2002). The 'National Norms and Standards' thus established funding procedures which promote equity and redress inequity, within a context of inadequate government spending and increasing parental financial support for education. The document sets out the minimum standards for the public funding of public schools, and exempts parents who are unable to pay school fees.

The 'National Norms and Standards for School Funding' require provincial education departments to prioritise the neediest schools when making decisions about capital expenditure, and to provide higher levels of recurrent non-personnel, non-capital funding for schools in poorer

communities. The procedures also provide for governing bodies to give fee exemptions to poorer learners. It does not address educator salaries or provincial education departments' school-level expenditure (Pampallis 2002; Karisson et al. 2002).

The purpose of the procedures is to effect redress and equity in school funding with a view of progressively improving the quality of school education, within a framework of greater efficiency in organizing and providing education services. The procedures indicate the method by which funds are to be distributed according to certain categories. The funding norms recognize that SASA imposes a responsibility on all public school governing bodies to do their utmost to improve the quality of education in their schools by raising additional resources to supplement those which the state provides (Patel 2002).

According to Karisson et al. (2002), to bring about redress of inequity among existing schools, provincial education departments are required to direct 60% of the non-personnel and non-capital expenditure towards 40% of the poorest schools in their provinces. In order to implement this, provinces are required to compile a list of schools based on their socio-economic levels of development and physical resources. This 'resource targeting list' is used to divide schools into five categories based on needs. The framework outlined in Table 1.1 below provides a guideline for the procedure, detailed further below.

Table 1: Resource targeting table based on condition of schools and poverty of communities

<i>School quintiles from poorest to least</i>	<i>Expenditure allocation (percentage of resources)</i>	<i>Cumulative percentage of schools</i>	<i>Cumulative percentage of non-personnel and non-capital recurrent expenditure</i>	<i>Per learner indexed to an average of R100</i>
Poorest 20%	35	20	35	175
Next 20%	25	40	60	125
Next 20%	20	60	80	100
Next 20%	15	80	95	75
Least 20%	5	100	100	25

Source: Government Gazette No. 19347, October 1998

According to quintile grouping of schools, the poorest 20% of schools receive 35% of resources, while the next poorest 20% receive 25%. The next two categories receive 20% and 15%

respectively. The last 20% of schools, which are largely former Model C and former House of Delegates schools which are regarded as least poor, receive 5% of resources. The recurrent cost allocation is used to fund water and electricity bills, maintenance of buildings and the purchase of learning materials equivalent to at least R100 per learner. If provinces lack sufficient funds, priority is given to the poorest schools.

The national norms and standards for school funding deals only with school level expenditure. The norms and minimum standards in the document apply:

- Uniformly in all provinces, and are intended to prevail in terms of Section 146(2) of the South African Constitution; and
- Only to ordinary public schools.

In terms of Sections 36-37 and 39 of South African Schools Act (SASA) 84 of 1996, the norms do not apply to funds raised by ordinary public schools through their own efforts. The national Department of Education is responsible for monitoring the implementation of the norms in terms of Section 8 of the National Education Policy Act (NEPA) 27 of 1996.

According to the 'National Norms and Standards for School Funding' policy of 1998, the Department of Education is required to undertake its monitoring and evaluation role in the following way:

- In a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of education provision and performance.
- Each Head of Department will be expected to verify that the national norms are being complied with in allocating funds, or that acceptable alternatives are being implemented, after consultation with the Department of Education. If the Provincial Education Department is unable to comply with the norms because of lack of expertise or for any other reason, the Department of Education must be informed without undue delay, so that the problem can be examined and remedies sought.
- SASA imposes other important responsibilities on the state with respect to funding of public schools. The basic principle of state funding of public schools derives from the constitutional guarantee of equality and recognition of the right of redress. Section 34 (1) of SASA states that the state must fund public schools from public revenue on an equitable basis in

order to ensure the proper exercise of the rights of the learners to education and the redress of past inequalities in educational provision.

According to the Norms and Standards policy, the Ministry of Education's personnel policy for schools embodies the following principles:

- Schools must be supplied with an adequate number of educator and non-educator personnel;
 - Such staff members must be equitably distributed according to the pedagogical requirements of the schools; and
 - The cost of personnel establishments must also be sustainable within provincial budgets.
- Further according to the policy, in order to make progress towards equity in school funding, each provincial education department must:

- Use relevant provincial data much more intensively in budgeting and planning decisions;
- Develop the necessary data systems to guide planning and allocations; and
- Be able to demonstrate to the Department of Education that progress is being made.

Schools must provide information to provincial education departments. On their part, departments must ensure that information is received on time from schools, so that the necessary analysis can be undertaken, and resource allocation decisions made on time. Provincial Education Departments must annually provide public schools with sufficient information so that the schools' governing bodies can develop their budgets as required by Section 34 of South African Schools Act (SASA) 84 of 1996.

It also deals with the procedures to be adopted by provincial education departments in determining resource allocation to their schools.

No-fee schools

In 2008 the government introduced no fee schools. All public schools which have been declared 'No Fee Schools' must not charge mandatory school fees from any parent, as defined in the South African Schools Act (SASA) as amended. The minimum standard requirement for all No Fee Schools should entail the following (LP, 2001):

- 60% of the total allocation must be spent on curriculum needs;
- Supplementary Learning Teacher Support Material (LTSM) to address the curriculum needs e.g. teaching aids, education toys, charts, science kit;

- Schools must be permitted to use funds for local sporting activities/equipment but this should not exceed 10% of total allocation;
- Schools have to prioritise allocations to pay for the running of the school, i.e all operational expenses, e.g. leasing of copiers, water and electricity, telephone; also including:
 - o Proper security fencing;
 - o Provision of clean water or borehole;
 - o Repair of all broken windows and doors, electrical and gas fittings, filling cracks and painting and other repairs;
 - o Annual servicing of fire equipment;
 - o Eradication of termites and other pests every 3 years;
 - o Quarterly cleaning, weeding and maintenance of gutters, channels and other storm water drains to prevent flood damage to foundations and other facilities;
 - o Annual repairs and maintenance of roofs to prepare for the rain season, treating roof trusses and replacement of gutters;
 - o Annual maintenance of ablution blocks, including the speeding up of digestion in toilets and emptying toilets;
 - o Annual painting and treatment of outdoor equipment to prevent rust damage to metal works.
- Schools could be allowed to erect ablution facilities, provided approval is granted. The department is to assist schools with the specifications for such structures. The norm of one seat per classroom should apply. The allocation for this should not exceed 8% of the total allocation.
- The school allocation may not be used to cover cost of personnel and new buildings, e.g. new classrooms or administration blocks.
- Extra-mural curriculum and choice of subject options must be exercised in terms of Provincial Curriculum Policy.
- Travel claims must be minimized and payments should be as per the SGB approved rates. The transport budget should not exceed 5% of the total allocation with no option of virement (budget shifting).
- Travel claim forms for principals must be authenticated by the Circuit Manager and SGB chairperson before payment can be effected.

DISCUSSION ON UNCONSTITUTION OBLIGATIONS

Considering the Constitution of the Republic of South Africa, National Education Policy Act and South African Schools Act, learners from previously disadvantaged communities were supposed to receive equal and quality education with those who were previously advantaged. It is unfortunate that the discussion below does not give good picture on the provision of quality education.

Ngcukana (2013:12) states that at Nyangilizwe Senior Secondary School in Libode, pupils take turns standing guard for friends outside broken toilets with no doors. At the nearby Ntapane Senior Secondary, the average class size is more than 120 pupils; eight of them cram together at desks designed for three. At Libode's Samson Senior Primary School, deep cracks reveal just how close buildings are to collapse. Schools around Mtata are understaffed with pupils crammed into classrooms empty of furniture and textbooks, crumbling buildings and filthy toilets. There is also no water in these schools. The toilets in Nyangelizwe are smelly. It is hygiene risk. This will surely create sorts of problems for the health of these kids. At Samson Senior Primary School, pupils are taught at in seven mud structures. These structures look like they can collapse at any time. There are cracks on the walls, and roofs are falling apart. All these schools are found in the Eastern Cape Province.

This kind of schools are not found only in the Eastern Cape, most of schools which are found in rural areas all over the country in all provinces are in this kind of conditions which are unbearable. Pupils are crammed in the dilapidated classrooms which are risk to them and their teachers. They still use their laps to support books when writing exercises and tests. This is an indication that there is no respect on the values and constitutional rights of the pupils.

Pupils found in these kinds of schools are discriminated against as schools which are found in affluent areas have got basic needs (water, electricity and adequate classrooms) where education is of quality. Pupils' dignity is being violated. This is because many learners are cramped in one classroom and do not have adequate ablution blocks. Untidy broken toilets which are filthy and having bad smell where learners are queuing is another way of abusing dignity of these pupils. In conditions like this one cannot expect quality education.

The Department of Basic Education is failing and violating the rights of South African learners. This was not supposed to be happening as Govender (2013:10) indicates that billions of rands in

2011 and 2012 financial year have been taken away from the Department of Basic Education because it has taken too long to spend money. This shows incompetency of personnel in strategic position. It has emerged that Treasury has diverted R7.2 billion of the department's schools infrastructure backlogs grant.

The grant was intended to replace impaired schools across the country and provide water, sanitation and electricity. The treasury stepped in because, in the 18 months starting in April 2011, the education department had spent only R451.7 million out of R3-billion which had been allocated to the department to spend over two financial years. Only 19 of 49 in Eastern Cape schools meant to have been finished last year are; in fact, complete (Govender, 2013).

CONCLUSIONS

The Constitution of South Africa which is the supreme law of the country is being breached as learners receive education in almost collapsing classrooms. National Education Policy Act provides the Minister with mechanism of funding. The Norms and Standards funding policy was promulgated in order to determine funding of education, unfortunately since this policy was in place in 1998, it has never changed the situation of rural schools. These schools are still under-resourced, 20 years after democracy. Even no-fee schools are suffering the same fate of not receiving adequate funding. Non delivery of learning and teaching materials, dilapidated classrooms and filthy toilets are violation of human rights of South African learners. Even principles which are enshrined in the South African Schools Act, as human rights of the pupils are not considered by the Department of Basic Education. Under these conditions we realise that constitutional obligation is being undermined and there will never be quality education in South Africa until there is correct implementation of policies.

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