

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

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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 and Education and Ordinary Parliamentary Legislation 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 punishment. 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 gives direction on how education should be offered, and supplementary legislation gives direction on how education should be funded. It directs on who should receive education and how education should be administered and funded for all citizens of the Republic regardless of race, colour, gender or creed. This paper examines whether South Africa, as a state, particularly the Department of Basic Education, is adhering and playing its role and/or its constitutional obligation or mandate in the funding for quality education.

INTRODUCTION

Since 1994, the 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 et al. (2011) call parliamentary education legislation. In this paper, parliamentary education legislation to be discussed is: National Education Policy Act 27 of 1996; South African Schools Act 84 of 1996; Employment of Educators Act 76 of 1998; and South African Council of Educators Act 31 of 2000.

Together with legislation, there are policies and regulations which regulate management and administration of education in South Africa. Discussion in this paper focuses on the obligation of the state and pays attention on the Constitution of the Republic of South Africa, parliamentary education legislation, and the Norms and Standards for School Funding Policy.

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, 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, researchers find Section 9 (3) of the same Constitution more interesting and have perceived it as one of the cornerstones of South African democracy and of education. Notwithstanding the regrettable South African history which has been left behind, schools continue to discriminate against 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. The researchers argue that schools in South Africa are supposed to admit all learners from different backgrounds and diversity, irrespective of the above-mentioned distinctions.

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

Schedule 4 of the Constitution stipulates the functional areas of concurrent national and provincial legislative competence. 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

This section discusses Education legislation, in particular, the National Education Policy Act 27 of 1996. Section 2 of the National Education Policy Act is significant for the following reasons: it empowers the national Minister of Education to determine national education policy in terms of certain principles; and provision of 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 determines national education policy in accordance with the provisions of the Constitution and this Act. When the Minister determines national policy for education at education institutions, he should take into account the capability 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 as part of any provincial law on education, the Minister shall inform the provincial political heads (Members of Executive Council) of education accordingly, and make a specific announcement in the policy instrument to that effect. The Section provides guidelines on how the Minister should consult with the Members of Executive Council of Education in the provinces. The Minister chairs the

committee which is called Ministers and Members of Executive Council (MinMec)

The National Education Policy Act gives the Minister prerogative mandate of determining national policy for the following aspects: planning, provision, financing, staffing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system. Without derogating from the generality of this section, the Minister has to determine national policy for the organization, management and governance of the national education system, facilities, finance and development plans for education. The mandate which the Minister has includes advice to the Financial and Fiscal Commission; learner-educators ratio; the organization, management and governance, funding of education, establishment and registration of education schools; infrastructure, finance and development plans for education.

Section 4 (a) (i) and (iv), (c) and (n) of the Act presents that the policy contemplated in Section 3 is directed toward the progression and protection of the fundamental rights of every person which are guaranteed Chapter 2 of the Constitution. It is also in terms of international conventions which has been ratified by Parliament, and stipulates the right of every person to basic education and equal access to educational 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 determines that the Ministers of Education and Finance should come together as expenditure from State Revenues Fund is involved.

Section 5 of the Act states bodies such as representatives of the organized teaching profession, a national council of college rectors, a national council representative of students and a national council representative of parents in order to: ensure the publication and implementation of the national education policy; and ensure the evaluation and monitoring of education in South Africa.

The South African Schools Act 84 of 1996 (SASA)

The Schools Act preamble states that, SASA aims at unifying all races and ethnic groups by devising uniform norms and standards for the

education of learners in South Africa and build an education system which does not discriminate anyone. The Act contains the most important provisions for the re-arrangement, governance and management of all public schools; the establishment, registration and subsidizing of independent schools as well as conditions for home schooling.

There are other essential principles of the Schools Act which are: to eliminate poverty through proper education; to establish a human rights culture to advance the democratic transformation of society; to ensure respect for, protection and advancement of various cultures and languages which were divided; and to establish that partnership between all stakeholders who have an interest in education, that is, the state, parents, learners, educators and other members of the community in the vicinity of a school (Joubert and Prinsloo 2008). In other words, the Act encourages involvement of all stakeholders such as parents in education.

Below is a discussion of Sections which are found in the Schools Act:

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

The State is obligated to fairly fund public schools from public revenue in order to guarantee proper exercise of the rights of learners to education and to redress the past inequalities in the provision of education. On an annual basis, the state must provide sufficient information to public schools related to funding for the public schools to prepare budgets for the next financial year as stipulated in subsection (1). Norms and standards for school funding of public schools are subject to the Constitution and this Act. Again, the Minister determines norms and minimum standards for the funding of public schools upon consultation with the Council of Education Ministers, the Financial and Fiscal Commission and the Minister of Finance.

Responsibilities of Governing Body

In order to improve the quality of education, a governing body must take reasonable measures to supplement resources that have been supplied by the state.

School Funds and Assets of Public Schools

According to the Act, the governing body of a public school has to establish a school fund

and administer it in accordance with the directive of the Head of Department (HOD). In terms of subsection (3) of the Act, all monies, whether from state or voluntary contributions, must be paid into the school fund. The governing body opens and maintains banking account of public. Money or other goods donated or bestowed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequests or trust funds. All assets which have been acquired by a public school on or after the beginning of this Act are the property of the school. The school fund, all proceeds thereof, and any other assets of the public school are to be used for the following needs of the public school: they should be used for educational purposes, at or in connection with such school; they should be used when there is agreement with such other public school and with the consent of the Head of Department; they should be used for the performance of the functions of the governing body; or they can be used for another educational purpose agreed upon between the governing body and the Head of Department. Some principles of the Schools Act are to: eliminate poverty through proper education and establishing a human rights culture in order to advance the democratic transformation of society.

Norms and Standards for School Funding Policy

The National Education Policy Act gives the Minister of Education mandate to establish 'National Norms and Standards for School Funding' and 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 determines national policy for the organization, management, governance funding, establishment and registration of the education system.

In consideration of both pieces of legislation, the Minister determines the 'National Norms and Standards for School Funding', as gazetted in October 1998, and this became national policy on 1 April 1999 and was implemented in 2000 (Nicolaou 2002) and (Karisson et al. 2002). The 'National Norms and Standards' established funding procedures which promote equality, equity and to redress inequality and

inequity of the past, 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 for their children.

The ‘National Norms and Standards for School Funding’ requires that provincial education departments should prioritize the neediest schools when making decisions about capital expenditure, and provide higher levels of recurrent non-personnel, non-capital funding for schools in poorer communities. The policy also provides procedures also for governing bodies to give fee exemptions to poorer learners who come from poor families. The policy does not address educator salaries or provincial education departments’ school-level expenditure (Pampallis 2002) and Karisson et al. (2002).

The procedures were affected to redress and equity in school funding, for the state to progressively improve the quality of school education, within a framework of greater efficiency in organizing and providing education services. The procedures have indicated the method in which funds are to be distributed according to certain categories (quintiles). The funding norms recognize that SASA executes 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). Even though there is policy in funding, the execution of parents to raise additional funding depends on where the school is situated. The poverty level of parents has to be looked at. The poverty level will determine whether parents are able to raise additional funds for school or not.

According to Karisson et al. (2002), to bring about redress of inequity among existing schools, provincial education departments are required to direct 60 percent of the non-personnel and non-capital expenditure towards 40 percent 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 five categories are known as Quintiles. Schools are grouped or categorized accord-

ing to quintile 1-5. Schools in Quintile 1-3 are regarded as poorest schools and are supposed to receive most funding than schools in Quintile 4-5. Quintile 1-3 schools are found in poor rural areas, whereas most Quintile 4-5 schools are former model C schools and found in urban areas. The framework outlined in Table 1 provides a guideline for the procedure, as detailed further.

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

<i>School quintiles from poorest to least poor</i>	<i>Expenditure allocation (age of resources)</i>	<i>Cumulative age of schools</i>	<i>Cumulative age of non-personnel and indexed non-capital recurrent expenditure</i>	<i>Per learner 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: National Norms and Standards for School Funding (2008)

According to quintile grouping of schools, the poorest (20%) of schools receive 35 percent of resources, while the next poorest (20%) receive 25 percent. The next two categories receive 20 percent and 15 percent respectively. The last 20 percent of schools, which are largely former Model C and former House of Delegates schools, which are regarded as least poor, receive 5 percent 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.

Table 2 illustrates how schools should be funded following the review of National Norms and Standards for School funding. The funding has been illustrated to cover ‘No fee schools’ from 2015 to 2017, taking into account the inflation rate.

The national norms and standards for school funding deals only with school level expenditure. It does not deal with infrastructure of schools or salaries of teachers. The norms and

Table 2: National table of targets for the school allocation (2015-2017)

	2015	2016	2017
Quintile 1	R 1 116	R1 177	R1 242
Quintile 2	R 1 116	R1 177	R1 242
Quintile 3	R 1 116	R1 177	R1 242
Quintile 4	R559	R590	R622
Quintile 5	R1 116	R1 177	R1 242
No fee threshold	R1 116	R1 177	R1 242
Small schools:	R25 843	27 264	28 764
National fixed amount			

Source: 2016 and 2017 figures inflation adjusted CPI projected inflation rate adjusted National Norms and Standards for School Funding (2015)

minimum standards in the policy apply consistently 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 as it is not known on how much schools will raise additional funding. The national Department of Education and provincial departments are 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 the monitoring and evaluation role reasonably, bearing in mind the issue of enhancing professional capacities and capabilities in monitoring and evaluation throughout the national education system, and assisting the competent authorities where necessary, by all practical means, within the limits of available public resources to raise the standards of education provision and performance.

Each Head of Department in all provinces is 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 has to inform the Minister, without postponement, so that the problem is examined and remedied.

SASA has imposed 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 the inequalities of the past. Section 34 (1) of SASA states that the state needs to fund public schools from public revenue on an equitable basis in order to ensure 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. In most cases, schools are still running short of adequate personnel. This might be caused by the lack of adequate funding or wrong prioritization by the state.

Furthermore, 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; the province must develop the necessary data systems to guide planning and allocations; and the province must be able to demonstrate to the Department of Education that progress is being made.

Schools need to provide information to provincial education departments. On their part, departments need to 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. There is also a need to deal with the procedures that are adopted by provincial education departments in determining resource allocated to schools.

No-fee Schools

In 2008, the government introduced no fee schools, which caused National Norms and Stan-

dards for School Funding Policy reviewed in 2014. All public schools which have been declared 'No Fee Schools' are not supposed to charge mandatory school fees from any parent, as defined in the amended South African Schools Act (SASA). The minimum standard requirement for all 'No Fee Schools' should entail the following (LP 2008): about 60 percent of the total allocation must be spent on curriculum needs; there must be supplementary Learning Teacher Support Material (LTSM) to address the curriculum needs such as 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 percent of the total allocation; schools have to prioritize allocations to pay for the running of the school, that is, all operational expenses; leasing of copiers, water, electricity, telephone bills including proper security fencing; provision of clean water or borehole; repair of all broken windows and doors, electrical and gas fittings, filling cracks and painting and other repairs; annual servicing of fire equipment; eradication of termites and other pests every 3 years; quarterly cleaning, weeding and maintenance of gutters, channels and other storm water drains to prevent flood damage to foundations and other facilities; annual repairs and maintenance of roofs to prepare for the rainy season, treating roof trusses and replacement of gutters; annual maintenance of ablution blocks, including the speeding up of digestion in toilets and emptying toilets; and 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 percent of the total allocation. The school allocation may not be used to cover cost of personnel and new buildings such as new classrooms or administration blocks. Extra-mural curricular and choice of subject options must be exercised in terms of the 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 percent 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

The introduction of National Norms and Standards for the School Funding Policy was to address the inequalities of the past by the government. 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. The challenge might be distribution of inadequate resources or providing resources where there is no need. It is unfortunate that the discussion below does not give a good picture on the provision of quality education, as the state is obligated by legislation.

Ngcukana (2013) 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; 8 of them cram together using desks designed for three. At Libode's Samson Senior Primary School, deep cracks reveal just how close buildings are to collapse. Schools around Mthatha 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 Nyangilizwe are smelly. It is hygiene risk. This will surely create sorts of problems for the health of the kids. At Samson Senior Primary School, pupils are taught at 7 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.

These kinds of schools are not found only in the Eastern Cape; they are mostly found in rural areas all over the country in almost all provinces, and these kinds of conditions are unbearable. Pupils are crammed in the dilapidated classrooms which are hazardous 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 basic needs (water, electricity and adequate classrooms) where education is of good quality. Pupils' dignity is being violated, and this is because many learners are cramped in one classroom and do not have adequate ablution blocks. Untidy, broken toilets which are filthy, having a bad smell where learners are queuing, is another form 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 is not supposed to be happening as Govender (2013) indicates that the Department of Basic Education has given away billions of rands in the 2011 and 2012 financial years because it took too long to spend the allocated money. This shows incompetency of personnel in strategic positions. Budget of R7.2 million which was allocated by Treasury to the education department to improve infrastructure backlog has been diverted.

The allocated grant was intended to replace impaired schools across the country and provide water, sanitation and electricity. Treasury Department 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 Education department to spend over two financial years. Only 19 out of 49 Eastern Cape schools, meant to have been built by 2012, were successfully completed (Govender 2013). This is a very unfortunate situation, where officials of the department are unable to utilize allocated funds to improve the conditions of schools. The state has an obligation to fund education. Within its obligation, the state has to employ personnel which has expertise in the position it occupies. Personnel have to have the ability to execute the given mandate in order to improve the quality of education. Researchers are of the opinion that wrong people are in the position of authority and are failing children of South Africa.

CONCLUSION

The Constitution of South Africa, which is the supreme legal framework of the country, is being breached as learners receive education in almost collapsing classrooms. The National Education Policy Act provides the Minister with a mechanism of funding. The Norms and Stan-

dards School Funding Policy was established in order to determine funding of education. Unfortunately, this policy has been in place 1998 but has never changed the situation of rural schools. These schools are still under-resourced, and 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 a violation of human rights of South African learners. Even principles which are enshrined in the South African Schools Act, such as human rights of the pupils, are not considered by the Department of Basic Education. Under these conditions, the constitutional obligation is being undermined, and there will never be quality education in South Africa until there is correct implementation of policies.

RECOMMENDATIONS

The Education legislation regulates the way in which education should be administered and managed. The Department of Basic Education, out of the annual allocated budget, must be able to allocate fees to all schools. No-fee schools should be allocated a budget which does not need any additional funds from parents, as stipulated in the policy. Of critical importance is to employ personnel capable to deliver (implement) the policy at all strategic areas. The Department of Basic Education should be able to make use of the budget allocated. Inability to make use of allocated budget is undermining the state's obligation in providing quality education to its citizen. The Minister must be able to understand his/her role in terms of Section 3 (1)-(4) (c) of National Education Policy Act as well.

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