International Developments

The Effect of Post-Apartheid Education Laws and Education Policies in South Africa

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Abstract

The education system in South Africa has undergone far-reaching changes since 1994. Despite the legislative and structural changes initiated to conform to the new Constitution, numerous socio-economic challenges remain. Various education laws and education policies have emerged to ensure that a new national education system which would redress past injustices in educational provision and provide education of high quality for all learners. The *South African Schools Act*, 1996 strives to provide for a uniform system for the organisation, governance and funding of schools by, amongst other aims, setting uniform norms and standards for the education of learners.

The making of education policy in South Africa is best described as a struggle for the achievement of a broad political symbolism that would mark the shift from apartheid to post-apartheid society (Jansen, 2000: 6). Most of the education policy-making demonstrates the state's preoccupation with settling policy struggles in the political domain. In other words, many education policies are not very practical.

This paper examines whether the *South African Schools Act*, 1996 and the new education policies contribute to the development of all our people's talents and capabilities, advance democratic transformation of society, and combat racism and sexism and all other forms of unfair discrimination

Despite the noble goals for social and educational change, we must recognise that education cannot change society or on its own produce national development. Vesting such hopes in education are bound to lead to disillusionment. The role of schools should be both to assist the achievement of wider goals of social justice, equity and democracy and also to develop the intellectual abilities and social values of students.

Introduction

South Africa is a society that has witnessed remarkable changes. It has moved from being an authoritarian, undemocratic, racially segregated society in which economic power was in the hands of a few, to a more open and inclusive society. In particular, the changes in the field of education have been remarkable and spectacular. Since the democratic elections of 1994, the restructuring of

the education and training system has been one of the top priorities of education authorities. The challenge faced by the post-apartheid government was to create a just and equitable education system, which provides good quality education and training to everyone throughout the country.

Most significantly, section 29 of the *Bill of Rights*, which forms part of the *Constitution of the Republic of South Africa*, 1996, guarantees the right of everyone to

(a) a basic education, including adult basic education; and

(b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

To start the process of transformation of education, the Department of Education and Training published a number of policy documents with the aim of restructuring the education system. The *White Paper on Education and Training* (1995) described the first steps in policy formation taken by the Minister of Education in the Government of National Unity. The values and principles of the education and training policy in this White paper were derived from the *Interim Constitution of the RSA* (1993). Both the Interim and the final Constitution of the RSA, 1996, define the individual and collective rights of all South Africans. For example, section 29 of the Constitution of 1996 guarantees education for everyone in South Africa. These educational rights are to be exercised in democratic institutions, among a population of considerable economic, racial and cultural diversity.

Despite the legislative and structural changes initiated to conform to the new Constitution, numerous socio-economic challenges remain. Various education laws and education policies emerged to ensure that a new national education system which will redress past injustices in educational provision and provide education of high quality for all learners.

Education Acts and Policies for the Transformation of Education in South Africa

The Mandela administration unleashed profound forces of democratisation, which left a significant imprint on the South African education system. The *Interim Constitution* in 1993 and the final *Constitution of the Republic of South Africa* in 1996 enshrine the rights of all people in South Africa, and affirm the democratic values of human dignity, equality and freedom. On 27 July 1999 Prof. Kader Asmal, Minister of Education said: 'I was told by everyone that I met that we have created a set of policies and laws in education and training that are at least equal to the best in the world…'

The six years of democracy in South Africa have brought a most impressive compendium of education laws and policies. In the process of education reform, since 1994, various commissions, task teams and committees have been appointed to investigate critical aspects of the education system in South Africa. The reports of these commissions formed the basis the White Papers on Education.

Education White Paper 1: Education and Training in a Democratic South Africa (March 1995)

The *White Paper on Education and Training* (1995) sets out the fundamental policy directions, values and principles for the education system in accordance with the Constitution. Important directives emphasised in this document include an integrated approach to education, an outcomes-based approach, lifelong learning, access to education, equity, redress and transformation of the legacies of the past (Mothata, 2000:6).

It was clear from this White Paper that the new government aimed to transform education to a unitary, non-racial, non-sexist and equitable system of sustainable quality (Manganyi, 2001:30). In the first place the nineteen different education departments were replaced by a unitary, non-racial system operated by nine provincial departments of education management and administration. Without regard to race, class, religion of language, South African children and university students were brought under one roof (Manganyi, 2001:25).

In its statement of Values and Principles of Education and Training Policy, White Paper 1 advocates that the curriculum must be diversified in order to prepare young people and adults with the education and skills required by the economy and for further training and career development. As a result a new curriculum policy, as a direct response to the pedagogy of apartheid, was developed. The new curriculum sought to replace teacher driven education with learner-centred pedagogy.

The Department of Education (2001) has stated that Curriculum 2005, which is synonymous with outcomes-based education, is envisaged for general education as a move away from a racist, apartheid, rote-learning model of learning and teaching to a liberating, nation-building and learner-centred outcomes-based one. In line with training strategies, the re-formulation is intended to allow greater mobility between different levels and institutional sites, and the integration of knowledge and skills through 'learning pathways'. Its assessment, qualifications, competency, and skills-based framework encourages the development of curriculum models aligned to the National Qualifications Framework (NQF) in theory and practice. Curriculum 2005 was introduced in Grade 1 in 1998.

In 1996 the *National Education Policy Act*, (NEPA) 1996 was promulgated to provide a vehicle for the creation of opportunities for public participation in the education policy-making process. The NEPA of 1996 was designed to inscribe in law the policy, legislative and monitoring responsibilities of the Minister of Education and to formalise the relations between national and provincial authorities. It established the Council of Education Ministers (CEM) and Heads of Education Departments Committee (HEDCOM) as inter-governmental forums to collaborate in building the new system, and provided for the determination of national policies in general and further education and training for among others, curriculum, assessment, language policy and quality assurance. (Department of Education, 2001:4).

White Paper 2: Organisation, Governance and Funding of Schools (1996)

Considerations like parental rights, public and independent schools, the governance policy of public schools, roles and responsibilities of public school governing bodies, employment of

teachers, and education for learners with special needs are some of the issues addressed in this White Paper. This White paper formed the basis of the South African Schools Act, 1996 (SASA). The main purpose of the South African Schools Act 1996, is to provide for a uniform system for the organisation, governance and funding of schools. A further aim of the SASA is to promote access, quality and democratic governance in the schooling system. It is drafted to ensure that all learners have the right of access to quality education without discrimination, and makes schooling compulsory for children aged between 7 and 15 years. It provides for two types of schools independent schools and public schools. The school funding norms outlined in SASA prioritise redress and target poverty in funding allocations to the public schooling system (Achievements since 1994: Department of Education, 2001:5). The Act further strives to uphold the rights of all learners, parents and educators, and to promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State.

White Paper 3: A Programme for the Transformation of Higher Education (1997)

This White Paper is the culmination of a wide-ranging, extensive process of investigation that was initiated with the establishment of a national Commission for Higher Education in 1995. The Paper discusses the needs and challenges of higher education such as the inadequate distribution of access and opportunity for students, the mismatch between output and the needs of a modernised economy, student financial support and the governance of higher education. This White Paper formed the basis for the *Higher Education Act*, 1997. The White Paper has also led to a range of other legislation, including the *Employment of Educators Act*, 1998 to regulate the professional, moral and ethical responsibilities and competencies of teachers. The historically divided teaching force is now governed by one Act of Parliament and one professional council – the South African Council of Educators (SACE).

The *Higher Education Act*, 1997 makes provision for a unified and nationally planned system of higher education and creates a statutory Council on Higher Education (CHE) which provides advice to the Minister and is responsible for quality assurance and promotion. This culminated in the *National Plan for Higher Education* in 2001. This National Plan aims to establish a single co-ordinated higher education system, to restructure and transform programmes and institutions to respond to the human resource, economic and development needs of South Africa and to ensure representative and equal access (Mothata, 2000:12).

Education White Paper 4 on Further Education and Training (1998) and the National Strategy for Further Education and Training (1999-2001)

The fourth White Paper provides the basis for developing a nationally co-ordinated further education and training system, comprising of the senior secondary component of schooling and technical colleges. It requires that further education and training institutions, created in terms of the new legislation, develop institutional plans, and provides for programme-based funding and a national curriculum for learning and teaching.

The *Adult Basic Education and Training Act*, 2000 provides for the establishment of public and private adult learning centres, funding for ABET provisioning, the governance of public centres, and quality assurance mechanisms for the sector.

Implementation of Post-Apartheid Education Acts and Policies

Policy Capacity and Implementation Realities

John Welton (2001:174) has reflected on the severe capacity constraints for the implementation of new education acts and policies. He has argued for a more focused approach to training and has underlined the fact that human resource development is crucial for successful policy change. It is a fundamental aspect of education that people learn in the way they have been taught. Similarly, they learn to teach in the way they have been taught. Many of the South African teachers, principals and staff report that they lack role models for the new paradigms of management, teaching and learning. They feel disempowered, de-skilled and deprived of professional esteem and status by the pressure they experience as a result of the drastic and rapid transformation of the education system. The far-reaching programmes of policy-making and legislation need to be accompanied by a strategy for implementation, which includes a major programme of re-skilling and re-empowerment. In their absence, policy statements seem to be no more than hopes and dreams.

Implementation of the *South African Schools Act* 1996

Looking back at the five years that have passed since the promulgation of the *South African Schools Act* this paper reflects on the implementation and the effect this Act had on the transformation of the South African school system.

The preamble of the act clearly states that the SASA strives:

- towards the achievement of democracy and
- a new national education system that will redress past injustices in educational provision;
- to provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities.
- to advance the democratic transformation of society,
- to combat racism and sexism and all other forms of unfair discrimination and intolerance,
- to contribute to the eradication of poverty and the economic well-being of society,
- protects and advance our diverse cultures and languages.

Capacity building and empowerment are essential principles to support such policies for the development and transformation of education systems, (Ngcongo & Chetty, 2000:72). Community participation in educational affairs engenders psychological and social satisfaction among its individuals. Once individuals are sufficiently empowered they will be capable of making sound judgments about the development, utilisation and management of resources.

The achievement of democracy and a new national education system

The state's intention to devolve substantial management powers to schools is enacted in the SASA. Section 15 of the Act declares that all schools are juristic persons with legal capacity to perform their functions in terms of the SASA. This includes, for example, the exercise of control over school funds and assets.

Changes are also reflected in school management structures. The education system has transformed from a system of domination and dictatorship to one of democracy and participation. Thus, members of a school's governing body must be democratically elected by the very people that they will represent (section 23) and must provide reasonable representation for each category (section 28). A key question in assessing the success o changes, is whether these governing bodies have the necessary competence in promoting redress, equality and democracy? In the majority of the nine provinces in South Africa, 60 percent of the parents had not completed primary education (Department of Education, 2000:8). Beckmann, (2000:5) reports that such parents generally are not able to play the role envisaged in the SASA. He reports that in many cases school governing bodies have not been properly formed or are not functioning effectively. His statements are confirmed by the very fact that the *Education Laws Amendment Bill* of 2001 has been introduced. This Bill seeks to amend the SASA 1996 on issues such as the functions of governing bodies. The Bill allows for the intervention of the Head of Department in cases where the governing body is unable to perform any of its functions. The Bill also proposes serious limitations on the future management of school funds in response to experience since the introduction of the SASA management scheme for schools.

The provision of an education of progressively high quality for all learners and the development of all our people's talents and capabilities

Section 3 of *South African Schools Act*, 1996 provides that every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such a learner turns seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first. This responsibility is a common feature of education legislation in common law jurisdictions such as Australia.

The first major curriculum statement of the democratic government is called Curriculum 2005. This curriculum reconceptualises the nature of learning and teaching through the adoption of an outcomes-based system. From the start the process of implementation of Curriculum 2005 has been attended with difficulties. Many of these difficulties are linked to the wider, immediate post-election context of social change and policy formation in which Curriculum 2005 emerged.

In June 2000 the National Department of Education launched its policy on Whole-School Evaluation, *Working Together to Build an Education & Training System for the 21st Century*. This policy introduces an effective monitoring and evaluation process that is vital to the improvement of quality and standards of performance in schools. A Review Committee is currently undertaking a substantive review of the new curriculum and its implementation. Undue haste and unrealistic deadlines have led to serious problems regarding the implementation of the new curriculum. Lack of resources, infrastructure conditions of teaching and learning, pressure in the form of policy and

inadequate and timeous information and training are key issues of concern in relation to the review.

The goals of providing high quality education to everyone and developing everyone's talents and capabilities are directly linked to the organisation, governance and funding of education. The notion of quality is understood as the need to ensure that learners have access to educational opportunities and resources. The *Education for All 2000* assessment document indicates that the goals have not yet been reached as:

- the Learner-educator ratio exceeds 40 in primary schools
- 24% of primary school educators are not appropriately qualified
- 17% of Grade 4 learners have repeated one or more grades
- Nearly half of the schools have no running water, electricity or proper sanitary facilities
- The general performance of South African primary school learners is poor. Numeracy being the poorest, the average score being 30% (Department of Education, 2000:1-3).

In the new education system quality is also used as a value-orientation alongside principles such as non-racism and restructuring of education. The concept of quality education is also linked to the particular kind of education that the parents can afford as payment of fees are required under the legislation. Sections 39 and 40 of the SASA provide that school fees are determined by the majority of parents of a school and parents are liable to pay the school fees. The quality of education therefore, depends on where the child attends school. Although the SASA strives to transform education from a racially unequal and segregated system to a national system which provides quality education for everyone, the SASA legitimises new forms of subtle class-based, rather than race-based, inequalities (Jansen, 2001:262).

Combating racism and sexism and all other forms of unfair discrimination and intolerance

Co-operative governance is one of the most important democratising principles underlying the South African constitutional framework and education system. The *South African Schools Act*, 1996 has given formal legal effect to the establishment of democratic structures for school governance in Sections 20 and 21. Co-operative school government rests on the principle of shared decision making and requires active participation of all stakeholders.

South Africa is enmeshed in a matrix of race, class and gender social relations. Transformation of education is one way to address and overcome obstacles perceived to impede the achievement of equity, and so, in the name of affirmative action, processes have been instituted to accelerate the representation of previously underrepresented communities. How far co-operative governance will succeed depends on a number of factors. One of the concerns about the implementation of the provisions regarding school governing bodies in the SASA is the issue of expertise and availability of parents to serve on the school governing bodies.

The Constitution of the RSA reinforces its commitment to equality and human dignity by spelling out an aversion to discrimination on the basis of race and gender. And yet the situation in South African schools (according to the South African Human Rights Commission, 1999) is far from complimentary. The South African Human Rights Commission (SAHRC) published a report

in October 1999 on 'Racism, racial integration and desegregation in South African public secondary schools'. The document combined reports on research and the conference on racial integration in schools, held in March 1999. Some of the recommendations made by the SAHRC are:

1. That the Departments of Education take immediate action in cases of racist practices taking place in schools.
2. The establishment of a body to address racism in education
3. The establishment of a body to address racism in education.
4. The development of anti-discrimination policies in schools.
5. Anti-discrimination training programmes in schools.
6. Anti-racist training programmes for educators
7. School clustering
8. The critical examination of education policies, legislation and implementation.

Speaking at the conference on racial integration in schools, Pityana (chairperson of the SAHRC) said schools should be places where tolerance is learnt, prejudice challenged and better human relationships constructed. A national, integrated system of education, founded on these principles, requires a commitment from national, provincial, regional, district and circuit levels of governance to assume collective responsibility for the transformation of education. Unfortunately, it appears as if the Human Rights Commission is approaching its task in a manner that emphasises anti-racism activities and excludes a proper consideration of the possibilities of the process of reconciliation. What is lacking in this area is collective accountability to ensure that all stakeholders in education understand the implications of implementing a human rights culture in education. Transformative policies, including those for school management and governance need to emphasise the balancing of duties necessary where individuals exercise their rights.

Protection and advancement of diverse cultures and languages

The *Constitution of the RSA* approves the recognition of diversity regarding culture, language and religion directly and indirectly (e.g. sections 6 (languages), 15 (freedom of religion, belief and opinion), 16 (freedom of expression), 9 (equality), 29 (education), 30 (language and culture) and 31 (cultural, religious and linguistic communities)). This is a reaction against the apartheid era in South Africa, when the divisions between communities were based mainly on race. The challenge in a non-racial education system is to find a balance to accommodate the language, religious and cultural rights of both society and individuals.

The SASA provides that the governing bodies o schools should:

- determine the admission policy of schools, without discriminating against anyone (section 5)
- determine the language policy of schools without practising any form of racial discrimination (section 6)
- determine the rules for conducting religious observances at schools, without forcing learners and members of staff to attend these observances. (section 7).

There are some constraints in the implementation of these provisions in educational institutions. In 1997, 72 percent of schools (95% of these Black) were uni-racial and 28 percent were multi-racial. (Department of Education, 2000:6). Some uni-racial schools are attended by learners belonging to the same ethnic group and therefore speaking the same language and belonging to the same religious group. However, most of the uni-racial schools situated in cities are attended by learners from diverse ethnic groups, speaking different languages and belonging to diverse religious groups. It appears that the language of instruction is being used as an instrument of power by the ruling political party. English is becoming the language of education, to the detriment of other languages. (South Africa has eleven official languages recognised by the Constitution). A process of assimilation which ignores the language, religion and culture of parents could lead to possible alienation between parents and children. Political agendas of various sorts are still evident in educational institutions and there is still a high level of mistrust and suspicion among the various peoples in South Africa.

Conclusion: The Effect of the Laws and Policies

Everyone wants to believe that new education laws and education policies are intended to bring about serious changes in a country. We all have a deeply held sense that a government means what it says in its new policies and assumes that what policy intends will happen within schools and classrooms. We all assume that policy moves logically and naturally from intention to realisation and that policy is devoid of politics and of conflicting power struggles.

Jansen (2001:272) has claimed that the making of education policy in South Africa is best described as a struggle for the achievement of a broad political symbolism to mark the shift from apartheid to post-apartheid society. Looking at the prominence assigned to the symbolic value of policy rather than the implementation thereof, one has to agree with Jansen. Again referring to the set of policies and new education laws developed by the South African government within a span of three years there is little evidence of successful implementation of these laws and policies. The media constantly reports on schools, educators, principals, governing bodies and departments of education involved in legal wrangles and actions which result from their inability to translate official version into contextual reality. Blame is constantly shifted from provinces to education departments to governing bodies without providing insight to the national policy-making and planning processes.

It seems as if policy implementation receives very little attention by the government. Where policy making and planning for the implementation thereof are strongly connected, one would expect implementation plans following immediately after the policy announcement. White Paper 2 aimed at addressing a uniform system for funding and governance of schools. Overseas consultants played a crucial role in developing new education policies in South Africa. An example is that of finance specialists who influenced the school funding policies. Implementing the provisions on school funding in the SASA has left the schools (especially the previously disadvantaged ones) destitute in their eagerness to match policies with practice. The functions allocated to governing bodies in sections 20 and 21 of the SASA require high levels of literacy and relevant expertise. On the issue of school funding, the Schools Act places a definite duty on and

responsibility on governing bodies to raise money, establish a school fund, prepare an annual budget, enforce the payment of school fees and to keep financial records (Sections 36 –44). In many areas the level of unemployment, poverty and illiteracy among parents make implementation of this law an impossible task.

Education White Paper 1 envisaged education and training in a democratic South Africa. One of the earliest tasks of the first democratic government was the building of a national platform for an integrated education system. The emphasis of government on the political symbolism of policy is expressed through the heavy attention paid to formal participation in the policy process irrespective of the final outcome. The ANC, other working groups, and hundreds of representatives spent an enormous amount of time on the policy development process.

The shift in policy thinking was mostly about the redistribution of the available funds for education. Political intervention and new education laws and policies do not redress past injustices in educational provisions and provide education of high quality for all learners. Despite the noble goals for social and educational change, we must recognise that education cannot change society or on its own produce national development. Vesting such hopes in education are bound to lead to disillusionment. The role of schools should be both to assist the achievement of wider goals of social justice, equity and democracy and also to develop the intellectual abilities and social values of students.

Keywords

Human rights of children; education policy; education legislation.

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