

**CHILDREN’S RIGHTS TO EDUCATION IN SOUTH AFRICA TWENTY YEARS AFTER DEMOCRACY: A REFLECTION ON ACHIEVEMENTS, PROBLEMS AND AREAS FOR FUTURE ACTION**

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**ABSTRACT**

Education is the most powerful weapon that can be used to change the world. These noble words by Nelson Mandela provide a yardstick against which South Africa can measure whether the rights of the child, key of which is the right to education, are progressively being realised. Towards this end, education is seen as the ultimate foundation and solution for the attainment of freedom, democracy and human rights; social justice and equality for South African children. Thus, the question remains: after more than twenty years of democracy, to what extent can South Africa pride herself of having achieved this noble goal? This article reflects on the national effort to realise the rights of children to education against the frameworks provided for in international and regional instruments. The latter require governments’ commitment to ensure that the rights of children to education in particular, are implemented and respected. An analysis will be made on how the new democratic government has succeeded to reverse the discriminatory policies, law and practice of the apartheid era. It further discusses how the existing education system translates the attainment of children rights to education in terms of the standard and quality of teaching and learning; existing school facilities; racial segregation; human and financial resources; and safe school learning environment. The article concludes by identifying measures that need to be taken by all stakeholders in order to promote the realisation of children’s right to education.

**Keywords:** Children’s rights; education; democracy; human rights; equality

## INTRODUCTION



Globally, the right to education continues to be given undivided attention due to its importance in promoting global progress and advancement. Today education is seen as a human rights issue. It is regarded as the formal process by which society conveys its accumulated knowledge, skills, customs and values from one generation to another (Churr, 2015). Education provides people with dignity, self-respect and self-assurance, and is an important basic human right on which the realisation and fulfilment of other rights depend (Oosthuizen & Rossouw, 2001). Since the advent of democracy, the discourse on children's rights has focused on the realisation of the imperatives enshrined in the Constitution of the Republic of South Africa of 1996 and in the Bill of Rights with a particular expression of children's rights (South Africa Constitution, 1996; Abrahams & Matthews, 2011). The Constitution of South Africa reigns supreme and the "best interest of the child" form the cornerstone of this legislation as highlighted in Section 28(2) (Power, 2015). One such right, is the right to education which is the focal point of this paper.

The first part of the paper gives a definition of the right to education. This is followed by brief background of the education system in South Africa during the apartheid era. An outline of the education system after gaining democracy is discussed, together with international, regional and national legislations which South Africa has acceded to in showing its commitment towards the right to education. The review also discusses if race blindness has been redressed at policy level and if the current education system translates to the right to education. The review suggests that apartheid legacies that subsists within the education system largely contribute to a continuation of profound inequalities and access to schooling, especially for those learners in rural and township schools. It ends by recommending that the government should tap on pockets of good practices from other countries on how to reduce the disparities in schools. There is need to revisit the sturdy domestic legal framework that establishes the responsibilities of the state to promote the right to education for all children as this may assist to expunge the relics of the apartheid legacies that continue to torment the classroom setting of South African schools in the 21<sup>st</sup> century.

## **DEFINITION OF THE RIGHT TO EDUCATION<sub>x</sub>**

For the purposes of this review, it is important that we define what is meant by right to education. We shall use the definition provided for by Universal Declaration of Human Rights of 1948 in Article 26 which states:

- a) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages, Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally available on the basis of merit.
- b) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial and religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- c) Parents have a prior right to choose the kind of education that shall be given to their children.

In addition the definition of the right to education as stated in Article 1 of the Convention against Discrimination in Education (UNESCO) of 1960 will also be adopted. This convention clearly states that the term discrimination includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose of nullifying or impairing equality of treatment in education.

## **A FLASHBACK OF THE EDUCATION SYSTEM IN SOUTH AFRICA PRIOR TO 1994**

An extrapolation of the apartheid era cannot not be ignored in the South African history prior 1994. The education system in South Africa comprised of a complex history which is imperative as it offers circumstantial information pertaining to the evolution of children's rights in the country. Firstly, children's rights were grossly violated including those of their right to education and human rights (Clark & Worger, 2016). During apartheid, education was the antithesis of race blind. The distribution of school funding was skewed between the racial groups and became even more unevenly allocated throughout the first half of the twentieth century (Moodley, 2004; Spreen & Vally, 2006). If an institution wanted to receive financial aid it had to register and the government decided upon the school syllabus that would be used. Thus, the enactment of the Bantu Education Act 47 of 1953 was to ensure that "African education should be inferior to that of white education and that Africans should only be trained to become unskilled labourers". This ensured that the education system then comprised of:

- a) Nineteen district racially based departments, each serving racially different learners and funded differently;
- b) Funding for whites was ten times that of blacks learners;
- c) Provision for education was unequal through:
  - Resources allocation – human and financial;
  - Policies;

- Curriculum Design;
- Infrastructure; and
- Teacher qualifications (Hyslop, 1999).

In addition, Mestry (2014) advances that, during apartheid, there was high teacher-learner ratio in black schools at 1:39 as compared to white schools which had a teacher-learner ratio of 1:18. Mestry further advances that by 1994, the state's annual per capita expenditure for learners from the most advantaged schools showed stark differences as compared disadvantaged schools. Thus when the apartheid era came to an end, one of its major priorities in South Africa was the immediate redress of the prevailing disparities within the education sector.

### **A NEW DAWN – A NEW ERA: SOUTH AFRICAN EDUCATION SYSTEM**

When Nelson Mandela came into power, one major task of the new democratic government was to re-construct and re-organise the South African education system. The South African Schools Act (SASA) (Act No. 37 of 1997) catalysed by the Bill of Rights and the Republic of South African Constitution of 1996 formalised the process of desegregation of schools. As a result of these legislative and constitutional measures, the public schooling system in South Africa underwent radical changes and the old system was dismantled to give way to a restructured system responsible for policy frameworks, norms and standards and monitoring and evaluation (Christie, 2006). This meant the language of equity and redress was not only given precedence but in the process, it was critical for the government to be transparent towards:

- Financing and how administration of the system and schools would be conducted;
- Steps taken to work against the fundamental inequalities of the apartheid systems;
- What and how to teach in the new system;
- Identifying the assessment and accreditation criteria to be adopted;
- Identifying professional development strategies of the educators (Chisholm, 2012; Christie, 2006).

This created the opportunity for students from diverse cultural backgrounds to attend public schools of their choice. At the centre of this was the Constitution of RSA which provided the basis for transformation and development within the education system with the focus on:

- policy reform through de-racialising schools;
- Development of new curriculum to replace the apartheid ideology; and
- Implementation of new funding system.

The new government hoped that this would assist and, as the preamble of the Constitution states, to:

- heal the divisions of the past;
- establish a society based on democratic values;
- promote social justice and fundamental human rights;
- Improve the quality of life and free the potential of all citizens.

To this end, and in line with the preamble of the Constitution, it was critical that State measures be implemented in order to ensure that recompense is brought about through adoption of policy measures, treaties and conventions that talk to the right to education. Therefore, *The Universal Declaration of Human Rights (UDHR) of 1948*, became the most basic and acceptable international instrument adopted by South African government. Though the UDHR is not a legally

binding treaty, it has since its inception inspired the adoption of a wide range of international conventions that are legally binding to state parties and South Africa has committed itself to a number of these instruments, as will be highlighted below.

## **INTERNATIONAL AND REGIONAL CONVENTIONS THAT TALK TO THE RIGHT TO EDUCATION**

Research by Sloth-Nielsen and Mezmur (2006) highlights that the rights of children are legally defined in international and regional human rights treaties and conventions, and country-specific legislations. The Office of the High Commissioner for Human Rights (1989) further adds that the extent to which international instruments and laws are able to improve the lives of children across the world is dependent on the degree to which State parties implement them and adopt domestic measures to comply with the relevant obligations. Below are some of the conventions that South Africa has acceded to that are central to promoting the right to education:

- The International Covenant on Civil and Political Rights (ICCPR)[1966]; *Articles (7,18,19 and 22)*;
- The International Convention on Economic, Social and Cultural Rights (ICESCR) – *Article 13 (1)*;
- The Convention Against Torture (CAT)[1984];
- The Convention of the Elimination of All Forms of Discrimination against Women (CEDAW)[1979];
- The Convention on the Rights of the Child (CRC)[1989]; *Section 29*;
- The African Charter on Human and Peoples' Rights (ACHPR also known as the Banjul Charter)[1981]; *Article 18(3)*;
- The African Charter on the Rights and Welfare of the Child (ACRWC)[1990].

Once ratified, these instruments are legally binding and form the basis for the legal protection of human rights namely: civil and political rights; economic, social and cultural rights and group rights. Education is embedded in all these rights, in particular the promotion of rights of children and their right to education. On the other hand, the education system, in line with the aforementioned instruments has also adopted and implemented a number of policies to promote, redress all forms inequalities and ensure that the right to education in South African schools is upheld.

## **PROGRESS IN POLICY AND CURRICULUM IMPLEMENTATION OF THE EDUCATION SYSTEM SINCE 1994**

The White Paper on Education and Training of 1995 was implemented to serve as a principal reference point and to set new ground rules for the restructuring; transformation; and development of new policies of the education system in South Africa (Department of Education, 1995). These policies were centred on non-racism and equal rights and were embedded on three critical factors – commonalities; reconciliation; and inclusion (Christie 2006). Most importantly, these were formulated and implemented by tapping on the best practices with a vision that South African learners would also be competitive at the international and regional level. The following policies

have since 1994, also played a huge role in promoting and protecting the right to, in and through education. These are:

- South African Schools Act, No 84 of 1996 (SASA);
- National Education Policy Act of 1996 (NEPA);
- Multilingual Educational Policy (DoE, 1997);
- Curriculum policy (DoE, 1997);
- Employment of Educators Act, No 76 of 1998;
- The Children's Act No 38 of 2005;
- South African Council for Educators Act, 31 of 2000;
- No-fee Schools Policy (2006);

**(i) Have we redressed race-blindness and the Right to Education for all at policy level?**

A glance at the foregoing policies that have been implementation towards the right to education for all learners since 1994, it can be argued that there is no doubt that between 1994 to date there have been numerous attempts to modernise and transform the education system. These have included radical changes to language policy; curriculum and assessment; funding; enrolment; pro-poor programmes; teaching qualifications and staff development programmes; learner throughput; infrastructure and resources (both human and financial). Each attempt has been drawn from pockets of best practices in the international and regional domain of education and customised to fit the education system and experience of South Africa. For instance the foregoing views are backed by Tomasevski in 2002 who stated that it was critical after apartheid era to guarantee that the education system in South Africa would not be treated as a financial hub but as a means to curb institutionalized racism *vis-a-vis* promoting the right to education of all learners.

As a consequence, a number of African students flocked historically white schools. This move was also coupled with the fact that there were inherent beliefs that these schools offered quality education, were better resourced and with better qualified teachers. For instance, a majority of teachers had completed their initial training through a segregated education system, with the understanding that they would be teaching students from a particular race group (Macha & Kadakia, 2017). In addition, most of the African learners who flocked to historically white schools had no choice but to commute to and from the townships. Thus, though there was evidence of a water tight constitutional foundation (Grossen, Grobler and Lacante, 2017), it was clear that the tenacity of structural inequalities were and still are deeply entrenched. This is a clear indication that not all children in South Africa from all races have the right to education neither in practice do they have equal access (Moodley, 2004). Moreover, the extant literature further suggests that: there still exists a wide divide between the qualities of education provided in rich compared to poor schools; racial discrimination is still rife, and many schools lack of resources - both human and financial (Christie, 2006).

For instance, the Education Policy Unit in 2002 found out that the implementation of user fees did not only exclude poor black people from penetrating historically white schools but also meant that the richer white schools had more qualified teachers and a wide choice of subjects for learners to choose from. This was and still is completely opposite for most of the township and rural schools where teacher to learner ratio continues to be high with insignificant funding (Marishane, 2017). For instance, the National School Register of Needs Survey showed that 27%

of schools had no running water; 80% had no libraries and 78% had no computers (Department of Education, 2001a). In May 2011 a report published by the national Department of Basic Education (DoBE) highlighted that little had changed since year 2000. The report showed that of the 24 793 public ordinary schools:

- a. 3 544 schools still had no electricity, while a further 804 had unreliable electricity source;
- b. 2 401 schools had no water supply, while a further 2611 schools had unreliable water supply;
- c. 913 schools did not have any ablution facilities, while 11 500 were still using pit latrines;
- d. 22 938 schools had no stocked libraries, while 19 541 did not even have space for a library;
- e. 21 021 schools did not have any laboratory facilities, while 1 231 schools had stocked laboratories;
- f. 2 703 schools had no fencing at all; and
- g. 19 037 schools had no have a computer centres (Legal Resources Centre, 2013).

In a report issued by South African Human Rights Commission, it emerged that over half a million learners were being taught in conditions that seriously undermined the right (to, in, and through) education as provided in the Bill of Rights (section 27(1) and 29(1) (South African Human Rights Commission 2004). The foregoing views are supported by Arendse (2011). In addition, the South African Human Rights Commission estimated that by 2004, nearly 16% of the children in South Africa aged 6 – 14 years were not in school. While as far back as 2005 it was highlighted that there was a shortage 57 000 classrooms. By 2018 the same problem was still in existence particularly in the Limpopo and Eastern Cape Provinces. Thus these province still have a lot of mud and wood schools (See Figure 1 and 2) and poor resources in township and rural schools are still the order of the day. Thus Figures 1, 2 show the enduring infringement of human rights and infrastructural disparity in South Africa schools. These stark differences exist in the same country, province and town in some cases.

According to a study done by Ndimande (2012) learner ratio is worse off than what it was during apartheid era with most schools having a ratio of 1:50 (or more). Sadly by 2013, the situation had not changed, 93% of its schools did not maintain proper school libraries and 95% did not have science facilities while, only half of South African's schools having water and sanitation;. In 2019 during the State of the Nation Address (SONA 2019), President Ramaposa revealed that the country had implemented the Sanitation Appropriate for Education (SAFE) after identifying 4 000 schools that had improper sanitation (Figure 4 and 5). However, the statistics given during SONA were not commensurate with figures given by DoBE, namely that by March 2018 there were a total of 23 471 public schools and 8 679 had pit latrines. These pit latrines had led to loss of life and severe injuries of learners, with some cases backdating to 2007 whereby the dignity, health, security, right to light and the best interest of the child were compromised, a clear deviation from what is provided in Article (1) (b) of the Convention against Discrimination in Education of 1960 as well as Section 28(2) of the Constitution. According to Section 27 in 2018, this illuminates an audit trail that does not reflect accurate assessment of schools in need of SAFE. Moreover, this indicates that South Africa is not living up to what is stated in Section 12, Article 4, of the"

Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure” that: “Plain pit and bucket latrines are not allowed at schools.”

It may be argued that education as a human rights issue remains elusive after more than 20 years of democracy leading to failure of attain social, economic and environmental justice despite the measures that the government and the education system has taken. According to Grobber, Lacante and Len (2014), black learners who attend school in townships and rural areas are a huge chunk consisting of 80% of South Africans’ enrolment in both elementary and secondary schools. The painful part is that out of this 80%, only a meagre 1% will pass matric (Spaull. 2012). Therefore, it would be abnormal for the state not to realise that these learners represent and play a very critical role towards national educational progress. But, the question remains, 20 years after democracy what has been done to alleviate the inherent problems that continue to be experienced from generation to generation of learners.

**Figure 1: Teaching and Learning conducted in a classroom with a leaking roof**



**Source: SECTION 27 (2016)**

**Figure 2: One of the mud schools which does not comply with Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure of 2013**



**Source: Groundup (2018)**



**Figure 3: Images of dilapidated pit latrine in at Junior Secondary School**



**Source Equal Education (2018)**

**Figure 4: Learners relieving themselves outside**



**Source: Ntshongwana and Damba-Hendrik (2018)**

## **(ii) Major milestones in realising the right to education in South Africa since 1994**

Scholars such as Lewin and Wang (2011) advance that despite the foregoing depictions which are clearly a violation of the right to education of most learners particularly in rural and township schools, the government has to be applauded for the positive steps that it has taken to promote the right to education in schools. Statistics indicate that children constitute 38% of the population of South Africa, which amounts to approximately 18.6 million individuals. In 2008, over 95% of children between 12 and 15 years old were attending school. Lewin and Wang also show 99% of enrolment from Early Childhood Development (ECD) phase and 88% in secondary schools. In 2009, there were 25 906 ordinary public schools in South Africa. KwaZulu-Natal had 6 091 whereas in the Eastern Cape there were 5 809, schools. In 2010 a total of 1 682 mobile classrooms were installed in several schools (Mestry, 2014). As of 2010, close to 70% of schools in poor communities were fee-free schools and fully state funded. For instance, the percentage of learners aged 5 years and older who attended schools where no tuition fees were levied increased from 0,4% in 2002 to 65,4% in 2014, before stalling and moving sideways to 65,3% in 2016. The number of public schools has also grown (Statistics South Africa-General Household Survey, 2016). Strides have also been made through the implementation of policies to promote nutrition

among learners in schools through pro-poor programmes implemented by the government. Thus, since 1994 the National School Nutrition Programme has been able to feed more than 8 million learners out of a total of 12 million learners both in primary and secondary schools. As of 2016, Statistics South Africa General household survey showed that more than three-quarters (77,1% ) of learners who attended public schools benefited from school feeding schemes in 2016, compared to 73,1% in 2011. Learners in Limpopo (92,1%), Eastern Cape (90,0%), Mpumalanga (86,1%) and Northern Cape (83,0%) were the most likely beneficiaries from this programme (Statistics South Africa-General Household Survey, 2016). These provinces continue to be the most improvised in South Africa.

Access to learner school transport has also been implemented to cater for those learners coming from townships and rural areas. Furthermore gender parity has also been achieved. Out of 12 million learners that are at school, 49.8% of this total comprises girls. President Ramaphosa also highlighted during SONA 2019 that financial year ending 2018 showed that a staggering 700 000 children had access to ECD which was now compulsory for every child in South Africa before they enter grade one. In addition, it was highlighted that considerable progress has been made in promoting SAFE sanitation in schools. However, inequalities still persist in some provinces, particularly in infrastructure backlogs, learning outcomes and learning and teaching resources (Macha & Kadakia, 2017; Dyantyi, 2020).

Therefore we ask: 20 years after democracy does equal access in terms of the aforementioned exists in principle or does it still reflect legacies and smidgens of apartheid? Why do we ask? The South African school system is currently crippled by a myriad of unfavorable challenges that seriously undermine the language of human rights (Churr, 2015). The language of rights marks privation and obscures this reality by presenting rights as if they are common to all despite the fact that they are unattainable to the majority (Spren & Vally, 2006). This is because the majority of African students still live in rural areas and their access to school and the right to equitable and quality education remains questionable. They still attend schools that were formally segregated and managed by homelands departments of education (See Figures 1, 2, 4 and 5). This is not in line with Article 2 of CRC which emphasises on provision of equal opportunities to all learners. Many of these challenges have been frustrating and solutions have been sought diligently (Churr, 2015)– with notable achievement in some cases. However, and in other areas the status quo subsists as shown below in Figure 6 of a picture which made headlines after learners were separated in class because of race more than 20 years after democracy.

**Figure 5: Pupils separated by race at a school 25 years after democracy**



Source: North (2019)

Ironically, these problems were foreseen by Alexander in his book titled “An Ordinary country: Issues in the transition from apartheid to democratic South Africa”. The author advanced that the government of South Africa is guilty of using a “glacial tempo” regarding the right to education concerning language, race, religion within a classroom setting (Alexander, 2002). For instance:

- The post-apartheid period has witnessed at best limited progress in reducing shortfalls in schools facilities particularly in poor communities;
- School related gender-based violence leading to high failure rates and high dropout rates is prevalent;
- Funding, retentions, retrieval and usage of learner and teacher support materials remains poor; and (Mncube & Harber 2013; DoE, 2001).

The above factors suggest that the state appears to be failing to live up to its obligations as underscored in Article 13(2) of the ICESCR to make education available, accessible, acceptable and adaptable. Unfortunately, this has led to the prevalence of high dropout rates and School Related Gender Based Violence (SRGBV) which continue to hamper the right to education of most learners given the enduring statistics. These two phenomena are not only prevalent but are interconnected with the problems associated with attaining the right to education in South Africa. We argue that these two factors paint a desolate picture and water down the efforts that have been injected since the advent of the democratic era. Each of these factors is examined below.

### **School drop-outs rates**

Despite having high enrolment which may be mistaken for equal access to quality education for learners, school dropout rates have reached a national crisis because they remain exceedingly high (Lewin & Wang, 2011). Dropout rates are particularly high in secondary schools. Moreover, many of these are at grades below the ones corresponding to ages of learners. Approximately 60% of first graders will ultimately drop out rather than complete 12th Grade (Weybright, Caldwell, Hui, Wenger & Smith, 2017). Likewise, by Grade 12, only 52% of the age appropriate population will remain enrolled. The dropout rate between 2010 – 2013 was 46 – 49 % (Weybright, Caldwell, Hui, Wenger & Smith, 2017). It is estimated that out of 100 learners that begin school in Grade One, half will dropout and 40 will successfully complete exams, and only 12 will be eligible to pursue higher education (Lamb & Markussen, 2011). Furthermore, research by Taylor , Van der Berg , Reddy and Janse van Rensburg, (2015) while 4% of learners dropout of school before completion of primary school, only 44% of learners complete schooling. In 2017, the DoBE advanced that of 60% of learners that completed school, 44% dropped out (DoBE, 2017). Unfortunately, this has also cascaded to university level. In 2014, of the 18% of the matriculates that gained entry into university, 50- 60% dropped out during the first year (DoBE, 2016).

In addition, due to high poverty levels and social economic background, the government has implemented a number of social grants however, these not alleviated poverty levels. For instance, a General Household survey conducted in 2015 showed that over 70% of the 14 million learners in South Africa walked to school every day. This exposed the learners to fatigue, absenteeism, late coming and eventually dropping out of school (Statistics South Africa-General Household Survey, 2015). In a bid to keep the learners from dropping out and repeating grades the government implemented a system of progression to meet the grade despite failure to meet the

promotion criteria to reduce dropout rates. For instance, in 2016 a total of 108 742 learners were progressed to grade 12. Conversely, this appears to have affected matriculation pass rates with the DoBE in 2011 advancing that 75–80% of South African schools are low-performing. The above statistics buttress the reason why the South African education system has been accused of not functioning satisfactorily (Churr, 2015); leading to delivery of pitiable quality education as well as the constitutional and human rights of the learners not being realised.

Accordingly, the state of education in South Africa today is dysfunctional and far worse than it was under apartheid (Chisholm, 2012; Spaul, 2012). Jansen in 2018 also stated that accusations that South African schools are dysfunctional should not come as a shock because 78% of Grade 4 learners in South cannot read with understanding, while 9% of Grade 6 teachers cannot pass a Grade 6 maths test despite the fact that the expected pass mark is a mere 30%. Therefore, can we safely say that with all the policies that have been implemented since the dawn of democracy has South Africa delivered the expected results, namely, promoting the right to education? If so, why then do schools continue to underperform? We advance that the answer to these foregoing questions lies in Linda Chisholm's contribution titled "*Apartheid education legacies and new directions in post-apartheid South Africa*". This scholar suggests that despite all the notable changes the apartheid legacy persists in subliminal ways - the presence of the past in the present education system (Chisholm, 2012). This is a clear indication that there is a need to identify pockets of good practices from other developing countries as well as, proactive strategies that will enhance the quality of education, retain learners in schools, as well as promote their right to education (Townsend, Flisher & King, 2007).

### **School related gender based violence (SRGBV)**

School Related Gender Based Violence (SRGBV) is defined as acts or threats of sexual, psychological violence occurring in and around schools, perpetrated unequal power dynamics (UNESCO/UNGEI, 2015). South Africa has ratified a number of international and regional instruments in a bid to prevent and respond to SRGBV; thereby creating a safe learning environment and enhancing the right to education. These include: The International Covenant on Civil and Political Rights (ICCPR)[1966]; The Convention Against Torture (CAT)[1984]; The Convention on the Rights of the Child (CRC)[1989]. There are also regional instruments which oblige South Africa to protect children which include: The African Charter on Human and Peoples' Rights (ACHPR) also known as the Banjul Charter [1981] the African Charter on the Rights and Welfare of the Child (ACRWC)[1990]. Like international law, the regional conventions ensure that state parties offer protection to children, and the girl child in particular, of their rights to health and education; from all forms of sexual exploitation.

South Africa also has a sturdy domestic legal framework that establishes the responsibility of the State to protect learners from SRGBV such as: The Constitution of the Republic of South Africa of 1996; Criminal Law (Sexual Offences and Related Matters) Amendment Act, No 32 of 2007; South African Schools Act, No 84 of 1996; Employment of Educators Act, No 76 of 1998; South African Council for Educators Act, 31 of 2000; Children's Act (No. 38 of 2005) as amended by Children's Amendment Act (No. 41 of 2007); and Protection from Harassment Act, (No 17 of 2011). However, high statistics on SRGBV against learners continue to be viewed as a disquieting reality that inhibits a learner's personal independence and right to education. Teachers and school

principals are reported in many studies as perpetrators and key actors in transforming a school culture that appears to legitimise; perpetuate violence and promote unquestioned routine practices that lead to SRGBV in the form of corporal punishment, bullying and sexual harassment (Chikwiri & Lemmer, 2014). For instance, in South Africa:

- 1.8 million of pupils between Grade 3 and Grade 12 have experienced SRGBV in one form or another.
- 30% of sexual crimes are committed by adolescents - some as young as 10 years;
- 7.8% of girls between the ages of 7 and 18 are not attending school because of pregnancy;
- 74% of schools in in KwaZulu-Natal experience corporal punishment (Chikwiri & Lemmer, 2014; Donald, Lazarus & Lolwana, 2014; Joyner, 2017).

Though the existing literature shows that there are a myriad of factors that fuel SRGBV - both social and political - such as inability to afford school fees and early pregnancy, the absence of meaningful consequences for the perpetrators lends legality to their behavior (Dieltiens, 2001; Jewkes & Abrahams, 2002; Duru & Balkis, 2018). These gaps may explain why SRGBV continues with impunity and high prevalence in South African schools (Mcube & Harber, 2013). A coverage of the above scholarly work lend support to what was alluded to by Le Roux and Mokhele (2011) that “crime and violence in South Africa are a way of life”. However, credit must be given to the government for the strides that it has taken to curb violence in South African schools. A number of critical programmes to guide redress of sexual violence have been adopted and implemented. These include: Guidelines for the Prevention and Management of Sexual Violence and Harassment (2008) in public schools meant for complaints procedure for educators and learners on sexual harassment; The Department of Basic Education’s Handbook for Learners on How to Prevent Sexual Abuse in Public Schools (2010). All these are premised on the importance of ensuring that the right to education, security of persons and promotion of human rights of the learner are observed at all times.

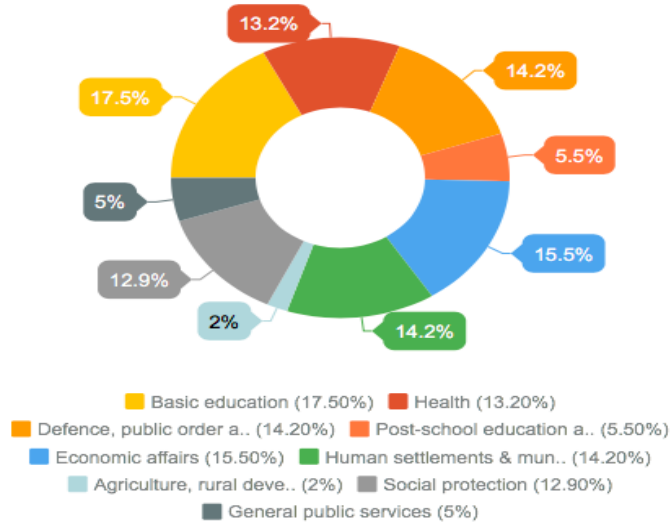
Unfortunately, 20 years after democracy the same problem still subsists and as was suggested by Foucault, learning institutions (South Africa) are full of cracks and silent shocks (Foucault, 1988). Undeniably so, this shows that there is a need to re-examine the existing legal frameworks. This will avoid the right to education of learners from being desecrated or learners being subjected to inhuman treatment which breaches their fundamental human rights in schools. In a society that is often perceived both domestically and internationally as one of the most violent in the world, this in itself, justifies concerted action to break the cycle of violence that young people are exposed to – starting with the school environment.

## **WHERE ARE GOING WRONG TWENTY YEARS AFTER DEMOCRACY?**

In this review we argue that the government has taken positive measures towards the realisation of the right to education in terms of policy implementation, pro-poor school programmes, and also being a signatory to a number of instruments that talk to the right education. Emphasis is made particularly on the high budget allocation for education which commands a substantial slice of the overall government expenditure as illustrated below in Figure 6. However, progress remains questionable and vast inequalities remain.

**Figure 6: The Projected 2017/2018 National Allocation**

The Projected 2017/18 National Allocation



**Source: Equal Education (2017)**

However, the question remains: in light of the foregoing discussion, where are going wrong 20 years after democracy in realising the right to education for South African children and in promoting the Mandela legacy? Did South Africa take drastic action soon after her attainment of democracy or did it adopt a cosmetic policy implementation which covered deep fissures that need to be closed up?

### BY WAY OF CONCLUSION

A child's right to education is palpable from other socio-economic rights as provided for in the South Africa Constitution which is hailed as one of the best in the continent. However, despite new plans and existing efforts to improve the school system guided by a water tight constitution, it appears the education system remains abysmal and indicative of apartheid legacies that subsists within the education system. Policies in place appear to reflect a cacophony *vis-a-vis* on how the right to education should be achieved. This has led to a continuation of profound inequalities and access to schooling *vis-a-vis* the right to education especially for those learners in rural and township schools. The current state of education system calls for a re-examination of how the government of the Republic of South Africa has approached the education sector which falls short of affording millions of children their right to education to its fullest extent, especially equal access to schooling.

### WAY FORWARD

The government should tap on pockets of good practices from other countries on how to reduce disparities in order to enhance equal opportunities towards the right to education. Children rights

to education should be recognised and respected as part of our constitutional and of human rights culture. Most problems affecting children's right to education are a direct result of poor governance, which is characterised by unabated corruption and lack of political will. Hence, transparency and accountability cannot be understated throughout the whole education system. Programmes that have been implemented to redress SRGBV, and promote retention of learners in schools should be monitored and evaluated to gauge if they have achieved the initial stated goals and objectives.

The much needed professional development programmes for teachers should also be implemented. The state appears to be failing to live up to its obligation as underscored in Article 13(2) of the ICESCR to make education available, accessible, acceptable and adaptable. Therefore, there is need to revisit the sturdy domestic legal framework that establishes the responsibility of the state to promote the right to education for all children in South Africa. This may assist to expunge the smidgions of the apartheid legacies that continue to replicate weighty disproportions within the classroom setting in the 21<sup>st</sup> century.

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