

Safeguarding the right to education in South Africa: Whose responsibility is it

Isaiah Mmatipe Sefoka

Faculty of Management and Law, School of Law,

University of Limpopo, Turfloop,

South Africa

Abstract

The essence of the right to education as outlined in section 29 of the 1996 Constitution remains a crucial and empowering entitlement deserving protection. Legally speaking, the right to education is inherent and thus places a responsibility on both governmental bodies and educational institutions to ensure its preservation at all cost. However, despite this legal mandate, it's evident that this right isn't always adequately upheld in accordance with educational legislation. This study delves into the safeguarding of the right to education, seeking to identify the parties responsible for ensuring its protection. In simpler terms, the central inquiry posed by this analysis is who holds the obligation to uphold the right to education. Methodologically, this study employs a literature review approach, utilizing resources such as Google Scholar and other internet search engines to access relevant scholarly works. By incorporating contemporary research findings, this paper aims to address the duty of safeguarding this right and ascertain which entities bear the responsibility.

Keywords: legal mandate, responsibility, right to education, safeguard, South Africa

Introduction and historical account

Initially, it is crucial to emphasize that in a democratic nation, ensuring the right to high-quality and sustainable education requires close collaboration among all branches and levels of government, as well as other relevant stakeholders. Consequently, the paper argues that active financial collaboration, including both monetary contributions and

in-kind support, between the government and other stakeholders such as private entrepreneurs and interested parties, is essential to bolster the financial resources allocated to the education sector, thereby improving the provision of high-quality and sustainable education. These entities must commit to safeguarding the right to education, whether through financial means or other forms of support. This concerted effort will guarantee that every student can access and successfully complete their educational journey, regardless of their financial circumstances, ultimately leading to the realization of the right to education.

It is important to highlight that the concept of education as a fundamental right found its initial expression on the global stage with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 (UDHR, 1948). While various instruments safeguard the right to education, such as the Universal Declaration of Human Rights (UDHR) and the Jomtien Conference of 1990, it's noteworthy that the United Nations Educational, Scientific and Cultural Organization (UNESCO)'s Convention against Discrimination in Education (CDE) of 1960 holds particular significance. This treaty stands out as the first international agreement to formally recognize the right to education as legally binding (CDE, 1960). The CDE's objective is to combat any form of discrimination in education, and uphold equal opportunity and treatment for all. It asserts that, discrimination in education is an infringement of the right as contemplated in the UDHR (CDE, 1960). This study submits that, both the UDHR and CDE oblige state signatories to strive to take steps to protect, promote, implement and enforce the laws informing the delivery of quality education. To this end, most human rights treaties and or conventions, both domestic, regional and across the globe, address the significance of protecting and upholding the right to education.

Regarding the responsibility to implement and protect the laws, the international community, through the UDHR and the CDE, developed standards to implement and enforce laws promoting quality education, which standards take into account diversity in legal systems (UDHR, 1948 Art 26 (1), (2) and (3); CDR, 1960 Art 4(a) and (b)). The state and other relevant stakeholders, assigned with the duties of administration, protection and promotion of the right to education, have a responsibility to monitor compliance, ensure laws are fully implemented, and enforced. This paper emphasizes that, since the right to education is ultimate and inalienable, even if a signatory has not

ratified a treaty promoting quality education, it is in any way bound in terms of general international customary law.

Implementing the right to education

It is important to define the meaning and the process of implementing the right to education. According to Ssenyonjo, like any other human right, “the right to education brings with it a set of globally agreed norms and standards, which give rise to state obligations in relation to which effective and transparent monitoring and accountability mechanisms are required” (Ssenyonjo, 2009). Victor and Raustiala posit that, the term “implementation” is a loose concept, which defines absolute definition. Victor and Raustiala state that, implementation is a complicated method suited to the creation of not so generous theories. In addition, it is what changes ideological principles and commitments into actual practice (Victor and Raustiala, 1998).

According to Mazmanian and Sabatier, it may refer to, “those events and activities that occur after the issuing of authoritative public policy directives, which include the effort to administer and the substantive impacts on people and events” (Mazmanian and Sabatier, 1983). For purposes of this study, the term implementation refers to the process of putting into effect the instruments and standards, which puts the right to education into place. This means the process of turning the content of the right to education into realization. In this study, the term implementation represents the practice of converting international human rights, obligations into action, as well as the process of adopting those obligations at the national level.

Why implementation and enforcement

According to Mokhaba, implementation and enforcement of quality education finds expression in the roles played by signatories, to the international covenants promoting the right to education, national government, educators and learners (Mokhaba, 2004). All these role-players make use of different approaches, to assist in realizing the right to quality education, and achieving the teaching and learning objectives (Mokhaba, 2004). Thus, the study submits that, it is important to indicate the ways in which these role-players behave, and how the implementation and enforcement of the right has an impact on them. Hence, the need to deliberate on the implementation and enforcement

activities performed by these role players, to realize the successful implementation of the right to quality education.

State's responsibility under international law

According to Orentlicher, there is a robust international law argument that states have an obligation to respond positively to any form of violation of fundamental rights, including the right to quality education (Orentlicher, 1991). The obligation to respond positively means that, if there is an infringement of a fundamental right, these states are compelled to take reasonable steps to redress the injustices and inequities caused by such a violation. The state's responsibility under the international human rights law prohibits states from doing some things, while on the other hand it obligates them to do others. It is vital to highlight that after a violation of a right, the state assumes liability, in the event of failure to afford an effective remedy for such violation, as provided for by the international law. It is worth stating that some of the responsibilities of the states include among others to protect, respect and to fulfil human rights inclusive of the right to education.

It is for this reason that this study emphasizes the importance of elucidating these duties. For purposes of this study, the duty to respect human rights simply means, not to impede on the right in question, whereas the duty to protect entails, taking measures to ensure no external interference with the enjoyment of the right or simply put, taking measures to ensure that others do not interfere with the exercising and enjoyment of the right. In the same manner, the duty to fulfil calls for the state to employ progressive measures, which include administrative or educative, legislative and judicial measures for the purposes of fulfilling their legal obligation as per the international law (Covenant on Civil and Political Rights, 1954).

The nature of state obligations

As stated above, states have an international obligation to implement economic, social and cultural rights, through international covenants and or conventions. Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that:

every signatory to this covenant embark on steps, independently and through international support and or collaboration (economic and technical) depending on the availability of its resources, to accomplish gradually, the full realization of the rights embodied in this covenant by employing all appropriate means which include the adoption of reasonable legislative measures (ICESCR, 1966 Art 2 (1)). Article 4 of the Convention on the Rights of the Child (CRC) provides that: signatories shall embark on all appropriate legislative, administrative, and other measures to implement the rights as documented in this convention. The article further provide that regarding the provision of socio-economic rights, signatories shall carry out such measures based on the level of their available resources and, where necessary, within the context of international collaboration” (CRC, 1989 Art 4).

This study posits that, in qualifying the states’ obligations, the provisions of these conventions use the formulation, “in all appropriate means, including the adoption of legislative measures”.

Considering the provisions of Article 2(1) of the ICESCR, and Article 4 of the CRC, the nature of signatories’ obligations is made of at least three important elements. In the first place, signatories are to take, “all appropriate legislative, administrative, and other measures in order to implement the rights recognized in those instruments. Secondly, in implementing those rights (socio-economic and cultural rights), signatories embark on such legislative and or administrative measures to the maximum extent of their available resources to implement and to realize the right so recognized”. Lastly, where required, the progressive nature of the implementation of economic, social and cultural rights as recognized by signatories should be carried out within the framework of international co-operation” (Rishmawi, 1996). This study submits that, it is the responsibility of the signatories to, “use all appropriate means, including legislative, administrative, judicial, economic, social and educational measures”, in order to achieve the responsibilities under the ICESCR. In terms of the Limburg principles, “the legislative measures alone are not sufficient, and as such, other remedies such as judicial remedies, where applicable, should be provided” (Limburg Principles, 1986).

The national measures in implementing the right to education

Mubangizi contends that since education is recognized as a human right, it remains incumbent upon the government of the Republic to actively pursue the promotion and implementation of Human Rights Education (HRE) (Mubangizi, 2015). Worth noting,

is that “South Africa recognizes a range of human rights, including access to healthcare, food, water, social security, and housing, as outlined in the Constitution”. However, for the specific focus of this research project, attention will solely be directed towards education as a fundamental human right, given its relevance to the study's scope. Thus, the paper recommends that in order to ensure that this right is properly maintained, the government should focus on encouraging its implementation in schools and other educational settings. Human rights standards should be incorporated, fully into the curriculum of schools, according to Mubangizi, in order to ensure that students' rights to a quality education are realised through educational institutions (Mubangizi, 2015). The Curriculum Review Committee, established in 2000, has also endorsed this initiative, further supporting the integration of human rights standards into the educational curriculum, which recommended the infusion of Human Rights Education (HRE) into the schools' curriculum (Department of Education, 2005). Additionally, in 2005, the Minister of Education dedicated the Department of Education and the Ministry of Education to integrate HRE throughout all levels of the education system (Keel and Carrim, 2006).

Roles of educators and learners

Mokhaba argues that teaching and learning should follow a logical and organized structure. To effectively align with this approach, both educators and learners have distinct roles to fulfill, ensuring the feasibility of the teaching and learning process (Mokhaba, 2004). The paper illustrates that educators serve as facilitators of teaching and learning, tasked with fostering skills development and motivating learners. Similarly, achieving quality education requires learners to actively contribute to educational outcomes, which entails active participation and engagement in all classroom activities. Therefore, the effective implementation and realization of quality education depend on both educators and learners fulfilling their respective roles.

The role and responsibilities of educators in improving educational outcomes

Brandy asserts that achieving quality education imposes certain responsibilities on educators. These include the need to personalize instruction, develop plans for remediation and enrichment, conduct problem-solving assessments, and maintain detailed records (Brandy, 1996). Furthermore, meeting each of these requirements

necessitates educators to devise and utilize suitable strategies and tools. Consequently, this paper argues for a discussion on the roles educators should undertake to enhance the educational system. In the context of Outcome Based Education (OBE), educators are tasked with guiding each learner in developing their skills, knowledge, values, and attitudes hence educators can facilitate learning, despite the fact that they are not directly participating, or taking part in the learning process.

To bolster this viewpoint, Tema suggests that "the educator's role can be likened to that of a soccer coach" (Tema, 1997). This analogy implies that just as a soccer coach tailors their coaching methods to each player's needs and doesn't play the game for them but instead helps them develop their skills, educators similarly act as facilitators in enhancing learners' abilities. Jacobsen *et al* further assert that educators' roles encompass promoting both the social and intellectual development of learners and crucially, fostering learners' motivation and desire to learn (Jacobsen *et al*, 1999).

Cullingfort argues that two underlying issues define the role of educators, shedding light on the impact they have on learners (Cullingfort, 1995). The first aspect highlights that an educator functions as a mentor. This emphasizes the mentor's ability to nurture and inspire the learner, facilitating their growth and development to reach their fullest potential. Simply put, this means the educator's capacity to bring the best out of a learner. According to Cullingfort, the mentor has the authority to criticize, be constrictive, command, as well as reflect on the learner's performance. A true mentor is one to whom learners turn, the person seen as a source of information, interest, and instruction (Cullingfort, 1995).

The second aspect pertains to the educator serving as an interpreter. This indicates that educators elucidate complex subjects in a manner easily comprehensible to learners by employing experiments, examples, engaging materials, and by making the subject matter itself more captivating (Mokhaba, 2006). This implies that educators become a wellspring of knowledge. Vegas and Umansky affirm that educators play a pivotal role in ensuring effective learning occurs (Vegas and Umansky, 2005). Similarly, Hanushek contends that quality education stems from the utilization of high-quality teachers, who are the cornerstone of enhancing learners' performance (Hanushek, 2009).

Learners' role and responsibilities in improving educational outcome

This paper illustrates that achieving quality education is not solely the responsibility of educators; learners also have a crucial role in the teaching and learning process. However, the extent to which learners contribute to realizing quality education is contingent upon the effectiveness of educators in facilitating teaching and learning. Mokhaba contends that quality education necessitates active participation from learners in the teaching and learning process (Mokhaba, 2004). Mokhaba further asserts that when considering the role of learners, it is essential to examine the characteristics and preferences of each individual learner. Additionally, it is crucial to consider the desired outcomes of educational curriculums, such as those aligned with Outcome-Based Education (OBE), in defining the type of learner envisioned to contribute to the enhancement of quality education (Mokhaba, 2004).

Mokhaba argues that for educators to effectively achieve their teaching and learning objectives, it's crucial not only to have a deep understanding of the subject matter but also to comprehend the individual characteristics and preferences of each learner (Mokhaba, 2004). Educators should be aware of what resonates with learners, their likes, dislikes, and what they already understand and prefer. This knowledge serves as a starting point for teaching and learning, creating an environment where learners feel comfortable, welcomed, and free to engage. For instance, Cullingford highlights that creating tasks and assignments relevant to learners' interests and incorporating material they understand effectively contributes to the teaching and learning process (Cullingford, 1995).

Educators and implementation

This paper emphasizes that educators are among parties accountable for the implementation of the right to education. The paper maintains that, educators are the builders of the learners, or the community at large; hence, they must be well trained and equipped with relevant knowledge and skills. The reason educators are regarded as the builders is, if not properly trained, they will not be appropriately equipped to impart requisite knowledge, and provide quality pedagogic services to the learners (Sefoka, 2021).

Capacitating educators for effective implementation and realization

As per the Centre for Enterprise Development, there is a notable absence of "accountability" among educators, primarily due to their lack of adequate preparation to impart knowledge and skills, consequently hindering their contribution to achieving quality education (Centre for Enterprise Development, 2015). The primary cause of this issue is that numerous educators struggle to provide quality education due to their insufficient capacity. Consequently, South African schools experience widespread underperformance. Adedeji and Olaniyan argue that for a country to advance and enhance its educational system, it is imperative to invest in the development and empowerment of educators or teaching personnel (Olugbenga and Olaniyan, 2011).

Adedeji and Olaniyan further assert that, any social, economic, and cultural approach, designed to improve educational institutions and human advancement, necessitates employment of continuous educators' development programs. Adedeji and Olaniyan further indicate that, "for a country to elevate its educational system and to have the best quality education it must employ sustainable and innovative pedagogic approaches that will advance the ability and conditions of educators and teaching and learning in schools" (Olugbenga and Olaniyan, 2011). Therefore, this paper suggests that empowering educators should be viewed as a means to instigate profound social change in values and norms, ultimately leading to the improvement of people's lives.

Tang argues that for a country to achieve developed status, it must prioritize the improvement of the mind-set and intellectual capacity of its citizens, along with the advancement of human capital. Tang further emphasized that focusing on these aspects enables a nation to enhance and cultivate its knowledge capabilities, creativity, and innovation, which are essential elements in the era of globalization (Tang, 2015). Tang further asserts that educators, being central players in implementing and evaluating learners and graduates, must first acquire practical skills and be innovative in designing and delivering their teaching modules to integrate relevant skills. Tang advocates for pedagogical techniques that are student-oriented, where learners and graduates actively engage in the teaching and learning processes while educators serve as facilitators and oversee learners' activities. Problem-solving assessments, case studies, presentations, group work, and other relevant teaching

and learning methods should be extensively utilized as alternatives to traditional approaches to enhance learners' skills (Tang, 2015).

Tang concluded by suggesting that educators should be equipped with contemporary skills relevant to future employment and trained in formulating teaching and learning activities that enable learners and graduates to acquire relevant work-related skills and proficiencies essential for building their futures. This is because the quality of teaching and learning received by learners is greatly influenced by the value added to the educational process by educators (Tang, 2015; Sefoka, 2021). Salazar argues that the achievement of education, vocational training, and lifelong learning are crucial pillars of employability and sustainable enterprise development within the framework of decent work agendas. This, in turn, contributes to the reduction of poverty and hunger (Salazar, 2008).

Salazar further asserts that a skills development approach is essential for promoting sustainable development and can significantly facilitate the transition from the informal to the formal economy within a country. Additionally, Salazar highlights that skills development is indispensable for addressing social prospects and challenges, thereby enabling the state to engage in social discourse and shape national, regional, and international skills development programs. This integration of socio-economic and environmental dimensions of sustainable development is vital for meeting new demands effectively” (Salazar, 2008).

With clear position, Salazar further asserts that a crucial element in achieving the objective of securing decent employment is skills development. This is accomplished by enhancing the productivity and sustainability of enterprises, improving working conditions, and enhancing the employability of the labour force. In his conclusion, Salazar maintains that, actual skills development needs an all-inclusive approach, which embraces among others:

- **“development of core skills** – this includes the ability to read and write, numerical competence, communication skills, collaboration and problem solving and other relevant skills, learning capabilities as well as knowledge of employees’ rights and the understanding of private enterprise as the building blocks for lifetime learning and competency to adapt to change”;

- **“development of higher level skills** – proficient, technical and human resource expertise to make the most of or create prospects for good or high-wage employment”;
- **“employability** – a robust bedrock of essential skills, access to good quality education, availability of education and training chances, inspiration and support to benefit from the presented opportunities for lifelong learning, – is key for empowering the workforce to secure decent work and for supporting enterprises to implement new technologies and enter the new markets” (Salazar, 2008).

The emphasis from this paper is that the profound foundation to achieve and realise effective skills development, depends on educating the educators, and thoroughly training them, so that they can produce high quality, and skilled learners.

Quintini and Pouliakas opined that, it is crucial that the necessary basic skills are built timeously by the improvement and augmentation of the quality of early childhood education, through capacitating educators. Furthermore, once people enter the workforce, it is crucial to make sure that the knowledge and skills they are taught in schools are applicable to the workforce, are maintained and improved throughout their working lives, and are recognised and used by employers. Quintini and Pouliakas suggest that educators should bridge the gap between education in schools and the professional working world, as this is essential for successful nation-building.

They recommend a coordinated strategy that provides educators with high-quality education to equip them with work-based knowledge and specific skills to impart to learners throughout their lives (Quintini and Pouliakas, 2014). Kamakura avers that, to avoid skills scarcity, which would alleviate poverty, ease unemployment intermediate and long term, and allow growth, a country needs to advance educators, and the skills development policies that help to furnish learners with appropriate knowledge and expertise. Such policies may necessitate a combination of pedagogic strategies, including teaching and learning, as well as training strategies for educators (Kamakura, 2012).

According to Somavia, providing educators with skills that are relevant for both the present and the future is essential and a strategic priority for the growth and development prospects of every cohesive country (Somavia, 2010). Somavia argues

that while acquiring skills is fundamental for securing decent work and enhancing productivity, many countries have leveraged education, particularly training, to retrain their educators as a proactive response to poverty and employment challenges. Somavia emphasizes that the foundational elements of any skills development approach should be built upon a strong foundation, fostering expertise and resilient relationships and interactions between educational institutions and the workplace (Somavia, 2010).

Somavia concludes by suggesting that resilient education and training methods are deeply ingrained in the educational training institutions of every country. This implies that a country with advanced educators' training institutions ultimately possesses a robust skills development system, empowering it to anticipate the skills needed for future development. Such a system facilitates meaningful engagement between employers and employees to contribute effectively to the provision of training strategies, ensures sustainable quality and importance of training, guarantees that training reaches all sectors of society, implements feasible and equitable financial mechanisms, and continuously evaluates the outcomes of such training (Somavia, 2010).

This paper suggests that in order to maintain the relevance of training programs, there needs to be interaction between training institutions and financial institutions. This interaction helps establish strong relationships between the realms of learning, innovation, training, and professional work. Consequently, this facilitates the ongoing enrichment of relevant knowledge across various sectors of society, fostering growth and addressing developmental challenges effectively.

Conclusion

The Constitution safeguards and advances the fundamental human right to education by assigning the responsibility to the South African government to ensure education provision in alignment with the Constitution and other relevant national, regional, and international laws. As the supreme law of the land, the Constitution underscores the protection and promotion of all human rights enshrined in the Bill of Rights. Section 39 of the Constitution mandates the government to consider consulting international law and, where necessary, foreign laws to interpret the Bill of Rights and advance its spirit, purpose, and objectives (Constitution, 1996 sec 39 (1) (b) and (c)). Globally,

international organizations, such as UNESCO, exercise a full support to it, provide vital provisions, highlight rules, and standards, for countries' progression, and development of education and training (Churr, 2012).

These laws, and standards, seek to build peace, through international collaborations in education, the sciences, and culture, and facilitate salient programmes, aimed at contributing towards the achievement of sustainable development (UNESCO, 2021). These laws, and standards, seek to build peace, through international collaborations in education, the sciences, and culture, and facilitate salient programmes, aimed at contributing towards the achievement of sustainable development. Ultimately, this paper concludes that the right to education must be protected at all costs because it is fundamental to both domestic and global society and is backed by both international law and the Constitution. As a result, education is crucial and should be safeguarded at all costs.

Based on the Constitution, it is important to note that the paper emphasised the importance of access to education and the availability of education in South Africa. Thus, it makes the case that education is essential for improving one's chances of landing a better job. It is obvious that the state must protect, nurture, and realise the right to education in order to pass the constitutional scrutiny in this paper. Based on the argument that, in accordance with section 29(1) of the 1996 Constitution, the state must make sure that education is accessible to everyone and that everyone can obtain it. Ultimately, educators and learners, as the closest role players, have the responsibility to ensure that the offered education produces the best results, even though it is the state's duty to guarantee that education is accessible. In addition, they support making teaching and learning more practical and enhancing educational results. To ensure the long-term realisation of the right to high-quality education, educators—who also serve as the nation's builders—need to be sufficiently capacitated.

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