



Examining Social Accountability and Transparency toward the Right to Basic Education in South Africa

Dr Siyabulela C Fobosi^{*1}

Senior Researcher: UNESCO 'Oliver Tambo' Chair of Human Rights, Nelson R Mandela School of Law:
Faculty of Law, University of Fort Hare

Date of Submission: 01-04-2023

Date of Acceptance: 11-04-2023

Abstract

South Africa is constitutionally required to progressively realize socio-economic rights in the Constitution. These include the right to have access to education, healthcare, the right to have access to housing, etc within available resources. In the provision of these services, the government is accountable to the citizens. Accountability refers to a public servant's or an institution's responsibility to account for their actions, offer information about decisions and actions, explain and justify decisions, accept responsibility for them, and publicly reveal the results. Citizens as users of public service voice their needs and demand for improved delivery of basic services. Citizens' power to hold the government accountable for its acts is referred to as social accountability. Accountability requires public officials to be responsible for their actions and, more crucially, to face repercussions when duties and commitments are not performed. To realize the right of access to education, public officials must not only be accountable but also transparent to the citizens. Transparency means disclosing information to the public upon request as well as information that is not sought but will benefit the public. Section 29 of the Constitution guarantees that everyone has a right to basic education. However, there are still challenges to accessing "quality" basic education given that some schools are facing infrastructure problems. This article investigates the right to access quality basic education through accountability and transparency.

Keywords: Basic education, right, Social accountability, transparency, rights, oversight.

I. INTRODUCTION

Education is a fundamental right in and of itself, as well as an essential tool for achieving other human rights. Education is the fundamental mechanism through which economically and socially excluded adults and children can raise themselves out of poverty and have access to the resources they need to fully participate in their communities as an empowerment right.² Education is critical for women's empowerment, protecting children from exploitative and hazardous labor and sexual exploitation, supporting human rights and democracy, conserving the environment, and limiting population increase. Education is increasingly being acknowledged as one of the best financial investments that a country can make. To begin with, and regardless of the actual content of the right, it is important noting that everyone, that is, all persons, South Africans, and non-South Africans, has the right to basic education. It is a fundamental right for people of all ages, including children and adults. It may or may not include anything different for persons with disabilities, and it almost surely will, but the right is no less theirs than it is for the able-bodied.

The right to access education is universal. The universality, indivisibility, and interdependence of all human rights for all were established with the passage of the Universal Declaration of Human Rights (UDHR) on December 10, 1948. Despite the fact that the UDHR is not a binding instrument on states, it has promoted a worldwide view on following the prescripts of human rights within the international community. The commitment is especially important for the right to education, as it is a prerequisite for the enjoyment of other fundamental

¹ BA, BA Hons, MA (Rhodes University)
Ph.D. (University of Johannesburg)

² Committee on Economic, Social and Cultural Rights, 'General Comment No. 13: The Right to Education (Art. 13)', 1999, Office of the High Commissioner for Human Rights.



rights. It's also a cornerstone of the 2030 Agenda for Sustainable Development, and it's a great instrument for advancing SDG 4 on education, which aims to provide inclusive and equitable quality education for all and promote lifelong learning opportunities for all. The United Nations has recognized the right to education in a number of international instruments, demonstrating its conceptual power.³

Section 29(1) of the South African Constitution guarantees that everyone has access to basic education. According to the said section, "Everyone has the right –

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

(b) to further education, which the state, through reasonable measures, must make progressively available and accessible."⁴

Democratic South Africa inherited a racially divided education system, with separate provincial education departments, each with its own set of standards and tests.⁵ The history of education during the apartheid era, as well as the constitutional provision that gives everyone the right to basic education, show that the right must ensure access to high-quality education. By educating people of different races in accordance with the social and economic positions they were required to perform by the apartheid government, the segregated apartheid system was designed with the goal of fostering white privilege while also restricting black social and economic opportunities and mobility.⁶ South Africa's attainment of the dawn of democracy in 1994 with the subsequent adoption of the 1996 Constitution⁷ provided a new lease of life for the enjoyment of human rights. According to the

United Nations, 'human rights are commonly understood as being those rights which are inherent to the human being.

The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth, or another status.⁸ This is of particular significance for the right to education which has to be provided and enjoyed by all without distinction. The right to education is a basic human right that is entrenched in many national and international instruments that are designed to eliminate and guarantee life-changing opportunities for everyone through education.⁹ This means that the right to education is at the top of the international community's agenda and requires that all children to be assured of the quality of education, which respects and promotes their right to dignity, and enhances the goal for societal change and optimum development and growth.¹⁰ It also entails that the provisioning of quality education is placed at the apex of reducing socio-political, legal and cultural inequalities that continue to manifest themselves in the new constitutional dispensation.

South Africa has to date made progress in the area of providing access to education which is grounded in the 1996 Constitution. The post-apartheid system of education has responded to the transformative ideals of the new dispensation through the passage of legislation such as the South African Schools Act of 1996, policy documents, and many other legal measures that are designed to address the historic

³ UNESCO 'UNESCO Convention against Discrimination in Education (1960) and Articles 13 and 14 (Right to Education) of the International Covenant on Economic, Social and Cultural Rights: a comparative analysis' (2006). Available at https://unesdoc.unesco.org/ark:/48223/pf000014592_2, (accessed 6 June 2022).

⁴ Constitution of the Republic of South Africa (1996).

⁵ South African Human Rights Commission, 'Report of the Public Hearing on the Right to Basic Education' (2006). Available at <https://www.sahrc.org.za/home/21/files/Reports/Right%20to%20basic%20education%202006.pdf>, (accessed 6 June 2022).

⁶ Franklin, S and MacLaren, D 'Realising the Right to a Basic Education in South Africa: An analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to a basic education' (2015) *Studies in Poverty and Inequality*

Institute Working Paper 10.

⁷ The Constitution of the Republic of South Africa 1996, hereinafter referred to as the 'Constitution'.

⁸ United Nations *Human Rights: A basic Handbook for UN Staff* (2000). Available at <https://www.ohchr.org/documents/publications/hrhandbooken.pdf>, (accessed 6 June 2022).

⁹ Mestry J 'A critical analysis of the learners' constitutional rights to basic education in South African public schools' (2017) 82(3) *KOERS: Bulletin for Christian Scholarship* 1-12. Available at: <https://doi.org/10.19108/KOERS.82.3.2327>, (accessed 6 June 2022).

¹⁰ UNICEF *A human rights-based approach to education for all: a framework for the realization of children's right to education and rights within education* (2007). Available at https://unesdoc.unesco.org/ark:/48223/pf000015486_1, (accessed 3 December 2020).



legacy of inequalities in education. The adopted legal framework reinforces the rights-based approach toward the fulfillment of the right to education. On the other hand, despite the legislative progress made, access to education is faced with many challenges that overshadow the adopted legal framework which compromises the quality of rights envisaged therein.

While the democratic government, since 1994, has opened the doors of learning to all, the realization of the right to quality basic education remains a challenge.¹¹ South Africa's education system continues to be characterized by unequal access between the rich and the poor which is a result of the apartheid era. Moseneke DCJ as he then was in *Head of Department, Mpumalanga Department of Education v Hoërskool Ermelo*¹² gave content to the impact of South Africa's history on education and held that:

"Apartheid has left us with many scars. The worst of these must be the vast discrepancy in access to public and private resources. The cardinal fault line of our past oppression ran along race, class and gender. It authorised a hierarchy of privilege and disadvantage. Unequal access to opportunity prevailed in every domain. Access to private or public education was no exception. *While much remedial work has been done since the advent of constitutional democracy, sadly, deep social disparities and resultant social inequity are still with us. It is so that white public schools were hugely better resourced than black schools. They were lavishly treated by the apartheid government. It is also true that they served and were shored up by relatively affluent white communities. On the other hand, formerly black public schools have been and by and large remain scantily resourced. They were deliberately funded stingily by the apartheid government. Also, they served in the main and were supported by relatively deprived black communities. That is why perhaps the most abiding and debilitating legacy of our past is an unequal distribution of skills*

¹¹Franklin, S and MacLaren, D 'Realising the Right to a Basic Education in South Africa: An analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to a basic education' (2015) *Studies in Poverty and Inequality Institute Working Paper* 10.

¹² *Head of Department: Mpumalanga Department of Education & Another v Hoërskool Ermelo & Another* (CCT 40 of 2009) ZACC.

¹³ *Head of Department v Hoërskool Ermelo* 2010 (2)

and competencies acquired through education,"¹³ (Author's emphasis).

With this background, this article discusses the right to access quality basic education in South Africa using the cases of social accountability and transparency. The objective is to use the rights framework to unearth some but not exhaustive, of the existing challenges in the fulfillment of the right to education which has been exposed by the lack of social accountability and transparency. It argues that the fulfillment of the right to education should not be limited on paper but be broadened to all branches, and spheres of government including various stakeholders in order to achieve the needed reforms in compliance with constitutional and international human rights obligations in the attainment of quality education.¹⁴

II. SOCIAL ACCOUNTABILITY AND TRANSPARENCY

The term social accountability refers to a method of ensuring accountability based on civic engagement, in which ordinary citizens and citizen groups participate directly or indirectly in enforcing accountability¹⁵. Citizen monitoring and oversight of public and/or private sector performance, user-centered public information access/dissemination systems, public complaints, and grievance redress mechanisms, as well as citizen participation in actual resource allocation decision-making, such as participatory budgeting, are all examples of social accountability. In the broader global context of the booming transparency and accountability field, which also includes high-profile open government reforms and the proliferation of voluntary multi-stakeholder initiatives attempting to set social and environmental standards, primarily for the private sector, social accountability initiatives are multiplying. These many initiatives are predicated on the premise that knowledge is power and that openness will inevitably lead to accountability¹⁶.

BCLR 177 (CC) (Ermelo) paras 45-47.

¹⁴ See also Skelton A 'The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law' (2013) 46(1) *De Jure* 1-23.

¹⁵ Fox, JA 'Social Accountability: What Does the Evidence Really Say?' (2015) *World Development* 72, pp. 346-361.

¹⁶ Ackerman, J 'Human Rights and Social Accountability' (2005) *World Bank Social Development Social Papers* 86. Available at



Central to accountability is information and justification.

Ackerman argues that “accountability is one of the most effective ways to combat corruption, clientelism, and capture and thereby assure “good governance”, but it is not the only strategy”¹⁷. The social aspect of accountability is an approach to building accountability that relies on civic engagement.

Transparency, ‘openness’, and access to government-held information are commonly praised as solutions for government flaws and operations where the government pretends to be democratic but fails to live up to its language. Transparency, accountability, and dependability have all become widely accepted operational elements for good public administration governance. In fact, a rights-based social protection system requires transparency and access to information. The information must be available, accessible, and widely shared among the general public in order to effectively ensure transparency.¹⁸ Transparency and openness to information, in particular, are critical for assuring access and participation and can help to reduce or eliminate corruption, clientelism, and inefficiency. As a result, accountability and transparency go hand in hand. It follows from this that if the rights-holders are unaware of government rules, they will not be able to notice corruption and raise objections. Furthermore, a lack of openness may obstruct the dissemination of results information and erode public support for continuing and/or increased investment in social security programmes. Therefore, the right to access quality basic education requires accountability, transparency, and accessibility.

III. REALISATION OF THE RIGHT TO

<https://documents1.worldbank.org/curated/en/250451468048914790/pdf/330110HR0and0SAc0paper0in0SDV0format.pdf> (Accessed 7 June 2022).

¹⁷ *Ibid* at page 6.

¹⁸ Ackerman, J ‘Human Rights and Social Accountability’ (2005) *World Bank Social Development Social Papers* 86. Available at <https://documents1.worldbank.org/curated/en/250451468048914790/pdf/330110HR0and0SAc0paper0in0SDV0format.pdf> (Accessed 7 June 2022).

¹⁹ *Ex parte Gauteng Provincial Legislature: In re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School Education Bill of 1995* 1996 (3) SA 165 (CC) at para 9, finding that

QUALITY BASIC EDUCATION

The state has the responsibility to ensure that the right to education is realized through available resources. For example, section 7(2) of South Africa’s Constitution mandates the state to respect, protect, promote and fulfill the rights to a basic and further education. Access to education ought to be of quality and not just quantity. Therefore, the Constitutional Court stated that the right to basic education imposes a positive obligation on the state to ensure that education is available to everyone.¹⁹ The right to basic education is unqualified and immediately realizable (in comparison to other socio-economic rights) as Justice Nkabinde emphasized this point in *Juma Musjid* case:

“Unlike some of the other socio-economic rights, this right is immediately realisable. There is no internal limitation requiring that the right be “progressively realised” within “available resources” subject to “reasonable legislative measures”. The right to a basic education in Section 29(1)(a) may be limited only in terms of a law of general application which is “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”. This right is therefore distinct from the right to “further education” provided for in Section 29(1) (b). The state is, in terms of the right, obliged, through reasonable measures to make further education “progressively available and accessible.”²⁰

The fact that the right to basic education is “immediately realizable rather than subject to progressive realisation means that the right belongs to the individual”.²¹ As such, the realization of the right to basic education is assessed whether it has been achieved or not rather than whether the state has taken reasonable steps to achieve the right. Therefore, a learner claiming that his or her right to a basic

“Section 32(a) creates a positive right that basic education be provided for every person and not merely a negative right that such a person should not be obstructed in pursuing his or her basic education.”

²⁰ *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* 2011 (8) BCLR 761 (CC) at para 37 (Juma).

²¹ Franklin, S and MacLaren, D ‘Realising the Right to a Basic Education in South Africa: An analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to a basic education’ (2015) *Studies in Poverty and Inequality Institute Working Paper* 10, at page 2.



human right has been violated does not have first prove that the government acted unreasonably in the policies that it has developed or implemented. When a learner or any “individual has shown that the state has failed to provide for the realisation of his or her right to a basic education, the state instead bears the burden of showing that the limitation of the right is justifiable in an open and democratic society based on human dignity, equality, and freedom”²². The unqualified right to basic education provides individuals who have been denied access to adequate basic education with certain benefits that litigants who seek to vindicate other socio-economic rights do not have and does not mean that all learners will immediately have access to quality basic education.

The current basic education context in South Africa is proof that quality basic education remains unrealized mostly at schools in rural areas. The realization of the right to quality basic education remains elusive due to the number of challenges that are experienced at different schools. These challenges have the potential to compromise the advancement of social justice and the prospects of diminishing life chances in many other areas such as employment, health, social security, and participation in the political processes that affect their lives. The lack of appropriate infrastructure in schools does not lead to equitable access to education and resources. For example, the 2017 National Adjusted Estimates reported poor performance of implementing agents in the delivery of water and sanitation facilities. As a result, out of a target of 344 schools, 1 school was provided water and, 4 schools were provided with sanitation out of the target of 257. Social Accountability gives power to the citizens to hold the political leaders accountable for ensuring the right to quality basic education. Schools will have quality basic education when they have adequate infrastructure facilities and access to information communication technology for learners.

IV. CONCLUSION

The right to education is guaranteed in national and international instruments. While the South African government has done much to ensure that this right is realized for all, the quality of access to basic education remains unrealized for most learners in rural schools. Most schools still have inappropriate infrastructure facilities which make it impossible for the learners to be in conducive learning environments. Governments ought to be

accountable and transparent to the citizens to ensure the realization of the right to access quality basic education. Transparency, accountability, and reliability have all become widely accepted operational characteristics of good governance in the public sector. In fact, a rights-based social protection system necessitates openness and transparency. In order to effectively promote transparency, information must be available, accessible, and extensively disseminated among the general public.

BIBLIOGRAPHY

Articles

- [1]. Committee on Economic, Social and Cultural Rights, ‘General Comment No. 13: The Right to Education (Art. 13)’, 1999, Office of the High Commissioner for Human Rights.
- [2]. Mestry J ‘A critical analysis of the learners’ constitutional rights to basic education in South African public schools’ (2017) 82(3) KOERS: Bulletin for Christian Scholarship 1-12. Available at: <https://doi.org/10.19108/KOERS.82.3.2327>, (accessed 6 June 2022).
- [3]. Fox, JA ‘Social Accountability: What Does the Evidence Really Say?’ (2015) World Development 72, pp. 346-361.
- [4]. Franklin, S and MacLaren, D ‘Realising the Right to a Basic Education in South Africa: An analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to a basic education’ (2015) Studies in Poverty and Inequality Institute Working Paper 10.
- [5]. Skelton A ‘The role of the courts in ensuring the right to a basic education in a democratic South Africa: a critical evaluation of recent education case law’ (2013) 46(1) De Jure 1–23.

Cases

- [6]. Head of Department v Hoërskool Ermelo 2010 (2) BCLR 177 (CC) (Ermelo).
- [7]. Head of Department: Mpumalanga Department of Education & Another v Hoërskool Ermelo & Another (CCT 40 of 2009) ZACC.
- [8]. Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others 2011 (8) BCLR 761 (CC).
- [9]. Ex parte Gauteng Provincial Legislature: In re Dispute Concerning the Constitutionality of Certain Provisions of the Gauteng School

²² *Ibid*



Education Bill of 1995 1996 (3) SA 165 (CC).

Constitution

- [10]. The Constitution of the Republic of South Africa 1996

Website Articles

- [11]. Ackerman, J 'Human Rights and Social Accountability' (2005) World Bank Social Development Social Papers 86. Available at <https://documents1.worldbank.org/curated/en/250451468048914790/pdf/330110HR0and0SAc0paper0in0SDV0format.pdf> (Accessed 7 June 2022).
- [12]. UNESCO 'UNESCO Convention against Discrimination in Education (1960) and Articles 13 and 14 (Right to Education) of the International Covenant on Economic, Social and Cultural Rights: a comparative analysis' (2006). Available at <https://unesdoc.unesco.org/ark:/48223/pf0000145922>, (accessed 6 June 2022).
- [13]. UNICEF A human rights-based approach to education for all: a framework for the realization of children's right to education and rights within education (2007). Available at <https://unesdoc.unesco.org/ark:/48223/pf0000154861>, (accessed 3 December 2020).
- [14]. United Nations Human Rights: A basic Handbook for UN Staff (2000). Available at <https://www.ohchr.org/documents/publication/s/hrhandbooken.pdf>, (accessed 6 June 2022).
- [15]. South African Human Rights Commission, 'Report of the Public Hearing on the Right to Basic Education' (2006). Available at <https://www.sahrc.org.za/home/21/files/Reports/Right%20to%20basic%20education%202006.pdf>, (accessed 6 June 2022).