

The Feasibility of Free Higher Education in South Africa; Prospects and Challenges

Isaiah Mmatipe Sefoka

Faculty of Management and Law, School of Law, Department of Mercantile and Labour Law, University of Limpopo, Turfloop, South Africa

Abstract: *The advent of democracy in South Africa brought a radical transition in educational policies and programmes through the promulgation of various legislation, policies, laws and documents such as the 1996 Constitution, Freedom Charter and the Universal Declaration of Human Rights (UDHR) which advocate for the realization of free elementary education. This paper postulates that jurisprudentially speaking, free elementary education has been achieved as per the provisions of these laws and instruments. Seemingly, the reality on the ground is that free higher education has not yet been achieved despite students' demand which fact has previously fueled them to engage in serious protests. Therefore, attention should be drawn to the possible feasibility of free higher education since it has been an issue of concern. This paper recommends that higher education should be made free owing to academic excellence and legislation to that effect should be passed to allow proper enforcement and compliance.*

Keywords: Constitution; Free Education; Feasibility; Prospects

1. Introduction

Education is a basic right and it is an important tool that the society can use to drive development in all sectors of the society and alleviate poverty (Veriava, 2005; 1). On the other hand, education is both a human right and at the same time a tool that can be used in realizing other human rights such as the right to vote, the right to expression and the right to access to information as these rights can mostly be meaningfully exercised, understood and undertaken by a person who has acquired a certain minimum level of education (Bekker, 2000). It is an empowerment right which a marginalized society or a person can utilize to break out of poverty and obtain a means of survival which include meaningful participation and human development (CESCR, 1999; Art 13 (1) para 1).

Education is an important tool to freeing and unlocking the potential of every individual (Section 27 and others v Minister of Education and Another, 2012; 114). It is one of the important tools to build the foundation in life as it instils and restore confidence in individuals and brighten their future (Department of Education, Education Centers Project Report, 2011; 1). It is the pillar of any democratic country that seeks to develop human capital and provide opportunities for all (Department of Education, Plan of Action, 2003; 4). Education does not only make people more confident about themselves and their abilities, it also opens the doors to opportunities otherwise not available and makes people more aware of the world around them (Department of Education, Education Centers Project Report, 2011; 1).

The 1996 Constitution provides everyone with the right to elementary education which encompasses the right to adult elementary education. Section 29 of the Constitution provides that:

- (1) Everyone has the right-
 - (a) To a basic education, including adult basic education; and

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

- (2) Everyone has the right to receive education in the official languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account-
 - (a) Equity
 - (b) Practicability
 - (c) The need to redress the results of past racially discriminatory laws and practices (section 29 (1) (a) and (b); (2) (a), (b) and (c)).

2. Definition of key concepts

It is of paramount importance to take a look at the meaning of certain concepts being used in this study to avoid misunderstanding and to promote common understanding. Most of these concepts and definitions come from dictionaries and legal literature with the emphasis on the shade of meaning that is relevant to the context within this paper. However, some of the concepts are based on independent arguments of scholars.

3. Education

According to Thompson education refers to the act or process of educating or being educated; systematic instruction; or development of character or mental powers (Thompson, 1995; 431). Barnhart and Barnhart define education as the development of knowledge, skill, ability, or character by teaching, training, study or experience (Barnhart and Barnhart, 1992; 670). On the other hand, Tulloch define education as a systematic instruction or development of human character and mental powers and abilities (Tulloch, 1996). Hornby concurs with the aforementioned definitions and asserts that education is a process of training, teaching and learning, especially in

schools or colleges, to improve knowledge and develop skills (Hornby, 2000;401). For the purposes of this paper, the word education is used in a much broader sense; it includes all the above given definitions and shades of meaning to the inclusion of other meanings of peculiar system of education that promote quality education and skills development such as the process of cultivating quality knowledge and skills to the learners.

4. Basic Education

There is no legislative document in South African jurisprudence that defines the phrase basic education and the South African courts have not defined it either (Simbo, 2012). For the purposes of this study and for a clear meaning of the phrase “basic education” this paper contends that the Jomtien World Declaration on Education for All defined the phrase to mean basic learning needs (World Declaration on Education, 1990). In defining the phrase, the World Declaration stated that the acquisition of a basic education is synonymous to the acquisition of basic learning needs. This means that the phrase “basic education” refers to basic learning needs. In describing the basic learning needs, the World Declaration states that:

“These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning. The scope of basic learning needs and how they should be met varies with individual countries and cultures, and inevitably, changes with the passage of time” (World Declaration on Education, 1990; Art 1 (1)).

For the purposes of this paper the phrase “basic education” refers to the acquisition of basic learning needs which composes of essential learning resources such as school furniture and books which promote the basic learning content. This definition means that the phrase is quality oriented.

5. Higher Education

According to the World Declaration on Higher Education adopted by the World Conference on Higher Education, higher education refers to:

“all types of studies, training or training for research at the post-secondary level, provided by universities or other educational establishments that are approved as institutions of higher education by the competent state authorities”(World Declaration on Higher Education,1998). According to this declaration, this includes “all the activities a given country deems to be higher education - not only those that take place within ordinary universities and graduate schools, but shorter term education and training courses (polytechnics, junior colleges, and various forms of technical specialty schools) that are 2-3 years in length, and even correspondence

courses that make use of information technology and are targeted at a broad population of students” (World Declaration on Higher Education,1998).

6. Problem Statement

The right to free basic education in South Africa is guaranteed, provided for and promoted by the Constitution, the ANC Freedom Charter as well as other policies and frameworks aimed at promoting and protecting the right to education. The element of free elementary education is also attributed by international treaties and covenants such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, the reality is that there is no element of free higher education in South African policies let alone in the international arena. Despite that, there has been an ongoing protests cutting across the four walls of South Africa relating to free higher education in South African universities irrespective of the fact that there is no law or policy talking to free higher education. This protest was as a result of the misconception of free education as enshrined in the Freedom Charter which the students argued that it promises them free higher education.

7. Aim and objective of the study

This paper is aimed at examining the feasibility of free higher education in South Africa. The objective of this paper is to evaluate the possibility of the South African economy having to fund or cater for free and sustainable higher education.

8. Research Methodology

The methodology used in this paper is qualitative method as opposed to quantitative generally acceptable in legal research. This study utilises a desktop analysis of secondary materials more in particular library resources and rely heavily on scholarly legal literature including but not limited to articles, legislation, policies and regulations and primary information from reports of relevant departments and internet sources dealing with the subject matter in South Africa.

9. Literature Review

Quite a number of scholars have stressed extensively the importance of education and the impact an educated society can have on the country. According to Dwane, education is a bridge which a disadvantaged and marginalised society can utilise to cross over from poverty to a better life and to uplift themselves (Dwane 2012). Devenish asserts that “education is of seminal importance as far as human rights are concerned, since it liberates people from the bondage of ignorance, superstition and fear” (Devenish 1998;Akinbola,2010). Devenish further opined that education is of cardinal importance if acquired as it enables a person to fully participate with understanding and function effectively in particular society. It is also a basic right on which the realisation of

many other rights depend hence it gives people dignity and self-confidence (Devenish 1998).

Tomasevski is of the view that quality education if acquired is the starting point for every individual to understand and enjoy other fundamental rights such as the right to vote, freedom of expression, freedom of information and freedom of association and also to empower such individual to participate meaningfully in the society (Tomaševski, 2006; 47). Tomasevski posits that quality education contributes immensely towards the fulfilment of other socio-economic rights and also increase the individual's chances of securing a better employment which as a result secures access to food, housing as well as health care services (Tomaševski, 2006; 47).

Some scholars in highlighting the importance of education they specifically debated on the higher education. According to Riddle and Song higher education is regarded as an essential element to improve social and employment success (Riddell and Song, 2011). Tilak opined that the society that lacks education is greatly affected in many aspects of life including the prospects of getting a better income through employment. Among many advantages of higher education in society is that it does not just provide an educated workforce but also a workforce that can contribute to the growth and development of the country's economy (Tilak, 2011).

10. Interpreting the right to education

The right to free education was firstly expressed internationally under the Universal Declaration of Human Rights (UDHR). Article 26 provides that:

“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 accessible to all on the basis of merit. 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 or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children” (UDHR, 1948; Art 26 (1) (2) and (3)). This was then followed by other instruments such as the ANC Freedom Charter. The Freedom Charter stipulates that “the doors of learning shall be opened to all. The aim of education shall be to teach the youth to love their people and their culture, to honour human brotherhood, liberty and peace. Education shall be free, compulsory, universal and equal for all children” (Freedom Charter, 1955).

Following this instruments, the paper submit that there has been an interpretational misconceptions by the majority of South African students regarding free higher education. The students argued that higher education should be free specifically making reference to the Freedom Charter,

which students argued that it promises free higher education. That led to an intense debates coupled with student protests that became common to universities across South Africa under what become known as the #feesmustfall (Calitz and Fourie, 2016). This paper submits that the whole issue started on or about end of 2015 and beginning of 2016 when students in South African universities rose up and first demanded a zero or no increment on their tuition which then later somersaulted into a free higher education.

However, the African National Congress (ANC) attempted to interpret the misconception of what the student thought of the freedom charter. When interpreting the misconception the then general Secretary Gwede Mantashe said that:

“People say there will be free education, no, that's not what the Freedom Charter says. The Freedom Charter says higher education and technical training shall be open to all that is the right to it. By means of state allowances and scholarship on the basis of merit. The right is open, but access is on the basis of merits. We have exceeded that. That's our submission for a public debate” (ENCA 4 Oct, 2016:5).

11. Argument

It should be pointed out that the enrolment rates in institution of higher learning's has increased rapidly and is fueling the discussions on its financing mechanisms (Dung and Mncayi, 2016). Traditionally, and in most countries of the world, financing of higher education primarily depends broadly on the government (UNESCO, 2011). For example, Karkkainen (2006:4) argue that in 66 percent of the Organization for Economic Co-operation and Development (OECD) countries, at least 80 percent of higher education funding has come from the government countries since the 1980s. However, the long queue of crucial needs that compete with public higher education for a share of scarce public revenues has been increasing the financial pressure on higher education, especially in low- and middle-income countries (Johnstone, 2010:3; Dung and Mncayi, 2016, 163). This paper submit that for a government to be able to afford and fund higher education it need to be well resourced. The paper submits further that if the country has limited resources and its economy is limping it cannot afford to fund free higher education. As such South Africa is still a developing country with limited resources not ample to fund free higher education.

12. Conclusion and Recommendations

The paper examined important national and international instruments promoting and talking to free education. This instruments showcase that education is of great importance in building the nation. The paper emphasize that since education is a tool that can also be used to build a country, empowering South Africans with education will also be a stepping stone to build this country. The least South African government could do is to make higher education freebased on merits rather than free for

everyone and to enact a legislation to that effect. That is to say free education to those with academic merits and not every student. That as well will promote academic excellence and as such the quality part of education will not be compromised. This paper further emphasize that if everyone is to have free education the quality part of it will be compromised and that in itself will adversely affect the country and the economy hence education is the building block of a better country.

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