



Declaring Education an essential service: A significant step in the wrong direction

Introduction

On the 4th of February 2013, South Africans woke up to news that the ANC was planning to make education an essential service. Apparently, this was an outcome of an ANC Lekgotla held in Pretoria then. Mr Gwede Mantashe, Secretary General of the ANC, was unambiguous: “As a number one priority, the ANC and its government will leave no stone unturned in making education an essential service.”¹

While it should be appreciated that this call has once again brought the crisis of public education to the centre of our national discourse, it has wrongfully placed the teacher at the centre of the problems that beset our education system, and thus absolved government from its responsibilities. This paper explains how so.

A deeper crisis

It is now well-known that South Africa faces a deep crisis of education. It is not only the lack of infrastructure that makes South Africa’s public education a disgrace; it is also the poor quality of output that leaves much to be desired. The conditions in some of our schools are not conducive for learners to learn and for teachers to work.

Yet government budget for education has been increasing since 1994. Already in 2009, spending on education equalled 5.4 percent of GDP, slightly higher than the average 4.5 percent spent on education by most OECD countries. South Africa’s education budget increased by over 551 percent between 1994 and 2012, from R31.8 billion to R207 billion respectively. But there is little to show for the money that goes to education every year.

The increase in the education budget has not eradicated mud schools, nor has it been accompanied by quality education outcomes. Almost two decades after the advent of democracy, reports of primary school learners taught under trees still form part of our daily dose from newspapers and television footages. 19 years on, there are learners who still do not know what a library or laboratory looks like, when these facilities should be readily available at schools. In rural areas, the shortage of school infrastructure is a commonplace.

That these are the same conditions in which some of our members, the teachers, work seems always to escape public sympathy. Always when mud schools are discovered, or a class under a tree is revealed, or a scandal about lack of text books is unearthed, no one seems to care that these are the same conditions in which our members work. It is always forgotten that it is the teachers who work in those conditions and still be expected to produce better results.

Yet we continue to wonder why teacher attrition is so high. It is the unfavourable working conditions that make many teachers frantically to search for greener pastures elsewhere. Research has shown that

“working conditions, including professional teaching conditions, play a substantial role in decisions to leave teaching in a particular school or district, and they contribute to decisions to leave the profession altogether.”² They leave the country in search for better working conditions and better salaries. It is these conditions that the government should be striving to improve.

The crisis of our education is also laid bare by poor learner performance from foundation phase to senior certificate level. That South African learners cannot read and write has become a cliché. South African learners’ performance on maths, science and literacy is amongst the worst in the world. According to the 2013 World Economic Reform report, South Africa’s quality of primary and secondary school maths and science ranked 143 out of 144 countries. The 2008 Southern and Eastern Consortium for Measuring Education Quality (SACMEQ) comparative study, validates these facts. What is more worrying, though, is that, according to the SACMEQ study, “South Africa is outperformed by 8 surrounding countries, many of which, including Mozambique, Kenya, Uganda and Tanzania, are much poorer, with gross domestic products in the order of one-tenth to one fifth of South Africa’s.”³ Clearly, investment in education in South Africa has not been matched by educational outcomes.

But there are several reasons that are attributed to poor performance of learners in South African schools. Teacher absenteeism is one of them. Research shows that 20 percent of teaching time is lost due to learner and teacher late-coming and absenteeism.⁴ Up to 24 days of regular teaching time were lost due to teachers’ leave of absence in 2008.⁵ It is indisputable that teacher absenteeism impacts on the education of the learners.

It is indeed undesirable that teachers should be out of school or classrooms for a considerable amount of time in a year. Nic Spaul’s assertion that teaching time lost is highly underestimated adds salt to what is an already painful sore to bear. He argues that the lost days do not always include “time lost where teachers were at school but not teaching scheduled lessons.”⁶ Thus the learners are confronted with an unenviable experience: at worst the teachers are absent, and at best they are available but not teaching. What Spaul does not tell us, though, is whether the extra days for recovery programmes are actually included in the statistics. The effort that teachers make in the catch-up programmes, usually after strike action, should also be acknowledged.

There is also a crisis of teacher competencies. The latest revelation that teachers do not know what they teach is surely disheartening. A study by the National Education Evaluation and Development Unit (NEEDU) of the Department of Basic Education, in which teachers were given the same tests as those set for learners found that:

*South African primary school teachers generally exhibit poor subject knowledge in language and mathematics, and consequently an incomplete understanding of both the requirements of the curriculum and how to animate it in their classes. The same applies to subject advisors and circuit managers in district offices and indeed to many officials higher up the system too.*⁷

Without revealing the results of teacher performance in these tests, the conclusion by NEEDU researchers may appear farfetched. Unfortunately, it is a reality. Average scores for teachers on language

were 55.2 percent for inference questions, 36.6 percent for interpretation and 39 percent for questions measuring evaluation skills. In maths tests, average scores were 67 percent for arithmetic operations; 49.7 percent for fractions, ratio and proportion; and 46.5 percent for algebraic questions.⁸ How can learners pass with flying colours if those who teach them do not know the subjects they teach?

However, the teachers are products of an imperfect system. It is therefore simplistic to apportion blame to them without focusing on the bigger picture. The logic of the problem is simple: the learners do not know because the teachers do not know, and the teachers do not know because their subject advisors, circuit managers and officials higher up the system do not know either. How, then, are we to expect our learners to outcompete their peers in the world if both the teachers, subject advisors, circuit managers, and officials in the Department of Basic Education don't know the subjects for which they are responsible?

It is clear that we cannot resolve the crisis of education by kneejerk solutions, such as taking away the right of teachers to strike. As a society, we need to ask difficult questions. In his famous book, *One-Dimensional Man*, philosopher Herbert Marcuse poses a profound question for us. He asks: "who educates the educators, and where is the proof that they are in possession of the good?"⁹ In South Africa, we have no proof that those who are responsible for the training and re-training of our teachers are in possession of the knowledge and competence required of them to train our teachers. If the leaders have the same deficits as the teachers, who is to provide guidance and leadership to save our education system from the crisis?

Easy solutions such as the much abused concept of teacher re-training can only be hopeless as the teachers have to be re-trained by the same people whose subject knowledge is suspect. The most serious threat to learners' right to education is therefore not teacher strikes. It is poor subject knowledge on the part of educators, subject advisors, circuit managers, and officials higher up the system. This denies our children the right to education.

The other element fuelling the crisis in our education system is that mediocrity has triumphed over excellence. How else are we to justify the fact that learners are allowed to pass Grade 12 when they know only 30 percent of the subject? The 30 percent pass mark requirement for senior certificate subjects is scandalous and reflects on our diminishing appreciation for excellence as a country.

While the appalling state of our education might be the rationale for the call, we find the proposed remedy misguided. This is not to suggest that the PSA is less concerned about the poor state of our education. We are very concerned. But we believe that the challenges that beset our education system cannot be fixed by taking away the right of teachers to strike.

The congruence of international and domestic laws

South Africa's Labour Relations Act of 1995 defines essential services as "a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population."¹⁰ This is in tandem with international best practice as modelled by the International Labour Organisation (ILO). In fact, South Africa's definition of Essential Services borrows a great deal from the ILO, if not entirely copied from there. Already in 1979, the Freedom of Association Committee of the ILO defined essential service as a service "whose interruption would endanger the existence or wellbeing of the whole or part of the population".¹¹

This definition was later refined in 1983, to become exactly what is contained in our Labour Relations Act. As a member state and signatory to the ILO Convention on the Right to Organise and Collective

Bargaining as well as the Convention of Freedom of Association, South Africa's labour law is in accordance with international best practice.

The South African Constitution is considered to be among the best in the world. This is because of its liberal stance regarding the protection of individual freedoms. Among the freedoms enshrined in the Constitution are political rights, freedom of association and workers' rights. Section 23 provides for the right to fair labour practices, the right to form a union or be member of a trade union. Section 23 (2) (c) specifically guarantees the right of every worker to strike.¹² It is precisely for these reasons that our Constitution is held in high regard.

Like other rights enshrined in our Constitution, the right to strike is also subject to section 36, which provides for the limitations of rights. Guided by the Constitution, the Labour Relations Act of 1995 made provisions regulating the limitation of the right to strike. Section 65 of the LRA states that "no person may take part in a strike or lock-out or in any conduct in contemplation of furtherance of strike or a lock-out if that person is engaged in an essential service."¹³ For the workers engaged in essential services, the right to strike is therefore limited. This would be the case for teachers, if education was to be declared an essential service.

The role of essential service committee

But the decision on whether any service is an essential service rests with the Essential Services Committee appointed in terms of section 70 of the LRA. The functions of this committee, among others, include: "a) to conduct investigations as to whether or not the whole or a part of any service is an essential service, and then to decide whether or not to designate the whole or a part of that service as an essential service; and b) to determine disputes as to whether or not the whole or a part of any service is an essential service..."¹⁴

It is clear therefore that the decision to make education essential service cannot be done haphazardly. First and foremost, the LRA requires that consultation must be undertaken with all the stakeholders. In fact, the exercise to conduct an investigation must be sanctioned by the Bargaining Council concerned. It goes without saying, therefore, that the call to make education essential service would render the Essential Services Committee's work redundant. By suggesting that the ANC will leave no stone unturned to make education an essential service, the ANC was putting the cart before the horse. The investigation duly to be conducted by the Essential Services Committee would be a sham process to legitimise a decision already made.

Vital but not an essential service

If it were to happen, the intention to declare education essential service would be going against international best practice. As way back as 5 October 1966, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) recognised teachers' right to strike. Whilst recognising that the right to education is a fundamental human right, and the role of teachers in educational advancement and the importance of their contribution to the development of man and modern society, UNESCO's Intergovernmental Conference on the status of teachers, upheld the right of teachers to strike. It stated in its recommendation concerning the status of teachers that:

Appropriate joint machinery should be set up to deal with the settlement of disputes between the teachers and their employers arising out of terms and conditions of employment. If the means and procedures established for these purposes should be exhausted or there should

*be a breakdown in negotiations between the parties, teachers organisations should have the right to take such other steps as are normally open to other organisations in the defence of their legitimate interest.*¹⁵

When UNESCO said that teacher organisations should have the right to take such other steps as are normally open to other organisations it was referring to teachers' right to strike. That South Africa is a member state to the United Nations means that our country's laws in respect of education are to be guided by international principles as agreed to by member states of such UN bodies such as UNESCO.

At the level of labour law, the ILO conventions should also be adhered to. It should be borne in mind that as the precedent and standard setter on labour relations all over the world, the ILO has not classified education as an essential service. The many cases referred to the ILO, where governments attempted to make education an essential service gives evidence to its stance on the position of education as vital but not an essential service. For example, in the case between the Philippines government and educators in that country, the ILO Committee on Freedom of Association asserted in 1991 that "workers in education are not covered by the definition of essential services or of the public service exercising the powers of public authority"¹⁶. Again in 2001, the Committee declared Argentine's ministerial promulgation making education essential services unlawful. Also in Canada, where a provincial government classified education as an essential service, the ILO asserted its position and urged the British Columbia Liberal Government to repeal its laws.¹⁷

It is unclear what motivation those who are proposing that education should be declared an essential service in South Africa have to convince the ILO otherwise. What is clear, though, is that the intention to make education an essential service will go against international best practice and may be declared unlawful by such internationally respected bodies as the ILO. Education is vital, but it is not an essential service.

A step in the wrong direction

Apart from it treading on shaky legal grounds, the intention to make education an essential service is, as the Minister of Basic Education, Mrs Angie Motshekga once remarked, a step in the wrong direction. Since the announcement in February 2013, no person has argued against making education an essential service as eloquently as the Minister of Basic Education did back in 2010. This was in a written response to a parliamentary question posed by Honourable J.C. Kloppers-Laurens (MP), which we quote in full below. The Minister said:

Under labour law, essential services are those that society cannot do without, even momentarily, because of the potential loss to life or limb. Those truly essential services such as health, fire and police services are expected by law to be available 24 hours of the day, seven hours of the week and 365 days of the year. Clearly public schools that operate from Monday to Friday, and a total of 200 out of 350 days a year, are not in the same category as hospitals, fire halls and police stations. The disruption of schooling due to labour disputes is inconvenient but not a matter of life or death.

*Imposing essential service legislation and eliminating teachers' right to strike is a significant step in the wrong direction as it would take away a fundamental right to strike. The right to strike, however, must be balanced with the right to education; something my Department will engage all stakeholders in.*¹⁸

The PSA agrees with the Minister's wise counsel. Public schools are not in the same category as hospitals, fire halls and police stations; and neither are teachers in the same category as doctors, nurses or emergency service employees. While it is true that teachers are responsible for the development of citizens in a modern society, their involvement in strike action does not threaten the loss of life or limb. This is why the PSA does not support the move to declare education an essential service.

Strike action as a last resort

Throughout the world, the total withdrawal of labour has always been a tool used by workers to force employers to attend to their demands. Labour disputes such as wages, working hours and conditions of service are from time to time negotiated through strike action. Strikes are therefore the only powerful arsenal the workers have to fight their battles with employers.

When workers (teachers) feel their conditions are intolerable, and when they feel that their employer is inconsiderate, they should reserve the right to strike. In a democracy such as ours, this right is guaranteed, but is also regulated. Thus workers cannot willy-nilly engage in strike action without following appropriate pre-strike procedures.

The PSA has always been of the view that, in a vital profession such as education, strike action should always be a last resort. This means that both the employer and the employees should negotiate collective agreements in good faith and honour them. Failure to do so, especially on the part of the employer, carries the risk of making strike action inevitable in the profession.

The recent decision by the Minister of Basic Education to renege on the 2011 collective agreement to increase salaries for national examination markers proves the contempt with which the employer treats employees. It is a case of an employer who negotiates in bad faith. Unfortunately, this attitude makes alternative proposals to be viewed with suspicion.

Is it collective bargaining or collective begging?

There are those who have suggested that compulsory arbitration could be a solution. In this regard, teachers would trade strike for compulsory arbitration. This means labour disputes would automatically be referred to compulsory arbitration as prescribed in the Labour Relations Act, 1995, as amended. However, labour law expert, John Brand argues that "The rationale behind collective bargaining is to maintain industrial peace. The protection given to this right to strike is based on the importance of strike to collective bargaining. Simply put, "collective bargaining without the right to strike amounts to collective begging."¹⁹ This means that when stripped off the right to strike, teachers' bargaining processes would be reduced to collective begging.

Strikes are not the main the problem

The assumption that if education is declared an essential service it will improve the quality of education is wrong. This assumption is based on the perception that teachers are the root causes of the ills plaguing our education system. It is important to understand that there are various factors that contribute to the quality of education. As Adams aptly observes:

"quality education" is more than education without interruption. Quality education is found in a system that pays salaries that attract good qualified educators in sufficient

*numbers. It requires class sizes that are manageable and safe and appropriate classrooms and outdoor sport facilities.*²⁰

It is only when all role player stake responsibility for their part that we can begin to swing the tide in our education system. On its part, government has a huge responsibility to provide the necessary infrastructure, support systems and make the conditions conducive to teaching and learning.

It is disappointing that for more than five years now, the Department of Education has been dragging its feet towards the promulgation of minimum norms and standards for public schools. The absence of these norms and standards makes it easy for government to avert its responsibilities to provide the necessary infrastructure as required. Accountability on the part of government is compromised by the absence of these norms and standards. The PSA wants to add its voice in urging the Minister of Basic Education to attend to this matter with the urgency it deserves.

Without quality education, South Africa's prospects and competitive urge in the community of nations cannot be guaranteed. If the graduates produced by our education system are of poor quality, education will lose its meaning and no longer be viewed by many as an antidote to disempowerment. It is in the interest of future generations that we should restore the value of education in society. Our nation must never allow the devaluing of education to succeed. We should do this not only for education to serve its utilitarian purposes, but also for our education to be able to shape the minds of our children.

Those who think that teachers and their unions are the root causes of the problems in our schools are oblivious of the real challenges that beset our schooling system. Merely declaring education an essential service will not resolve these problems. How, for instance, will making teaching an essential service suddenly improve teachers' subject knowledge? In what ways will the taking away of teachers' right to strike transform mud schools and the trees under which our learners are taught into modern classrooms our teachers can call their work stations?

Until these questions are addressed, the call to make teaching an essential service will appear nothing more than a tactic to divert people's attention away from the real problems emanating from the failure of government to fulfil its responsibilities. Government must take responsibility for the education crisis engulfing our country.

Conclusion

There is no denying that South Africa is faced with a monumental crisis of education. From the provision of infrastructure, curriculum development, district support, teaching and learning in the classroom, and logistics, all evidence point to an education system in urgent need of serious overhaul. Piecemeal solutions will take us nowhere. A comprehensive strategy focusing on all aspects of our education system would be the surest way to salvaging our country's education.

Endnotes and References

-
- ¹ SAPA, 2013, ANC wants education to be declared an essential service, *The Times*, 4 February 2013.
- ² Pitsoe V.J., and Machaisa P.R., 2012, "Teacher Attrition Catastrophe in Sub-saharan Africa: A Hurdle in the Achievement of Upe, Efa Policy Goals and MDGs" *Science Journal of Sociology & Anthropology*, Volume 2012, Article ID sjsa-215, 7 Pages, 2012. doi: 10.7237/sjsa/215
- ³ Tailor N., 2008, "Whats wrong with South African Schools, Presentation to a conference", JET Services, 28-29 February 2008
- ⁴ Wittenberg M., 2005, "The school day in South Africa", Working Paper N0.113, Centre for Social Science Research University of Cape Town: Cape Town,.
- ⁵ HSRC
- ⁶ Nic Spaul, 2012, "Learning outcomes, teacher content knowledge and absenteeism", LRC conference, 15 November 2012.
- ⁷ NEEDU, 2013, *National Report 2012*, Summary Report,
- ⁸ Ibid.
- ⁹ Marcuse H., 1964, *One-Dimensional Man*, Routledge and Kegan Paul: United Kingdom.
- ¹⁰ Labour Relations Act (LRA) No. 66 of 1995, Section 213
- ¹¹ International Labour Organisation, Case no 909(Poland) 194th Report of the CFEA.
- ¹² Government of South Africa, 2005, *Constitution of the Republic of South Africa*, Parliament: Cape Town.
- ¹³ LRA, Section 65.
- ¹⁴ Ibid.
- ¹⁵ UNESCO, 1966, Special intergovernmental conference on the status of teachers, 21 September to 5 October 1966, UNESCO: Paris.
- ¹⁶ Adams A.J., 2011, Education sector as an essential service, in fulfilment of Magister Legum in Labour Law, Nelson Mandela Metropolitan University: Port Elizabeth.
- ¹⁷ Ibid.
- ¹⁸ Motshekga E., 2010, Written response to parliamentary question, 02/03/2010. <http://www.polity.org.za/article/sa-reply-to-parliamentary-questions-by-angie-motshekga-minister-of-basic-education-on-education-being-declared-an-essential-service-02032010-2010-03-02>
- ¹⁹ Brand J., 2013, Compulsory arbitration for teachers may be the solution, *BusinessDay*, 8 February 2013, p. 9.
- ²⁰ Adams A.J., op cit.