

SADTU's positions on education matters post the ANC's alliance education summit

Back ground

In the education alliance summit organised by the ANC held from the 12th to the 13th of April Velmore there were a number of issues that could not find expression or consensus at plenary and thus for various reasons required further engagement with the alliance partners particularly those that are involved in the education sector. The purpose of this consolidated document is to provide the leadership with an insight to the outstanding issues that are going to be raised at the meeting and to give a point of departure for our views.

Performance Agreements for Principals & Accountability of Teachers (Monitoring & Evaluation of Performance)

- The document drafted demonstrated that the proposed performance agreements for principals are a mere duplication of the Integrated Quality Management System which has already been agreed to by labour and the employer at the ELRC. The proposed performance agreements are also a duplication of the employment contracts that describe a principal's job description according to the Personnel Administration Measures. Most importantly there is no empirical evidence in the world that can prove that principals who signed performance agreements are able to improve the quality of learning.
- Whilst there is consensus from all the stakeholders that there are serious challenges in education these however need to be viewed systematically. Very little research has addressed the real factors influencing student performance. A recent study published by the South African Education Journal on various stakeholders' perceptions about the causes of poor learner performance revealed that major causes of poor student performance according to the participants included a lack of resources, lack of discipline and poor morale, problems concerning the implementation of policies, and inadequate parental involvement
- Research shows that little has been done to resource schools and to develop teachers. We believe that if the objectives of the IQMS and recommendations of teacher development summit which is mainly to resource schools and develop educators could be implemented, then the performance of schools could improve without requiring principals to sign the proposed performance agreements which we believe are the duplication of the IQMS.
- Evidence suggests that the problems affecting learner performance are structural and intertwined in their character, which means focusing on principals signing performance agreements whilst they have contracts already with adequate measures to manage performance would be too simplistic an approach. Some of the key areas as per the latest data where government should be focusing include:

1. **Lack of resources:** The lack of resources was rated as one of the major causes of poor learner performance, this include the lack of electricity,water,sanitation,libraries and labs.
2. **Inadequate text books:** All respondents mentioned the problem of shortage of relevant textbooks. Many learners did not have all the required books, and sometimes a class of 40 learners was required to share five copies of a textbook. In worse situations, learners depended on writing notes provided by the educator.
3. **Shortage of learning and teaching aids:** Learning and teaching aids such as posters, charts, audiotapes, computers and E-mail facilities were not available in most schools. Research evidence has shown this as a common problem in developing countries.
4. **Unfavourable learner/teacher ratio:** In some of the schools visited the teacher/learner ratio was significantly above the recommended one severely compromising the learning and teaching environment. In some schools the problem was caused by inadequate physical infrastructure and whilst in others it was largely due to a shortage of adequately trained teachers.
5. **Shortage of relevant and qualified educators:** Respondents indicated that there was a high shortage of experienced and effective teachers in some learning areas. Literature has shown that developing countries face the challenge of badly trained or under-qualified teachers.
6. **Lack of student discipline & commitment:** Student discipline was viewed as the second major cause of poor performance. Educators argued that some learners were ill-disciplined and difficult to work with. This affected the relationship between educators and learners. The level of learners' disruptive behaviour was increasing at a higher proportion and this impacted negatively on their commitment to work. Learners sometimes ignored the instructions of educators and promoted a culture of "no work".
7. **Inadequate parental involvement:** A school is a unit within a society, and can only exist through the cooperation of a school community. Establishing a good school community relationship was a key ingredient to success in securing mutual participation of parents in decision-making, school activities, problem solving, providing assistance and offering services to a school.
8. **Medium of instruction:** Although mother tongue instruction is pedagogically justified, learners in most schools are taught through a foreign medium of instruction. This makes the understanding of complex concepts more difficult.
9. **Problems in implementing government policies:** Policies of government clearly had a great impact on learner performance. In an attempt to reform the education system, government enacted many laws and adopted some new policies. However, not all policies were easy to implement. The data revealed that the Provincial Department of Education suffered from poor management procedures and unclear distribution of responsibilities for decision-making at various levels. Communication between various

levels, districts and schools, and districts and the provincial and national departments of education were not clear enough. There was a shortage and oversupply of relevant educators in schools.

10. **Poor communication:** Respondents argued that there is poor communication between various levels, i.e. between the school and school community and between the schools and districts.
11. **Poor Instructional support system:** The principle responsibility of subject advisors was to provide professional support. The unavailability of subject advisors in some districts made it difficult for the available person to visit schools on a regular basis. These officers did not meet the expectations of the clients, namely, educators and learners. Resource constraints affected the professional support negatively.
12. **Shortage of senior management posts in schools:** Many acting school principals, deputies and heads of departments were observed during the fieldwork. Surely school principals cannot be expected to run schools with unpaid school management teams.

Post Provisioning Norms

Introduction

The new model is in part a response to the complaints about the old model. The broad principles were approved by CEM in 2008, although implementation would be for 2011 at the earliest.

Whilst there are improvements in the new model, many aspects of the old model remain, and some of the new proposals have consequences for educators and schools which require further attention.

Potential areas of improvement

- Targeted class sizes now favour the foundation phase – for smaller classes - over the senior phase. In the previous model it was the other way around - contrary to international best practice and experience.
- There is an important shift from learner:educator ratios used in the past – which of course included non-teaching educators - to actual class size. However there are areas which could be improved:
 - These targeted class sizes are set rather high at 39 to 42 for (depending on quintile) for the senior phase.
 - Moreover, these are averages – so that the actual size can vary above this. It would seem useful to set a range of minima and maxima, rather than a vague average.
 - There is also a question as to whether non-teaching principals (built into the new model) are part of the staff establishment – which will then increase average class size

- The new model claims to be pro-poor. The old model made a general commitment to use 5% of posts for redress purposes. The new model builds the pro-poor element into the model based on quintiles, eg for the senior phase the average class size for Quintile 1 (poorest) would be 39 compared with 42 for Quintile 5 (least poor). Out concerns would be:
 - There remain serious questions about the way the quintiles are calculated and whether the poorest learners always receive the necessary support
 - This is the total extent of the pro-poor content of the new model – and may be even less than the current 5% commitment – which of course is minimal, to say the least
- The new model may assist with planning. It provides for a scenario A - based on the actual need for posts – and a scenario B – based on budget. Ultimately the budget scenario will prevail. But at least we would now know how much money is actually needed to run the system.

Areas of concern: Linking provisioning of teachers and physical classrooms

There is a provision in the new model to hold back posts from schools with insufficient classrooms to accommodate all the teachers. The argument is that giving more teachers than the number of classrooms available is an inefficient use of resources, since the excess teachers will just be sitting around taking free periods. In other words a school – which on student numbers (and other criteria) – is entitled to say 12 educators, but only has 8 classrooms – such a school would only receive 8 posts, and the other posts would be held back and used elsewhere until the school had received the additional classrooms.

This proposal caused greatest consternation as it appears that the model is penalizing schools which are already under-resourced, in order to make financial savings. Specific concerns include:

- This approach does not address the underlying problem of overcrowding and infrastructure backlog. The approach should be to fast-track the building of classrooms/schools, not reduce the number of teachers thus further increasing class sizes
- This approach could also impact on the grading of schools, leading to down-grading

The creative alternative to the DoE's penny pinching approach surely would be to develop strategies for improving delivery in situations of physical constraints using the full staff compliment – eg group work, multi-grade teaching strategies, some kind of shift system – as short-term strategies until proper physical infrastructure is in place.

Areas of concern: the issue of equity and redress

The new model claims to be pro-poor. At best this is marginally true. But there are other factors which contradict the pro-poor claim:

- Historically so-called “small class subjects” which provide for classes as small as 6 have favoured the best resourced schools which are able to offer a wide range of learning areas/subjects. These have been retained in the new model

- There has never been any rational justification offered for the specific class sizes attributed to these particular subjects. The presenters were unable to say what the basis of the weightings is. Seemingly they have been inherited wholesale from the earlier Morkel model – which was condemned at the time as favouring the richer schools.
- These better resourced schools also collect thousands of rand (millions in some cases) from user fees. This allows them to employ additional teachers (almost certainly depriving poorer schools of scarce skills). The model draws a veil over this aspect of the real system of post distribution existing within the public schooling system.

Let us contrast this with the norms and standards for non-personnel non-capital spending which is genuinely redistributive towards the poorer schools – with the poorest schools receiving seven times as much support as the richest. It has been further proposed to link support to the size of fees charged. Why has there been no similar thinking in relation to post provisioning? – so that significant moves towards greater equity can begin. This is at the heart of the pro-poor debate since 80% of budget goes towards post provisioning – and yet the redress element in post provisioning is at best miniscule.

- The model deals in posts – not in the cost of individual educators – which in an equal system would provide no problem. In the South African public education system however – still scarred by racial and class divisions – we suspect that the highest qualified and best paid educators gravitate disproportionately towards the former model C schools.

Further concerns

- No allowance has been made for ELSEN learners either in special schools or in the mainstream. Again the most vulnerable come last.
- There is no mention of new forms of provision or substitutes. The 2005 HSRC Report indicating the widespread prevalence of HIV pointed to the need for new forms of teacher substitution to cope with the rising levels of absenteeism caused by the disease.
- Ultimately the model is resource driven – scenario B – rather than needs driven
- The model builds in very large steps where the loss or addition of one additional teacher could result in the loss or gain of an HoD and a Deputy Principal.
- The model does not appear to have the capacity to ensure that educators are best utilized in relation to their areas of training and skill.
- Grade R is not part of the model. The tendency here has been for the DoE to try and provide for Grade R on the cheap.
- There is no focus on sports – where we have a major deficit in terms of poorer schools. It is an indictment that as we approach the FIFA World Cup in 2010 the majority of our schools have no physical education and sports programme to speak of. This new provisioning model does not assist in ensuring that schools have physical education teachers.

- Similarly there is no consideration in the model for the need to employ counselors, librarians, guidance teachers. This has to be integrated into the model.
- The model has not considered the implications of curriculum change for staffing levels and staff distribution.
- Does the model need to set an upper limit for the size of schools. Do we need a debate on just how big schools should be in South Africa? – so that we do not repeat the mistakes made elsewhere.

Process going forward

The DoE will continue to trial the new model and sys it will take into account comments made at the workshop. They will also provide the parties to the ELRC with a demonstration of how the new model works in practice – using practical examples.

From the side of SADTU there are clearly some fundamental reservations about the new model. There are problems with the proposed model and there are concerns that there are unintended consequences arising out of a very technicist approach to the issue of post provisioning and distribution. At the least we need to request further research.

Further research needed:

- Into the distribution of ‘small class subjects’ across schools by quintile
- Into the number, spread and utilization of SGB appointed educators across quintiles
- Into the spread and utilisation of educators according to qualifications and pay levels across schools by quintile.
- Effectiveness of the quintile system in supporting the poorest learners across the system
- Evaluation of the present weightings given to “small class subjects”
- Strategies for best utilizing educators in schools with insufficient physical space (classrooms)

Introduction

The purpose of this paper is to review the current Post Provisioning Model or Post Distribution Model (PDM) with a view to improving the learning environment (quality of teaching and learning). The paper takes into account the Education Labour Relations Council Research Report 2000-2006 and the general discourse on (PDM) in various forums. The research report supports the general discourse on PDM and the need to strengthen or change the model.

The current model is premised on distributing a fixed number of posts within the system (province). When enrolment drops the access teacher is moved to a school with increased enrolment. The number of post remains the same. Together with the funding model schools are indirectly encouraged to increase learner numbers.

The research report identified the following general challenges with the implementation of the PDM model:

- Lack of familiarity with the mechanics of Post Distribution Model(PDM)
- Quality of EMIS DATA
- Monitoring of PDM
- Equality vs. Redress

The current model or the new model can be strengthened by including the topics listed below.

Quintile

According to the research report (2000-2006), schools are given incorrect poverty ranking. Schools in close proximity to urban centers receive higher quintile ranking despite low parent income and levels of poverty within the community. For example, a school located in an urban area where the industries or mines have closed is given a high quintile ranking. Yet, the main economic activity in the areas has been reduced to low income economic activities like informal trading. The quintile ranking also fails to take into account that many parents would make huge financial sacrifices to send their children to better schools. Hence, it's a common practice for parents to "bus" their children to a school in a different community for better schooling.

Recommendation

1. Develop a model for ranking schools correctly in quintile categories taking into account parent income, residential address of students etc.

Resourcing

Provincial spending of the education budget is variable. Education funds allocated from national treasury are utilized in provinces according to provincial priorities. Budgets are used to cover expense outside the education sector. Per learner spending is also a provincial prerogative. Streamlining the education budget require a two fold intervention. Ring fencing the budget will ensure that funds are spent for intended purposes and binding norms will ensure that funds are spend to enhance education quality in the different areas of education. Funding personnel and non personnel expenditure will be guided by the binding norms.

Recommendations

1. Ring fence the education budget.
2. Create binding funding norms for provinces.

Class Size Model

The current PDM is based on a fixed number of posts in a province and the distributions of these posts are based on learner weighting into a schools. This has consequences for class size. The research report (2000-2006) cites school level distribution and classroom shortage as the two main reasons for this. School also maximizes learner enrolment to benefit from the school LTSM

allocation. Post allocation for main stream and full service schools must be based on the maximum class size.

The research (2000-2006) indicates that with significant increase in learner weighting the post allocation remains relatively the same.

Recommendation/s

1. Introduce a maximum class size into the PDM:

Phase	Current	Proposed
Foundation Phase	1: 35	1:25
Intermediate Phase	1: 40	1: 30
Senior Phase	1: 37	1: 30
FET	Varies	1: 25

Teacher Qualification

The most experienced, qualified and highest paid teachers are practicing in the ex model C schools. The under qualified teachers are concentrated in schools that need more support. Primary Schools 11%-High Schools 2.8 % /Rural 9 % -Urban 7.5% / Coloured 13.8 %- White 2.2 %/ NW, FS, NC, WC 10%.

This affects school spending with more funds going to better performing schools. Schools do not receive additional posts because of limited spending for under qualified teachers.

Recommendation/s

1. Develop a equitable model for PDM taking into account total spending per school.
2. The principle of redress must inform the model.

Focused Schools and Expanding the Curriculum

Most secondary schools are offering learners a limited number of subjects because expanding the curriculum offering places pressure on existing staff without post benefits. Of the 29 subjects available, learner in most learners can access about 12 subjects.

Scarce and critical subjects can be promoted by creating focus schools. Languages too can fall into this category.

Recommendation/s

1. Make provision for PDM for focus schools.
2. Support schools to introduce more subjects with additional staff.

Teacher Work Load

In addition to teaching and learning, teachers are asked to perform many tasks that fall outside their job description (Research 2000-2006). Some of these are time consuming and require expertise. The Teacher Well-being research identify work load of the teacher as one of the key factors creating stress among teachers. The work demands far exceeds the time available and capacity of many teachers. Stress, burnout, violence and assault characterize the difficult conditions under which teachers work.

Teacher work load is the relationship between class sizes, instructional time and administration time.

Working on realistic work loads like the table presented, with reduced learner numbers, will assist in mitigating many problems including learner discipline. Teacher will be able develop deeper understanding of learners and their background to assist them in learning. In effect, they will be able to sharpen their roles in student learning in an enabling environment.

Recommendation/s

1.Improve classroom environment and job satisfaction through PDM taking into account class size.

PDM and ECD, Specialist Post

The current PDM excludes ECD practitioners and Specialist (Psychologists and Therapists). Currently, parents fund the ECD posts in many schools. Some province subsidizes the ECD post resulting in poorly qualified staff being employed in these posts.

The specialist post fall outside the PDM and provinces determine salary structures of these practitioners with little career opportunities.

Recommendation/s

1. Include ECD practitioner as part of the PDM.
2. Develop a model for Post Distribution for specialists (Psychologist and Therapists)

Budget for Posts

The Research Report (2000-2006) argues that consideration needs to be given to the overall budget and spending priority and the following were identified as key areas for debate:

1. Personnel and Non Personnel
2. Office Based and School Based Staff
3. Educators and No Educator Staff

Recommendation/s

1. Identify the most effective distribution of the budget in relation to improving the quality of teaching and learning.

PDM for Full Service and Special Schools

Including a norm for distributing post to Full Service and Special schools is long overdue. Support staff in this sector is also important because of high learner needs. Teachers have to cope with psychosocial and medical needs of learners.

Recommendation/s

1. Develop a class learner needs model for the PDM.

SMT Roles and Responsibility

In the current PDM, the principal and rest of the SMT members are expected to teach almost a full load. Principals in small schools maintain a class unit as well. Because principals also attend meeting and engage in other activities their teaching and learning responsibility is often compromised. The PDM needs to allow for SMT administration time.

Recommendation/s

1. Principals are excluded from teaching and learning responsibilities.
2. Make provision for SMT administration time.

Sports and Languages

Physical education and languages must be given priority in the PDM. The large class size makes it almost impossible to effectively develop learners' physical abilities. Promoting indigenous languages should also be given priority.

Recommendation/s

1. Allocate additional posts for physical education and languages.

Conclusion

The review of the PDM or PPN is made with the intention of promoting a better learning environment (quality of teaching and learning). This can be accomplished by the following:

1. Ring fencing education allocations;
2. Developing binding norms for provinces;
3. Ensuring equitable distribution of resources as opposed to equal distribution;
4. Developing a better model for determining the quintile ranking of a school;
5. Developing a class size model as opposed to a learner weighted model;

6. Include ECD and Specialist Posts in the PDM;
7. Make stronger recommendation on Personnel/ Non Personnel; Office Based/ School Based Staff; Educator and Non Educator distribution spending;
8. Exclude Principals from teaching and learning although the research suggest that marinating a practice at least in one subject will keep him or her in touch with teaching and learning changes;
9. The model must favour smaller class sizes which will have a positive impact on teacher work load;

Ultimately, the model needs to create a better learning environment where proper teaching and learning can take place. Schools also need support staff for administration and school finance. Security and school cleaning can also enter into the discussion for a better learning environment.

Resourcing of education

It is imperative for the DBE to come up with an intervention strategy that will attract good teachers to poor (township and rural) schools. There should be attractive and sustainable incentives that facilitate the movement of effective teachers to the previously disadvantaged schools. Without such incentives, it will be very difficult if not impossible to equalize the distribution of teacher knowledge across South African schools.

In this regard the government must expand the FUNZA LUSHAKA BURSARY to allow more access to those learners who want to become teachers. These learners must be placed in the rural schools once they graduated.

The government may also consider introducing a community service model where recent graduates (B Com, BA in languages, BSC Maths and Science, Sports) are employed to do community service for a year in the rural areas. These graduates should be employed to work as work as teacher assistants, to help learners on after schools and Saturdays with basic literacy and numeracy, help with homework.

Quality learning and teaching cannot take place in the absence of resources including quality school infrastructure. The government must build the much needed school infrastructure in all the schools. Research has proven that when schools have a functional library fully stocked with a fulltime librarian, laboratories, computer centre, storage facilities, enough toilets, a play ground, sports facilities, a school hall, a staff room, a kitchen, an administrative centre, water and electricity, are beneficial to the progress; and academic development of learners. In a major international study researchers concluded that all other things being equal, student performance increases by between 10% and 25% when a library space is adequately stocked, and properly staffed within a school.

1.2 Capacitating the School Governing Body

The membership of the school governing body (SGB) is comprised of teachers, learners and parents. The parents are the majority in terms of numbers in the SGB. However most of the parents do not

know the role and functions of the SGBs. And it is precisely in relation to the role and composition of SGBs that a key weakness could be identified in the governance arrangements of schools.

The leadership role of the SGBs is limited, if not non-existent in some schools. Some SGBs provide little or no leadership and strategic direction, and have weak management accountability measures in place. In some schools SGBs have abdicated their leadership role to the school management for instance the school principal. It is important that SGBs provide leadership and strategic direction to school to ensure that their institutions' mission and strategic plans are aligned with, and contribute to meeting national policy goals and objectives.

Since majority of SGBs in South Africa do not have the necessary skills to carry out their duties. The DBE may consider running training programs for SGBs to train them about the role and work of the SGBs. These programs the need to be adaptable and responsive to local circumstances. They should take into consideration the environment in which the school is operating, based on the challenges faced by the school and the SGB's cultural and social capital.

DBE should develop training programmes that links schools with communities as it has been proven in many research studies that parental involvement constitute a significant role in better school management and learner achievement. This will make schools to be more relevant to address challenges that are faced communities. This view is based on the fact that schools reflect communities from which they operate from. As a result, such a synergy between community and school will be to the benefit of the school.

The other challenge is that of the Learner Representative Council (LRCs) because most of them are well not trained to participate in the school governing body. Sometimes they feel disempowered; they are still young and expected to master large and complex agendas. They are also undermined/ marginalised by the school management and the parents and they are almost always in the smallest of minorities. The DBE must capacitate LRCs through programs that will give them the skills help them participate in the governance of their schools.

Essential services and Teachers right to strike

Educators' right to strike and Learners' right to basic education

Section 23 of the Constitution¹ guarantees to every worker the right to strike. The Labour Relation Act² was enacted in order to give effect to section 23 of the Constitution. The rights in the Bill of Rights may be limited in terms of section 36 of the Constitution.

Section 29 of the Constitution guarantees the right to basic education, including adult basic education to everyone and section 28 of the Constitution provides that "A child's best interests are of paramount importance in every matter concerning the child". The right to fair labour practice

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which include the right of every worker to strike and the right to basic education are said to be competing to one other.

Some political parties including the Democratic Alliance³ calls for the limitation of educators' right to strike in order to give effect to the right to basic education. The DA submitted a Proposed Private Members Bill in Parliament in October 2011 which seeks to limit the educators' right to strike in order to give effect to the right to basic education. DA's proposal seeks to suggest that section 28 of the Constitution supersedes other rights in the Bill of rights and according to the DA; teachers' constitutional right to strike should be limited in order to give effect to children's right to basic education.

One of the primary objects of the LRA is to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation (ILO). Section 3 of the LRA compels the LRA to be interpreted in compliance with the public ILO of the Republic. Section 39 of the Constitution requires an interpretation of the Bill of Rights which promotes the values that underlie an open and democratic society, based on human dignity, equality and freedom. It also states that International Law must be considered.

Where two fundamental rights are in conflict with each other, it must be attempted to harmonise them with reference to the criteria in section 39(1) of the Constitution.⁴

Effects of declaring education an essential service

Section 213 of the Labour Relations Act⁵ defines essential service as:

"(a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;

(b) the parliamentary service; and

(c) the South African Police Service."

Section 65 of the LRA provides that:

*"No person may take part in a strike or lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if - ... that person is engaged in an essential service..."*⁶ Section 64 of the LRA set out procedures which must be followed before the right to strike may be exercised.

The Labour Court held in South African Bus Employers' Association v TGWU⁷ that:

"Internationally it has been recognised that there should not be a right to strike in "essential services". Societies recognised that the harm which a strike in certain services may inflict are far too detrimental to the life, health and safety of the whole or part of the population of a country. The

³ Herein after referred to as "the DA"

⁴ See du Toit et al "Labour Relations Law: A Comprehensive Guide 5ed, LexisNexis, Durban, 2011 on page 70.

⁵ Act 66 of 1995 (herein after referred to as "the LRA")

⁶ See section 65(1)(d)(i)

⁷ (1998) 5 BLLR 522 (LC) at 524

International Labour Organisation recognises this exception to the right to strike and has defined it in these terms. Employees who render essential services were not to be left out in the cold; compulsory arbitration was to be their substitute for the right to strike”.

The Constitutional Court held in SAPS v POPCRU & another⁸ that:

Section 65(1)(d) of the Labour Relations Act 66 of 1995 (“LRA”) provides that no person may take part in a strike if, *inter alia*, that person is “engaged in an essential service. The Court held that when an employer is declared an “essential service” it is the function of the employer that constitutes the “essential service” and only the persons engaged in the performance of those functions are prohibited from striking. It was accordingly necessary to establish the functions performed by the SAPS and to identify who is engaged to perform those functions. The functions assigned to the SAPS by the Constitution are “to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law” – i.e. to police. It is these functions which constitute the “essential service” contemplated by section 71(1) of the LRA.

The court rejected the SAPS argument that all SAPS employees are engaged in the policing function. The SAPS is part of the country’s security services. The Constitution refers to “members” of the security services. So, too, does the SA Police Services Act, which specifies that only members may perform policing functions, unless the national commissioner exercises his authority to declare employees employed under the PSA “members”. The Court accordingly held that, unless they are deemed members, non-members employed by the SAPS cannot perform police functions, and therefore do not form part of the police service.

The Court held further that the fact that non-members perform a vital support function cannot catapult them into the class of “members”. A strike by non-members will not disrupt the essential service rendered by SAPS because their duties may be performed by members or substitutes may be hired. This meant that the SAPS’ argument that all its employees are prohibited from striking would constitute an unreasonable limitation on non-members’ constitutional right to strike.

Section 70 of the LRA provides for the establishment of an essential services committee. This committee is to conduct investigations as to whether 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 any service an essential service.

The Labour Court held in Natal Sharks Board v SACCAWU⁹ that:

“The Essential Services Committee must designate a service as an essential service by publishing a notice to that effect in the Government gazette and only after an investigation has been done... if the applicant feels that it ought to be an essential service it should go through the procedures laid down in section 70 of the Act”

ILO position on teachers and essential services

⁸ (2011) 2 BLLR 109 (CC)
⁹ (1997) 8 BLLR 1032 (LC) at 1039

In a case involving Argentina¹⁰, a ministerial promulgation declaring state and private education to be essential services was declared unlawful by the Committee, which indicated that the education sector does not constitute an essential service in the strict sense of the term. This was after the Confederation of Education Workers of Argentina and the Latin American Federation of Workers in Education and Culture levelled allegations against the Government of Argentina that there was a violation of the right to strike of education workers by virtue of the promulgation of ministerial resolutions.

The protection of teachers' right to strike is further emphasised by paragraph 84 of the 1966 ILO and the United Nations Educational, Scientific and Cultural Organizations. Recommendations Concerning the Status of Teachers, which provides as follows:

"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."

SADTU's position regarding the proposal that education should be declared an essential service

We should point out at the outset that SADTU is fundamentally opposed to the proposal of declaring teaching an essential service as the proposal does not seek to put the interests of learners first but is in fact aimed at unconstitutionally limiting teachers' rights to strike and to freedom of association.

It is clear from the court cases cited above read with the definition of "essential service" as provided in section 213 of the LRA that a service is deemed to be an "essential service" if the interruption of that service will endanger the life, personal safety or health of the whole or any part of the population. The LRA definition of the "essential service" is in line with the ILO definition.

When teaching is interrupted due to strikes, we submit that, such interruption do not endanger the life, personal safety or health of the learners. The functions performed by educators (teaching) are not "essential service".

SADTU's opposition on the proposal to declare education an essential service is in compliance with the International Labour Organisation. As already stated above, the 1966 ILO, the United Nations Educational, Scientific and Cultural Organizations recognises and protects educators' right to strike.

We believe that if problems of teacher-learner ratio, exorbitant school fees at former model C schools, school violence, inappropriate infrastructure, inadequate learning materials, under qualified teachers can be addressed, education in South Africa will significantly improve without taking away educators' right to strike. SADTU fundamentally oppose the submission that teacher strikes are the only factor that contributes negative to education system in South Africa.

SADTU further opposes the submission by the DA that by virtue of including section 28 of the Constitution in the Bill of Rights, sections 29 and 28 supersedes section 23 of the Constitution. We submit that Rights in the Bill of Rights are interrelated and where two fundamental rights are in conflict with each other, it must be attempted to harmonise them with reference to the criteria in section 39(1) of the Constitution.¹¹ We therefore submit that declaring education an essential service and/or limiting educators' right to strike will not pass section 36 of the Constitution test as there is no need for such limitation. Declaring education an essential service will be in conflict with the ILO standards and inconsistent with the Constitution.

Quality Learning and Teaching Campaign

SADTU is committed to improve education in South Africa. SADTU affirm her unequivocal commitment in Quality Learning and teaching Campaign (QLTC). SADTU calls all stake holders in education, namely, teachers, parents, learners and government to work together to improve education as it is evident from the studies mentioned above that teacher strikes are not the only factor that negatively contributes to the alleged crisis in education.

We have decided not to include teacher absenteeism and late coming as a problem which needs to be addressed as there are legislations in the education sector which specifically addresses the problem. The example will be section 14 of the Employment of Educators Act, where educators are discharged from service if they are absent from work for a period exceeding 14 days. Their services are terminated without following pre-dismissal procedures and they do not enjoy protection afforded by the LRA to employees who have been unfairly dismissed as such termination is not a dismissal but is a termination by the operation of the law.¹

Number of days lost due to strikes and purpose of strikes

The reported findings of the Tokiso Review on labour disputes show that two percent (2%) of strikes from 1995 to 2009 fell within the Health and Education sector. Out of two percent (2%) SADTU is responsible for forty two percent (42%).

Forty two percent is calculated by using SADTU's 250 000 membership – multiply by 21 days that the 2007 strike lasted – and you end up with five million workdays lost on account of SADTU. Forty two percent is not surprising giving the fact that SADTU is the largest union in the public service with about 250 000 members and well organised. SADTU participated in protected industrial action for twenty one (21) days in 2007 and an average of twelve (12) days in 2010.

The purpose of a strike action is for remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee. It is clear from the definition of "strike" that the purpose of a strike is to remedy a grievance or resolving a dispute and is directed to the employer. It is unfortunate that in the education sector, the strike does not only affect the employer but also affect learners.

Educators' use power play as a means of last resort as the strike is not only affecting the state and learners but is also affecting educators due to the application of the principle of "no work no pay".

¹¹

Educators' are affected by the principle of "no work no pay". The state can also avoid strikes by acceding to reasonable demands by educators. Employees comply with pre-strike procedures such as referring a dispute to conciliation and serving notice before striking. Therefore the employer is afforded with an opportunity to accede to employees' demands. It is the responsibility of the state as an employer to ensure that they put measures to minimise the adverse impact of educators' strikes to learners, hence the requirement of the notice of the proposed strike.

We deny that if education could be declared an essential service, thereby limiting educators' right to strikes will improve the quality of education in South Africa, as we believe that the crisis in education is systematic and deep-rooted. Educators' does not embark on strikes everyday or every year. SADTU was in the forefront of mobilizing teachers to participate in catch up programmes, teaching at weekends and during school holidays after the suspension of strike by Educators.

The right to strike

It should be noted that the right to strike is not only enshrined internationally through the International Labour Organisation ("ILO") conventions,¹² but is a key right entrenched in our own Constitution.

In terms of these ILO conventions, workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Workers further have the right to organise and to bargain collectively free from interference from administration.

It is our view that the proposal to declare education an essential service in order to give effect to section 29 of the Constitution is aimed at undermining educators' right to strike and interfering with the right to collective bargaining. It is our view as submitted above that, even if educators' right to strike may be limited, we do not believe that the right to basic education will be fully achieved if other problems affecting the full realisation of the right to basic education are not attended to even if education could be declared an essential service.

If the proposal to declare education an essential service especially using children as a bargaining tool to take away educators right to strike was to be accepted it would, in effect destroy some of the most important pillars of our LRA which is giving effect to the Constitution and open the door to industrial chaos rather than legitimate regulation of our labour relations.

Conclusion

The Constitution envisages a careful balance between the right to strike and the regulation thereof. Section 23(2) (c) of the Constitution provides that every worker has the right to strike. The right must be seen as part of the process of collective bargaining. Section 23(5) provides that national legislation may be enacted to regulate collective bargaining. It contemplated that such legislation may limit the right to bargain collectively but requires such limitation to comply with the provisions of section 36(1) of the Constitution. The LRA was enacted to regulate collective bargaining and to also deal with industrial action and its limitations.

Declaring education an essential service and prohibiting educators from engaging in strikes as proposed by SANCO and DA cannot meet the test of section 36(1) of the Constitution. Limitations on the right to strike are contained in section 65 of the LRA and no limitations other than those expressly mentioned in the LRA are justified.

Teaching should not be declared an essential service as is evident from cases referred to the ILO. The ILO has indicated expressly that teachers are not essential services.

The community should recognize that “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 manageable class sizes, qualified teachers, appropriate infrastructure, adequate learning materials, safe and appropriate classrooms and outdoor sport facilities. By prohibiting teachers to strike will not only hurt teachers, it would also hurt the education system as teachers also bargain for improvements in the education of the country.

SADTU calls on all individuals and organisations to assume responsibility for improving the quality of education in South Africa.

