The right to education for children aged 5-18 years[1]

This is one in a series of topical guides developed for PAN:Children that provides key information on the current state of affairs in South Africa related to the topic and highlight practical guidance, lessons learned and case studies (both national and international) that will be helpful in policy development dialogue and knowledge sharing.

1.   International, African and national instruments guaranteeing the right to education

The right of children to education is guaranteed. The obligations on the state to protect, respect and promote the right are governed by international, African and national legal instruments, including the following:

- The United Nations Convention on the Rights of the Child (United Nations , 1990);
- A World Fit for Children (United Nations General Assembly, 2002);
- The Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, 1979);
- The Convention on the Rights of Persons with Disabilities (United Nations, 2006);
- The African Charter on the Rights and Welfare of the Child (African Union, 1999);
- The Millennium Development Goals (UN General Assembly, 2000);
- UNESCO's Education for All (UNESCO World Education Forum, 2000);
- SADC Protocol on Education and Training (SADC, 1997);
- Constitution of the Republic of South Africa (Republic of South Africa, Act 108 of 1996).

In terms of these instruments the state has to ensure the right to education through appropriate legislative, administrative and other measures to, inter alia, make primary education compulsory, available and free for all, and make secondary education generally available, universally accessible and progressively free for all. While the state is also obliged, in terms of a number of these instruments, to make early childhood education available to children under the age of five years, this guide will not address this issue. It is addressed in detail in the Early Childhood Development guide that forms part of this compendium of reference guides.

2.   National policies, laws and programmes

The state has sought to realise its obligations through the development of a range of policies and laws, including the following more recent documents:

The South African Schools Act No. 84 of 1996provides the regulatory framework for the national schooling system in South Africa (Department of Education, No. 84 of 1996).

The Employment of Educators ActNo. 76 of 1998governs the employment terms and conditions of public school educators(Department of Education, No. 76 of 1998).

The National Norms and Standards for Public School Funding, 1998,as amended in 2006, 2008 and 2011, regulates the pro-poor education funding policies(Department of Basic Education, 1998).

The South African Council for Educators Act No. 31 of 2000 regulates the professional development of educators(Department of Education, No. 31 of 2000).

The Exemption of Parents from the Payment of School Fees regulations, 1998, as amended in 2006,regulates school fee waivers for children living in poverty (Department of Education, 2006).

The Admission Policy for Ordinary Public Schools, 1998 provides a uniform framework for developing school admission policies(Department of Education, 1996).

The Education White Paper 6: Special Needs Education – Building an Inclusive Education and Training System, 2001sets out the framework for a national inclusive education system(Department of Education, 2001).

The Education Laws Amendment Act No. 24 strengthens the no-fee and school-fee exemption frameworks(Department of Education, No. 24 of 2005).

The National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment, 2008provides a national framework for the standardised provision of infrastructure for an enabling learning environment (Department of Education, 2008).

The National Policy on Learner Attendance, 2010regulates the monitoring of learner attendance (Department of Basic Education, 2010).

TheDelivery Agreement for Outcome 1: Improved quality of basic education, 2010documents the commitments to realise quality basic education for all children in South Africa(Department of Basic Education, 2010(a)).

 Action Plan to 2014: Towards the realisation of Schooling 2025is the national plan for the improvement of the quality of education (Department of Basic Education, 2011(c)).

The Integrated Strategic Planning Framework for Teacher Education and Development in South Africa 2011-2025provides a framework for teacher development in South Africa (Department of Basic Education , 2011 (d)).

The Policy on the Minimum Requirements for Teacher Education Qualifications, 2011stipulates the minimum qualifications for school educators and makes provision for processes for upgrading the qualifications of those who are non-compliant(Department of Basic Education, 2011(e)).

Collectively, these policies and laws create the infrastructural, organisational and funding matrix which makes primary and secondary education available to childrenbetween the ages of 5 and 18 years through schools.

The governing legal framework has a strong equity focus in view of the national imperative to reverse the previous apartheid-driven educational exclusion of black African children, children living in poverty, children living in rural areas and children with disabilities. In summary, the pro-equity measures include the following:

- The prohibition of discriminatory admission and other education policies and practices by all stakeholders, including national and provincial education departments, school governing bodies, parents, school principals and educators, parents and learners;
- A pro-poor funding model that results in the allocation of substantially more operational funds to schools serving poor communities, the eradication of school fees in primary and secondary schools located in the poorest communities ("no-fee" schools), the provision of school-fee waivers for children living in poverty attending fee-paying schools and the provision of school feeding programmes in the poorest schools;
- The provisioning of improved school infrastructure and facilities to create a safe and enabling learning environment, with priority given to schools in poor communities;
- A language policy that aims to ensure teaching of young children in their home language during the

foundation phase and offers children a choice as to their language of teaching and learning in their later school years;

- Improving the qualifications and quality of teaching through curriculum and teacher development, annual learner assessments, regular monitoring of implementation of relevant policies, and targeted support for under-performing schools;
- The inclusion of children with learning barriers, including those with disabilities, in mainstream schools equipped with the necessary facilities and qualified teachers to meet their learning needs, and the provision of specialised schools for children with more severe disabilities.

3.   Situation assessment and analysis

3a.   Situation assessment of education for children aged 5-18

Since 1994 the South African government has significantly improved physical access to education for the majority of children previously excluded by the apartheid system through a combination of race, poverty and language.

By 2010, it had achieved:

- A 99%gross enrolment rate for children aged 7-15 years in the compulsory grades (1-9)(Department of Basic Education, 2012);
- An 83% enrolment rate among children aged 16-18 at secondary schools or Further Education and Training (FET) colleges(Department of Basic Education, 2012);
- The universalisation of a reception year (grade R) with an 83% enrolment rate(Department of Basic Education, 2012);
- Gender parity in enrolment at primary and secondary levels(Department of Basic Education, 2012)(Branson, Lam, &Zuze, 2012);
- An increase in the number of children aged 7-15 with disabilities attending school from 73% to 94% between 2002 and 2010(Department of Basic Education, 2012);
- A substantially more equitable distribution of per learner funding, non-personnel expenditure on items such as learning and teaching support materials (LTSMs), school infrastructure and basic services to favour children living in poverty and to remedy the previous gaps in expenditure between the poorest and the least poor provinces (Motala, Dieltiens, Carrim, Kgobe, Moyo, &Rembe, 2007)(Organisation for Economic Co-Operation and Development, 2008).

Despite these significant access gains,the education system faces two broad challenges (which are discussed in more detail in the body of this reference guide).

1. Although the number of children excluded from school is relatively small (120,000 between the ages of 7-15 in 2010), the most marginalised children (such as children living in poverty, children living with a disability, children in rural areas) continue to be excluded(Department of Basic Education, 2012)(Van der Berg, S, 2008)(Motala S, Dieltiens V, 2010)(Jukuda, 2011)(Bloch, 2009).
2. The majority of children in South Africa achieve poor educational outcomes in comparison to their regional and international counterparts. In addition, the poor educational inputs and outcomes are linked with lower socio-economic status. Poorer children, rural children and children living in households with low-literate adults among others receive lower quality education and attain poorer educational results(SACMEQ III, 2010)(Mullis, Martin, Kennedy, & Foy, 2007).

Access to education remains a problem because of:

- The high drop-out rates at secondary levels, especially after completion of the compulsory phase of education. Drop-out rates peak at 11.8% in Grade 11 (Motala S, Dieltiens V, 2010). These rates have not improved since 2002(Department of Basic Education, 2012)(Taylor, Mabogoane, Shindler, & Akoobhai, 2010).
- Poor learner attendance rates due to illness, poverty, disinterest, school violence and work (Motala, Dieltiens, Carrim, Kgobe, Moyo, & Rembe, 2007).
- The exclusion of children with disabilities. A total of 480,000 children with disabilities of school-going age are out of school(Department of Basic Education, 2012).

The poor educational outcomes of South Africa's learners are evidenced by:
- Low literacy and numeracy levels amongst learners at all levels. In 2011, the average score for Grade 3 learners was 28% for numeracy and 35% for literacy. Grade 6 learners did not fare any better with an average of 28% for literacy and 30% for mathematics (Department of Basic Education, 2011). Generally, educational outcomes decline as children progress through the grades, indicating that learners are moving from one grade to the next without acquiring sufficient skills and that learners' knowledge and skills are notdeveloping beyond elementary levels(Department of Basic Education , 2011(a))(SACMEQ III, June 2011).
- Poor rates of successful completion of the FET phase of education. Only 41% of children complete the FET cycle of education which is made up of secondary schooling (Grades 10 – 12) and FET colleges(Department of Basic Education, 2011(c)).
- Low numbers of children obtaining their national senior certificate (NSC). In 2010, 68% of candidates passed the NSC examination and 24% received a university exemption(Department of Basic Education , 2011(b)).
- High repetition rates. At primary level, repetition rates are an estimated 7% compared to 5% in other developing countries. The rate is much higher in the higher grades (Department of Basic Education , 2011(b)).

The inequitable face of exclusion and poor performance

Despite the numerous pro-equity policies to remedy historical exclusions, children's socio-economic status (SES), race, language, gender, and disability continue to be predictive of exclusion and poor educational outcomes(Van der Berg, S, 2008)(Motala S, Dieltiens V, 2010)(Jukuda, 2011)(Bloch, 2009).

Black African children, children living in rural areas and children living in poverty and/or with disabilities remain disproportionately represented among out-of-school children(Motala S, Dieltiens V, 2010)(Department of Basic Education, 2012).

Black African children living in poverty and in rural areas who receive instruction in non-home languages attain significantly lower completion rates, are more likely to repeat grades and they achieve lower literacy, numeracy, mathematics and science outcomes at all levels of schooling than their white, Asian,coloured, urban and wealthier counterparts(Department of Education, 2007)(Spaull, 2011)(Branson N, Lam, D, 2009).

The causes of poor and inequitable access and outcomes

The causes of the ongoing inequity in educational access and outcomes are linked to the failure of educational (and broader development policies) to address the underlying patterns of social, economic and organisational inequality engendered by apartheid(Van der Berg, S, 2008)(Jukuda, 2011)(Motala S, Dieltiens V, 2010) (Bloch, 2009).

Poverty

Despite the no-fee policy, poverty remains the biggest barrier to access to education. An inability to pay fees remains the single most cited reason for children not attending an educational institution (Statistics Sout Africa, 2012). Thereasons for this are: 1) that the no-fee policy is not universal; 2) the inadequate implementation of the school fee exemption policy for poor learners attending fee-charging schools; and3) transport costs, uniform costs and books and stationery continue to make education unaffordable(Motala, Dieltiens, Carrim, Kgobe, Moyo, & Rembe, 2007)(Giese, Hombakazi, Koch, & Hall, 2008).

Poverty also impacts significantly on educational outcomes. Children living in poverty achieve significantly poorer educational outcomes than their wealthier counterparts and are far more likely to be overage for their grade(Taylor, Mabogoane, Shindler, & Akoobhai, 2010)(SACMEQ III, 2010)(Spaull, 2011).Poor children start school with a disadvantage as many have experienced cognitive developmental delays due to lack of nutrition and lack of access to quality pre-school. This disadvantage is compounded once they are at school. Low levels of parental literacy and school support at home, lack of financial resources, lack of access to text books andpoor school infrastructure and facilities,together with the increased likelihood of their attending a poorly managed school,intersect to the disadvantage of the child's educational attainment(Van der Berg, S, 2008)(Spaull, 2011).

Geography: rural versus urban and provincial variations

Most children living in rural areas and/or in provinces falling within the boundaries of the former, predominantly rural apartheid homelands,receive poorer quality education, only have access to poor quality school infrastructure, basic services, facilities and LTSM, and achieve lower educational outcomes(Jukuda, 2011) (Branson N, Lam, D, 2009) (SACMEQ III, June 2011) (Van der Berg, S, 2008). Predominantly rural provinces with high levels of poverty, including the Eastern Cape, Limpopo, KwaZulu-Natal and the North West provinces, have consistently produced lower educational outcomes than urban wealthier provinces like the Western Cape and Gauteng in science, maths, numeracy, literacy and senior certificate pass rates (SACMEQ III, June 2011) (Department of Basic Education, 2009).

Language

Despite the protection of the right of children to be taught in their language of choice from Grade 4 onwards, the majority of black African children are not taught in their home language, but in English. While the situation is much better for children in the foundation phase, 80% of whom are taught in their home language, none of them are taught English as a second language. Consequently, when they start Grade 4, they are taught in a language that many cannot speak, read or write, often by teachers who themselves are second language speakers, and often at the insistence of the children's parents (Department of Basic Education , 2010). It is thus not surprising that educational outcomes are significantly worse for the majority of black African children who are taught in languages other than their home language (Motala S, Dieltiens V, 2010).

Gender

While gender parity has been achieved in terms of enrolment, completion and pass rates, girls continue to suffer gender discrimination at schools on two primary fronts (Branson N, Lam, D, 2009):

1. They experience excessively high levels of abuseby their male peers and educators (Motala, Dieltiens, Carrim, Kgobe, Moyo, & Rembe, 2007) (South African Human Rights Commission, 2006);
2. Almost half of the girls that drop out of school do so because of pregnancy (Gustafsson, 2011). The decision to drop out is often due to pressure from the school (Motala, Dieltiens, Carrim, Kgobe, Moyo, & Rembe, 2007) (Panday, Makiwane, Ranchod, & Lestsoalo, 2009).

Disability

Children with disabilities are at a high risk of educational exclusion. This is largely as a result of the inequitably poor resourcing and implementation of the current inclusive education policy and significant provincial funding disparities (Wildeman R, Nomdo C, 2007). Moreover, current education policies do not make provision for the protection and realisation of the education rights of severely and profoundly disabled children. There is no obligation, at present, on the Department of Education to ensure the realisation of the right to education for children with severe disabilities (Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa and Another , 2010).

Educator conduct, competencies, knowledge and lack of accountability

High levels of educator absenteeism and tardiness, the inability of many to teach reading and writingand low levels of subject knowledge are key causes of poor learning and educational outcomes. It is more acute in former "Bantu" education schools and is largely attributable to the historically inferior teacher training provided by the apartheid education system (Motala S, Dieltiens V, 2010) (Spaull, 2011) (Wildeman, R, 2010).

The problem has been aggravated by weak educator accountability mechanisms. Teachers are not regularly tested on content knowledge and competency levels (Taylor, N, 2011). The resolution of the problem has been impeded by educator trade union resistance to the introduction of stronger and more effective systems (Taylor, N, 2011) (SACMEQ III, 2010).

Infrastructure, facilities and basic service backlogs

Inadequate infrastructure, educational facilities and basic services contribute to poor access, retention and attendance, as well as poor educational outcomes (Wildeman, R, 2010).The situation is most problematic in schools serving predominantly poor black African children, especially in the rural areas of the Eastern Cape, KwaZulu-Natal and Limpopo provinces where massive backlogswereinherited from the apartheid government (Motala, Dieltiens, Carrim, Kgobe, Moyo, & Rembe, 2007).

Poor technical and management capacity

The equitable targeting of funds and numerous pro-equity policies has not been sufficient to remedy educational inequality in South Africa. This is because the policies have not been accompanied by effective measures to overcome the deep-seated capacity and structural inequalities at provincial, district and school level. The capacity and ability to manage and spend funds efficiently varies dramatically, with lower capacity more evident in low SES schools (Motala, Dieltiens, Carrim, Kgobe, Moyo, & Rembe, 2007). The lack of capacity among all role players – educators, principals, teachers and system level officials – has been compounded by the lack of effective accountability mechanisms (Bloch, 2009).

3b.   Key innovations necessary to improve education for children in South Africa

Generally, current policies and resources are adequate to meet South Africa's educational challenges and inequities. However, implementation of the policies is weak (Organisation for Economic Co-Operation and Development, 2008).Improving the situation requires a fundamental holistic system reform. Improved implementation requires improved capacity at all levels to enable the efficient utilisation of the substantial education resources, effective mechanisms to ensure accountability at all levels for realisation of national policy goals, use of resources and educational outcomes, and effective information and other organisational management systems.

These structural systemic interventions are a necessary pre-condition for the effective implementation of the numerous pro-equity policies which recognise and promote, but have not been able to secure, the following essential elements of access to quality education for all: Improved infrastructure, facilities and basic services,

qualified and competent teachers, pedagogical practices suited to realising the aims of education, effective management of schools and resources, provincially standardised inputs and use of resources, amongst others (Organisation for Economic Co-Operation and Development, 2008) (Taylor, N, 2011) (Bloch, 2009) (Taylor S. , 2011).

The innovations that are required include the following:

- Building technical capacity and professionalism of teachers by improving their qualifications,competenciesand conduct (Taylor, N, 2011) (Motala S, Dieltiens V, 2010);
- Building the management skills and administrative capacity of school principals as well as that of officials at district-and provincial-levels (Taylor, N, 2011) (Motala S, Dieltiens V, 2010);
- Improving the management systems within poor schools (Taylor S. , 2011);
- The development and implementation of stronger monitoring and evaluation systems to hold teachers accountable to service delivery standards and educational outcomes (Motala, Dieltiens, Carrim, Kgobe, Moyo, & Rembe, 2007);
- Despite the fact that, on the whole, current policies and resources are adequate, there are a number of areas that require resource and policy strengthening to ensure access to and retention and completion of school by the most marginalised and to ensure equitable quality education outcomes. These include:
  - Strengthening of the inclusive education policy through the provision of substantially more dedicated funding and the development of national funding norms and standards to equalise the allocation of inclusive education resources across the provinces (Wildeman R, Nomdo C, 2007).
  - The development of appropriate policies to oblige the Department of Education to fund, regulate and ensure the delivery of quality education for children with severe and profound disabilities (Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa and Another , 2010).
  - Strengthening secondary school retention policies by addressing the main underlying causes of older children dropping out of school. The cost of secondary schooling in respect of fees, costs of transport and cost of textbooks should be remedied through appropriate amendments to the funding policies (Gustafsson, 2011). In the case of girls, a stronger policy for the management of teenage pregnancies, the return and retention of girls at school after they give birth, and for the provision of adequate support to the new parents should be developed (Gustafsson, 2011) (Panday, Makiwane, Ranchod, & Lestsoalo, 2009).
  - The Language in Education Policy should be strengthened so as to increase awareness of the current right to and value of home language and to increase the capacity of educators to provide effective home language teaching (African Conference on the Integration of African Languages and Cultures in Education, 2010).The policy should be amended to permit teaching to take place in English from the start in the foundation phase (Motala S, Dieltiens V, 2010).

4. Guidelines and advice on the design, implementation, monitoring and evaluation of policies and programme interventions to improve educational access and quality

The manual on rights-based education: global human rights requirements made simple provides guidance to policy-makers and development organisations on what is necessary to make the international , regional and development obligations and commitments to the right to education a practical reality. It lists and describes relevant human rights standards, highlights how they could best be translated into education practice at the micro level, and points to the key human rights questions that ought to be addressed at the macro level (Tomasevski, 2004).

Spaull's **Identifying policy priorities to improve outcomes for poor primary school learners** is a guide to policy-makers as to which interventions should be prioritised, based on the findings of the SACMEQ III study, to

improve educational outcomes for poor primary school learners. The four priority interventions proven to have the most significant equalising effect on their learning outcomes are:

1. The provision of quality pre-school education;
2. The provision of reading text books;
3. Policies encouraging that teachers prescribe homework;
4. Improved teacher knowledge and teaching quality (Spaull, N, 2011(a)).

McKinsey's **How the world's most improved school systems keep getting better** recognises that addressing the inequalities in educational outcomes as between different districts, provinces, race groups and quintiles requires "whole system reform". The report provides guidance, based on replicable successful interventions, on proven policy and programmatic interventions necessary for affecting such reform (Mourshed, Chijioke, & Barber, 2010).

The guidance is based on evidence derived from a 20-country analysis of school systems that have "achieved significant, sustained and widespread gains, as measured by national and international standards of assessment." It provides guidance on the range of policy and programmatic "pathways" to take from the starting point to completion, to "get results in reasonably short time frames" and to "raise the bar and close the gap for all students."

The analysis includes education systems in developing, middle-income and developed countries. These include Ghana, India, Brazil, South Africa, Lithuania, Latvia, Singapore, Canada, England and the United States of America.

Enhancing Accountability in Schools: What Can Choice and Contracting Contribute? provides an overview of a number of alternative models used in both developing and developed countries for the delivery of "core" educational activities through private contracted service providers to improve the quality of education. It provides a comparative analysis of the cost and quality of educational outcomes commonly associated with each of the different models.

The report concludes that contracting offers an effective mechanism for introducing accountability into the education system and for targeting interventions at specific groups or specific outcomes. It also allows for the introduction of skills and capital into the sector and "provides greater scope for increasing efficiency and innovation in the delivery of education and provides a means of expanding access to education" (World Bank, 2007).

UNESCO's **Global perspectives on teacher learning: improving policy and practice** is targeted at two groups: 1) educational planners and administrators; and 2) policy-makers. The purpose of the booklets is to provide guidance on optimal educational policies and planning methodologies that can be applied in developing and developed countries for the preparation and continuing professional development of teachers so as to secure quality educational outcomes in different contexts (Schwille, Dembele, & Schubert, 2007).

Taylor's **Uncovering indicators of effective school management in South Africa using the National School Effectiveness Study** provides an analysis, based on the National School Effectiveness Study data, of aspects of school management and teacher practice in schools serving disadvantaged communities that are linked to material improvements in literacy and numeracy outcomes. The report provides concrete guidance on the type of policy innovations necessary to ensure and harness the benefit of improved management and teaching practices to improve learning outcomes (Taylor S. , 2011).

The **Policy Guide on the Integration of African Languages and Cultures into Education Systems** offers guidance to policy-makers on how to institutionalise and strengthen learners' home language as the language of teaching and learning to improve and reduce inequities in educational outcomes for indigenous African

children. It provides guidance on the essential elements of a home language of learning policy (African Conference on the Integration of African Languages and Cultures in Education, 2010).

5.   Case studies

Educational equity and public policy: Comparing results from 16 countries provides information drawn from a comparative study of 16 countries in Asia, Africa, Europe and North and South America. The study reviews how the different countries have unlocked the role of teachers for achieving, consolidating and sustaining educational progress. The report documents the causes, costs and consequences of poor teacher management. Its starting point is that quality education depends on competent, motivated, well trained, adequately rewarded and well supported teachers. It provides insights, based on evidence from the 16 countries reviewed, on the policy and programmatic innovations necessary to achieve these outcomes. It covers innovations ranging from increasing the number of teachers, improving the qualifications and training and motivation of teachers, to teacher management and support. It addresses the challenge presented by teacher trade unions to the implementation of the necessary reforms (Sherman, Poirie, & Jeffrey, 2007).

Good Governance Lessons for Primary Education provides an overview of mechanisms, successes and challenges for securing accountability and transparency in decentralised education systems. Based on evidence from case studies in seven sub-Sahara African countries, the report provides guidance to policy-makers on measures to ensure accountability for educational management, funds and outcomes, as well as for responsivenees of the system at all decentralised levels. The report examines the various systems with a view to ascertainig whether they are effective in "controlling malpractice, monitoring the flow of resources and preventing corruption, resource leakages and delays." It specifically explores whether the systems foster real accountability of school administration and participatory governance (Africa Education Watch, 2010).

Meeting the Challenges of Secondary Education in Latin America and East Asia provides evidence-based guidance, drawn from case studies in Latin America and East Asia, on how countries like South Africa can expand and strengthen its secondary education system. It explores how countries can fulfil the multiple purposes of secondary education and address the challenges of improving coverage, equity and the quality of secondary education. Key issues that are addressed include the level of resourcing required and policy innovations necessary to secure the efficient use of such resources and resolve equity issues such as a strong urban/rural divide common in both regions. The report draws lessons from successful case studies to recommend policy innovations and how they can be combined and sequenced for maximum impact (Emanuela di Gropello (Ed), 2006).

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