

## Realizing Fee-Free Higher Education in South Africa; Dreams and Nightmares

Lucretia Ngwanamosadi Hlaka and Isaiah Mmatipe Sefoka<sup>a\*</sup>

<sup>a</sup> *University of Limpopo, South Africa*

\* [sefokaim@gmail.com](mailto:sefokaim@gmail.com)

### Abstract

The component of free rudimentary education is guaranteed and recognized by the 1996 Constitution, the African National Congress (ANC) Freedom Charter as well as other international instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Conversely, *it is without a shadow of doubt* that there exists no component of free higher education in South African laws and statutory guidelines, let alone in the international arena advocating for free higher education. Notwithstanding this fact, reality has shown that free higher education has not been realized despite students' petition which fact has instigated them to take part in severe dissents from the four walls of South Africa. This paper argues that free higher education is not realizable *since* the South African government has limited resources and the economy is on its knees. The paper further argues that for the South African government to fund free higher education it needs a well-resourced economy which is the contrary in South Africa.

**Keywords:** Freedom Charter; Free Higher Education; Realization; Nightmares; Pitfalls

### 1. Introduction

Education is recognized as an important human right in South Africa and across the globe. It is a fundamental right and a significant contrivance that people can use to improve themselves in all facets of life and if attained, it may possibly lessen poverty (Veriava, 2005; 1). CESCR provides that “education remains an empowerment right

which a marginalized society or a person can utilize to break out of poverty and obtain a means of survival which include meaningful participation and human development” (CESCR, 1999; Art 13 (1) para 1). According to *Section 27* “education is an important means to freeing and unlocking the potential of every individual” (*Section 27 and others v Minister of Education and Another*, 2012; 114). This paper posits that currently in many countries including South Africa, education is of seminal importance to enhance personal development and to empower youth and adults who were previously deprived of the opportunity to receive quality education. To eradicate the injustices faced in the past, laws and policies aimed at facilitating quality education and regulate relations between students and educators were passed; for instance, “the South African Schools Act 84 of 1996 (SASA) and the National Education Policy Act 27 of 1996”.

The post-1994 government is committed to two goals being; the eradication of racial inequalities and to rationalize the cumbersome administrative of educational structures and a huge bureaucracy which was inherited from Apartheid system (South African Human Rights yearbook 8, 1997; 33). In addressing the inequalities, the South African government promulgated the Constitution which assures citizens the right to education. The relevant provision states:

“(1) Everyone has the right -  
(a) to basic education, including adult basic education; and  
(b) to further education, which the state, through reasonable measures, must make progressively available and accessible” (Constitution, 1996; sec 29 (1) (a) and (b)).

## **2. Methodology**

The authors in this study adopted a qualitative approach. In conducting this research, the authors employed search, critical analysis and application of existing literature on fee-free education and its feasibility in South Africa. The study is hypothetical in nature and

as such it is principally aligned with the perusal and analysis of relevant academic literature whereas it utilises a desktop analysis of secondary materials to examine the feasibility of a fee-free higher education in South Africa.

### **3. Historical Background**

Education was expressed and declared a fundamental right in the international arena through the UDHR (UDHR, 1948). The UDHR depicts in Article 26 that “everyone has the right to education and that education shall be free, at least in the elementary and fundamental stages”. The UDHR stipulates that “technical and professional education shall be made generally available and higher education shall be equally accessible to all based on merit” (UDHR, 1948; Art 26). Following the UDHR the right to education was also attributed by other significant legislation and instruments such as the ICESCR, the SASA and Freedom Charter which were one way or another adopted into the 1996 Constitution.

In South Africa, the first moment of education came together with the foundation of colonial experience at the Cape in 1652. In 1658, Jan Van Riebeeck initiated formal school in the Cape Colony. This school was established for the children who were enslaved and brought to the Cape in the Dutch ship (Sinclair, 2014). This educational system was aimed at ushering important social, political and economic developments of the learners (Sinclair, 2014).

In 1955, the ANC Freedom Charter was released which outlined the intention of different potential political leaders which stated that “education shall be free”. It further provides that “the doors of learning shall be opened to all. Education shall aim to teach the youth to love their people and their culture, to honour human brotherhood, liberty and peace. Education shall be free, compulsory, universal and equal for all children” (Freedom Charter, 1955).

#### **4. Conceptual Clarification**

It is important to define some central concepts adopted in this paper to circumvent confusion and to promote mutual understanding. These conceptions and meanings are from legal writings, legislation and reports from relevant ministries, with emphasize on the subject matter. The following are some of the relevant definitions:

##### ***4.1 Education***

Sinclair posits that there is no single meaning of the word education (Sinclair, 2014; 3). However, Sinclair asserts that different scholars defined the word education differently. Some scholars perceive education as a prescribed schooling path or constant learning while; some observe it as a process of attaining relevant knowledge, skills and attitudes to empower oneself. Some define education as a practice of developing people's intellect in a way that will bring about anticipated changes (Sinclair, 2014; 3).

Education is the process of receiving, giving organized teaching and learning or improvement of human character or mental capabilities (Thompson, 1995; 431). On the other hand, Barnhart and Barnhart describe education as “the development of knowledge, skill, ability, or character by teaching, training, study or experience” (Barnhart & Barnhart, 1992; 670). For the purposes of this study, education refers to a system of teaching and learning to acquire and transmit knowledge which includes the cultivation of quality skills.

##### ***4.2 Basic Education***

Simbo opined that “there is no legislative document in South African jurisprudence that defines the phrase basic education”. Simbo asserted that the judiciary has not defined the phrase either (Simbo, 2012). The study asserts that “the Jomtien World Declaration on Education for All explained the phrase to mean fundamental learning needs”

(Jomtien Conference, 1990). In explaining these needs, the World Declaration asserts that:

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

According to the Department of Basic Education, “basic education” refers to education from grade 1 to 10. This is compulsory education for all South African learners between the ages of 5 and 15. According to department’s report, there is also adult basic education which is education for adults over the age of 21 who are no longer eligible to start school with the children from the age of 5 in primary education (Department of Education, Education Centres Project Report, 2011; 1).

On the other hand, the right to elementary education has been elucidated and distinct by the courts to be immediately realizable. In contextualizing the phrase "immediately realizable" the court in *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others* held that:

“It is important to understand the nature of the right to a basic education under section 29 (1) (a). Unlike other socio-economic rights, this right is immediately realisable in that there is no internal limitation requiring that the right be progressively realised depending on the availability of the state’s resources and subject to reasonable legislative measures. This right may only be limited in terms of a law of general application, which is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. This right is therefore distinct from the right to further education as provided for in section 29 (1) (b). The state is, in terms of this right, obliged through reasonable measures, to

make it progressively available and accessible” (*Juma Masjid v Essay*, 2011; par 37).

### ***4.3 Further Education***

In accordance with the provisions of Further Education and Training Act, the phrase “further education” refers to “all learning programmes leading to qualifications from levels 2 to 4 (general and further education and training qualification sub-framework) of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, which levels are above general education but below higher education” (Further Education and Training Act, 1998; sec 1). In the context of this study, the phrase “further education” refers to post-compulsory education different from the higher education offered in universities. This kind of education may be at any stage beyond compulsory secondary education from fundamental skills training to higher occupational education. This education is predominantly offered in FET colleges, occupational-based learning, adult and community learning institutions.

### ***4.4 Higher Education***

This paper argues that a distinction can be drawn between “further education” and “higher education”. The latter refers to education provided at a higher level than secondary school normally being offered by higher institutional organizations such as universities and colleges. As per the World Declaration on Higher Education, the phrase “higher education” denotes to:

“all types of studies, training or training for research at the post-secondary level, provided by universities or other educational establishments that are approved as institutions of higher education by the competent state authorities” (World Declaration on Higher Education, 1998). According to this declaration, this includes “all the activities a given country deems to be higher education - not only

those that take place within ordinary universities and graduate schools, but shorter-term education and training courses (polytechnics, junior colleges, and various forms of technical speciality schools) that are 2-3 years in length, and even correspondence courses that make use of information technology and are targeted at a broad population of students” (World Declaration on Higher Education,1998).

## **5. Problem Statement**

Although primary education is assured and postulated in the 1996 Constitution, and free primary education is guaranteed by the Freedom Charter and other international instruments such as the UDHR, the reality, however, is that there is no legislation, policy or instrument in South Africa as well as in the international arena that contains the element of free higher education, which fact makes it difficult if not impossible for the government to provide for fee-free higher education despite the student demand. Looking at the current South African economic status, there is a need to scrutinize the possibility or the likelihood of realizing free and sustainable higher education.

## **6. Purpose of the Study**

The study is directed at scrutinizing the possibility of implementing and realizing free and sustainable higher education in South Africa. The study is also intended to evaluate the South African economy and the government’s revenue and resources to respond to the students’ call to fund or provide for a fee-free and viable higher education.

## **7. Significance of the Study**

The paper will add to the state’s measures and strategies to protect and promote the right to education. It will also give an insight into the construal of the right as envisaged in the Constitution and the right to free education as contained in other frameworks like the UDHR and the Freedom Charter. The paper will also help the Department of

Education and other interested parties to protect, uphold and to prioritize the provision of education. It will also assist students including those who were involved in the interpretational misconception of the right to free education to have a clearer conception and meaning of the right.

## **8. Scholarly Deliberations**

There have been some heated debates across South Africa regarding the provision of free higher education. Bitzer and De Jager maintain that the debates were among others as a result of the announcement by the then president Jacob Zuma that “there would be a zero per cent increase in university fees in 2016” (Bitzer & De Jager, 2018; 13). In a distinct statement, the former president Zuma also alluded that “free higher education would be possible, although could not be implemented overnight” (Bitzer & De Jager, 2018; 13).

Contrarily, the Minister of Higher Education, Science and Technology, Blade Nzimande highlighted that “free higher education for all students would be impossible but could be restricted to students from poor families”. On the other side, Roshuma depicts that “following an analysis by the South African Institute of Race Relations, free higher education for all would only be possible if the South African government would adjust their spending priorities”. Bitzer and De Jager posit that following the announcement by the then-president Jacob Zuma, few students were satisfied while the majority who were not satisfied and demanded a total fee-free higher education, opted to engage in a serious protest action across the country (Bitzer & De Jager, 2018;13).

On the other hand, Bitzer and De Jager assert that “the provision of free higher education would not be a good idea, because a developing country like South Africa cannot afford to implement it owing to lack of resources” (Bitzer & De Jager, 2018;13). Moreover, Raborife, opined that “if higher education is to be made free, it will be of a

reduced quality, which may result in lack of student motivation to complete their studies or to perform to the required quality criteria” (Raborife, 2016). Teferra asserts that education in South African institutions of higher learning can never be free of cost hence, the country does not have ample resources to fund the process (Teferra, 2016;9).

### **9. The Meaning and the Fallacy of the Right to Free Education**

Remarkably, the constituent of fee-free education, albeit not free higher education was espoused by the UDHR. Article 26 stipulates that:

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all based on merit. Education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children” (UDHR, 1948; Art 26 (1) (2) and (3)).

The UDHR was shadowed by other domestic regulations and frameworks; for instance, the Freedom Charter and the SASA. The Freedom Charter specifies that “the doors of learning shall be opened to all. Education shall aim to teach the youth to love their people and their culture, to honour human brotherhood, liberty and peace. Education shall be free, compulsory, universal and equal for all children” (Freedom Charter, 1955).

Subsequent to the above two legislative framework, this paper postulates that “there has been an interpretational misconception by the majority of South Africans, particularly students in universities concerning the provision of free higher education” (Sefoka, 2019; 1768). The students contended that “there must be a fee-free higher

education specifically referring to the Freedom Charter, which students argued that it promises free higher education”. The misconceptions steered an intense debate followed by student unrests across the South African universities that became commonly recognized as the “*#Feesmustfall*” (Calitz & Fourie, 2016). Sefoka highlighted that “this issue commenced on or about the end of 2015 and beginning of 2016 when students in South African institutions of higher learning rose up and initially demanded a zero or no increase on their tuition fees which then later somersaulted into a free higher education” (Sefoka, 2019;1768).

In an attempt to clear the misconception, the ANC interpreted the delusion of what the students thought of the Freedom Charter. In doing so, the former Secretariat Gwede Mantashe explained that:

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

## **10. Argument**

It must be kept in mind that the admission rates in the institution of higher learnings increase rapidly year in and year out which fact is exacerbating the debates on its funding strategies (Dung & Mncayi, 2016). In most jurisdictions including South Africa, funding higher education is habitually and mainly dependent on government revenue (UNESCO, 2011). This is augmented by Karkkainen’s argument that “in 66 per cent of the Organization for Economic Co-operation and Development (OECD) countries, at least 80 per cent of higher education funding has come from the government countries since the 1980s” (Karkkainen, 2006;4). Moreover, Johnstone emphasizes that “the long queue of crucial needs that compete with public higher

education for a share of scarce public revenues have been increasing the financial pressure on higher education, especially in low- and middle-income countries” (Johnstone, 2010;3, Dung & Mncayi, 2016; 163).

## **11. Conclusion**

The study concludes that education is vital in shaping every nation and it frees people from the oppression of illiteracy as provided for in domestic and international instruments aimed at promoting the provision of free basic education. The paper further concludes that South Africa is an emerging state with inadequate resources, not sufficient enough to cater for free higher education despite the students’ demand.

The study asserts that meanwhile education is a means that can be utilized to shape and improve a country’s economy, providing South Africans with quality education will serve as a steppingstone to develop this country economically and in all spheres. On the other side, the paper emphasizes that although education is perceived as a bridge to escape poverty and starvation (Dwane, 2012), the provision of free education in a developing country such as South Africa may be the death of that country hence, its economy is not robust. This paper concludes that the major problem is that South Africa is an emerging state with inadequate wealth, not sufficient enough to cater for free education in Institutions of Higher learning.

## **12. Recommendation**

The paper recommends that for the realization of free higher education, the government should make higher education free based on merits as opposed to free for every student and to enact legislation that will ensure proper compliance and to guard against misuse of state funds. That will also serve as a motivation to achieve academic excellence which will not compromise the quality of education. Even though South African

economy is not so well established to fund free higher education, the provision of a total fee-free higher education will not only worsen the economic status of the country despite its instability, but it will also compromise the quality of education in a sense that students are likely to relax and not strive for academic excellence.

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