

CHAPTER THREE

THE RIGHT TO EDUCATION

PART A: OVERVIEW

1 INTRODUCTION

The post-1994 government inherited an education system riddled with inequalities. The system was racially fragmented and characterised by a disproportionate distribution of resources with former white schools receiving more resources than schools of other racial groups. Multiple education authorities caused duplication and inefficiency. The system was also marked by lack of properly qualified educators for the vast majority of learners. Higher education was mostly restricted to the relatively well off families with the majority of students not having the means to access higher education.

The national Department of Education (NDE) received a constitutional mandate to put measures in place to realise the right to education. In its previous report to the South African Human Rights Commission, the department reported that it had instituted several policies and legislation towards the realisation of the right to education.

This chapter assesses information provided by national and provincial Departments of Education on measures instituted during 1999/2000. The analysis seeks to find out whether the measures contributed to the realisation of the right to education.

2 CONSTITUTIONAL OBLIGATIONS

Education rights are contained in s 29 of the Constitution. Section 29 (1) enshrines and protects the right to basic and further education for everyone.¹ The section provides that the state has to make further education progressively available and accessible. Accessibility means that the state should move towards removing barriers, including discrimination, to further education. Where reasonably practicable everyone is entitled to receive education in the language of his or her choice.² The right to education may be realised at an independent

¹ Section 29 (1) of the Constitution of the Republic of South Africa Act 108 1996 provides that “everyone has the right - (a) to basic education, including adult basic education.
(b) to further education, which the state through reasonable measures, must make progressively available and accessible”.

² Section 29 (2) provides that “everyone has the right to receive education in the official language or languages of their choice in public institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account -

educational institution that may be subsidised by the state.³ Independent institutions should not be subjected to undue restrictions relating to finance. The fact that the state subsidises these institutions should not jeopardise their academic freedom.

The right in s 29 must be understood in the light of the aim of education. Education must be aimed at the full development of the human personality and instil a sense of dignity. It should also be aimed at enabling all persons to participate effectively in a free society.⁴ In the first instance, education should confer the ability to appreciate and exercise human rights; it should also develop learners' ability to make political and civil choices. Secondly, education should confer the necessary skills to enable recipients to enjoy and appreciate human existence, and participate in the economy. To this end, the content of the curricula forms an important part of the right to education and should provide the necessary skills to participate fully in society.

The right to education imposes an obligation on the state to put in place and maintain an education system, with educational programmes available in all its forms and at all levels.⁵ The state has to take steps to ensure that there are functioning educational institutions with education programmes and educators throughout its territory. The state has to build schools, employ educators and set curricula. Institutions and programmes should be accessible, that is, barriers to these institutions and programmes must be removed, for example, the removal of discrimination due to affordability or physical disability.

The education system should have the object of making education available, accessible, acceptable and adaptable. These elements apply to both basic and further education. Availability means that functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State Party. All institutions and programmes should have buildings or other protection from elements, sanitation facilities for girls and boys' safe drinking water; trained teachers; teaching materials; libraries; laboratories and computers.⁶

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- (a) equity
 - (b) practicability
 - (c) the need to redress the results of past racially discriminatory laws and practices."

³ Section 29 (3) provides " Everyone has the right to establish and maintain, at their own expense, independent private educational institutions that-

- (a) do not discriminate on the basis of race;
- (b) are registered with the state; and
- (c) maintain standards that are not inferior to standard at comparable public educational institutions."

Subsection 4 goes on to provide that " Subsection 3 does not preclude state subsidy for independent educational institutions."

⁴ Article 13 of the International Covenant on Economic, Social Cultural Rights (1966).

⁵ General Comment 13 (1999) para 6.

⁶ General Comments 13 (1999) para 6 (a).

Accessibility has three dimensions: non-discrimination, physical, economic accessibility. This means education institutions and programmes should be accessible to everyone without discrimination, and education institutions have to be within acceptable perimeters and be affordable to all.⁷ Where there are barriers the state should work towards removing them. To combat discrimination the state should outlaw discriminatory practices. One of the mechanisms to create equal opportunities is to make basic education compulsory and free, and eliminate differential treatment of learners that does not serve the public interest or purpose.⁸ Nonetheless, differential treatment of learners would be permissible for the purpose of securing adequate advancement of learners from certain groups who require special protection for them to be able to enjoy the right.⁹

Acceptability means the form and substance of education provided should be relevant, culturally acceptable and be of good quality. Adaptability means education should be flexible enough to adapt to societal changes, and the needs of learners within their diverse social and cultural settings.¹⁰

2.1 Basic education

Section 29(1)(a) enshrines the right to basic education, including adult basic education. The national qualification framework of the South African Qualification Authority defines basic education as education grades between R and 9. Adult basic education refers to education targeted at adults who lack basic education. The White Paper on Education defines basic education as a flexible concept to be defined so as to meet the learning needs appropriate to age and experience of the learner, and should also provide access to nationally recognised qualifications.¹¹ To this end, basic education should provide learners with minimum learning tools.

In line with the provisions of international instruments, the South African School Act states that education between grade R and 9 is compulsory, but unlike international instruments, falls short of stating that it is free.¹² In terms of international instruments, basic education should not only be compulsory but also free. Basic education should be compulsory so as to confer on young children basic skills and the appreciation of human rights. Denying young children basic education because their parents cannot pay

⁷ Ibid para 6 (b).

⁸ Article 4 Convention Against Discrimination in Education (1960).

⁹ Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) para 39.

¹⁰ Ibid Para 6 (c) and (d).

¹¹ G E Devenish *A Commentary on the South Africa Bill Rights* (1999) 398.

¹² The following instruments provides for compulsory basic education:
Article 11 (3) of African Charter on the Rights and Welfare of the Child
Article 13 (2) of International Covenant on Economic, Social and Cultural Rights
Article 28 of the Convention on the Rights of the Child
Article 26 (1) of the Universal Declaration of Human Rights

for it detracts from the general aims of education and the obligation to make it compulsory.

The Committee on Economic, Social and Cultural Rights has stated that compulsory primary education means that “neither parents, guardians nor the state are entitled to treat as optional the decision of whether the child should have access to primary education.”¹³ Basic education equips children with necessary skills that shape their understanding of human worth. The impact of the denial of basic education on young children would mean that society and parents deny their children the means of survival and ability to exercise other rights.

The Committee has gone further to state that primary education should be free; alternatively the state has to move progressively to make it free.¹⁴ The Committee on the Convention on the Rights of the Child (CRC) interprets free basic education to mean that basic education should be made accessible to all children; accessible meaning free from barriers, especially financial barriers.¹⁵ To this end, the state should monitor the costs of education and discourage high costs of basic education, by taking responsibility for basic education and making it free to all. In appropriate circumstances, the state should act to keep the costs of basic education within the limits of the majority of its citizens through funding or subsidisation of schooling.

Basic education, unlike further education does not have an internal limitation of progressive realisation and limited resources. The state is obliged to ensure that every child within the school going age has access to primary education. The Committee further stated that a state cannot escape the unequivocal obligation to adopt a plan of action on the grounds that resources are not available. If the state is lacking in financial resources, the state could appeal to the international community for assistance.¹⁶ This means that lack of resources is not a justifiable ground for failure to take measures to realise the right to basic education; the state should pay due priority to the fulfilment of the right.

2.2 Further education

Section 29(1)(b) provides for the right to further education, which has to be progressively available and accessible. It comprises Further Education and Training (FET) and higher education. The National Qualifications Framework (NQF) defines FET as grade 10 to 12. The Constitution uses the phrase “progressively available”, which has the same underlying principles and meaning attached to the phrase “progressive realisation.” This means the state has to move swiftly towards ensuring that further education is accessible to everyone within available resources. Article

¹³ General Comment 11 (1999) para 6.

¹⁴ *Ibid* para 10.

¹⁵ UNICEF *Implementation Handbook for the Convention on the Rights of the Child* (1998) 378.

¹⁶ General Comment 11 (Note 13 above) para 9.

13(2)(c) of the ICESCR provides that further education should be made equally accessible to all, based on available capacity, and through every appropriate means. Even with this limitation the state has an obligation to take reasonable measures to make the right progressively available and accessible to everyone. The Committee on Economic, Social and Cultural Rights has stated that 'reasonable measures' means that the state must demonstrate that the measures are "deliberate, concrete and targeted as clearly as possible" towards meeting its obligations.¹⁷ The state has to show that it has a plan in place for the implementation of FET and higher learning institutions and the funding thereof. In the South African context, the state should continue to fund institutions of higher learning without compromising their independence; it should also fund students to facilitate access to higher education.

The Committee interprets progressive realisation to mean that the state is obliged 'to move as expeditiously and effectively as possible towards' the provision of the right to education.¹⁸ Under no circumstances shall states have the right to defer indefinitely, efforts to ensure the full realisation of the right. On the contrary, State Parties are obliged to begin immediately to take steps to fulfil their obligations under the Covenant.¹⁹

The Limburg Principles provide that the obligation of progressive achievement requires the effective use of available resources.²⁰ This means that whether the financial resources increase or decrease the state still has to progressively realise the right. The state is expected to move and shift resources according to needs. This would require that state funds be directed at increasing access for excluded groups. The state should also work towards having an FET system in place and increase the number of non-represented groups such as women, disabled people and African people. The Principles further provide that progressive implementation can be effected not only through increasing resources, but also by the development of societal resources necessary for the realisation of economic and social rights.²¹ This would mean that the state should train and maintain educators and build infrastructure.

In the case of the *Government of the Republic of South Africa and Others v. Grootboom and Others* the Constitutional Court indicated that the rate at which the right is achieved as well as the reasonableness of the measures employed are governed by the availability of resources.²² In delivering the judgement, the Court noted that the Constitution does not require the state to do more than its available resources permit. However the state must move towards progressively realising the rights in the Bill of Rights, by

¹⁷ General Comment 3 (1990) para 2.

¹⁸ Ibid para 9.

¹⁹ International Court of Justice *Economic Social and Cultural Rights: A compilation of essential documents* (1997) 82.

²⁰ Limburg Principles (note 9 above) para 23.

²¹ Ibid para 24.

²² *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR (CC) para 45.

having a comprehensive plan that considers all circumstances, where necessary the state should prioritise and shift resources accordingly.²³

3 KEY DEVELOPMENTS FOR THE YEAR UNDER REVIEW

3.1 Policy developments

The following were the key policy developments that took place during the year under review for both basic and the further educations bands:

- The development of the Draft White Paper for Adult Basic Education and Training (ABET)
- HIV/AIDS Policy
- Assessment Policy
- Education White Paper 3 – A Programme for the Transformation of Higher Education

Adult Basic Education

The Draft White Paper for ABET was released for public comment during the year 2000. The White Paper provides a policy framework for ABET implementation and support.²⁴ The Multi Year Implementation Plan (MYIP) has already been developed to help expand the number of public adult education learning centres.²⁵ The National Multi-Year Implementation Plan for Adults Education and Training Accreditation and Provision, is a plan to implement the vision of ABET. The Plan has provisions based upon principles and practices of equity, redress, development, reconstruction, access, integration, partnership, sustainable use of resources, a flexible curriculum, outcome based standard of attainment, the recognition of prior learning and cost effectiveness.²⁶ The measure is aimed at reducing the rate of illiteracy and innumeracy amongst adults.

HIV/AIDS policy

The policy on HIV/AIDS was instituted to manage the impact of HIV/AIDS. The policy intends to provide HIV/AIDS education and to prevent discrimination against people affected by and/or infected with HIV/AIDS. The policy prohibits medical testing of learners, students or educators. Learners, students and educators who are HIV-positive are not compelled to disclose their HIV/AIDS status. However, the department does support voluntary disclosure of HIV/AIDS status. Schools are required to take steps to eliminate the risk of transmission of the virus on school premises.

Assessment policy

²³ Ibid para 45.

²⁴ D Burger (ed) *South Africa Yearbook* (2000/01) 435.

²⁵ Ibid.

²⁶ Ibid 439.

The policy on school assessment was introduced, to address the problem of excessive repetition and dropout rates by learners.²⁷ The policy has shifted the emphasis from relying on year-end exams to continuous performance appraisal. The policy ensures access for other learners in that learners already in school do not take room for other learners when they repeat a grade. As the learners move up they create room for others thereby facilitating access.

Education White Paper 3 - Higher Education

The Education White Paper 3 seeks to transform higher education. This entails the incorporation of colleges, including education, agriculture and nursing colleges into the higher education system; and the merging of universities and technikons. This was deemed necessary to avoid duplication and waste of resources in the provision of higher education. There will also be the aligning of curricula of various institutions. The policy will create a coherent higher education system. It intends to promote the widening of learning areas that will include previously disadvantaged groups. The policy envisages to promote representivity.

3.2 Legislative developments

There were no major legislative developments relating to basic education and FET that took place during the year under review. Both the basic education and FET sectors saw amendments that did not add anything substantive to principal legislations. The draft ABET Bill and draft regulations for the National ABET Board were publicised during the year under review. The Bill is intended to provide a legislative framework for ABET implementation.

The higher education sector did experience a positive development with the passing of the National Student Financial Aid Scheme Act 56 of 1999. The Act seeks to establish a National Student Fund and to provide for its management and administration. The National Student Fund will grant loans and bursaries to eligible students at public higher education institutions. Another provision in the Act relates to measures of recovering loans from students.²⁸

3.3 The Budget

In the year 1999/2000 the national Department of Education was allocated a total budget of R46, 84 billion. R40, 23 billion was directed towards costs for college, primary and secondary school education, and R6, 61 billion was for universities and technikons.²⁹

²⁷ The Eradication of Poverty - Education at <http://www.polity.org.za/govdocs/reports/welfare/chapter2.html>. Site visited on 10/10/2000.

²⁸ National Financial Aid Scheme Act at <http://www.polity.org.za/govdocs/legislation/1999/act56.pdf>. Site visited 30/08/2001.

²⁹ Burger (note 24 above) 432.

In terms of the new budgetary system, provinces now allocate approximately 89 percent of their education budget. In 1998, a Review Team noted that the 1998/1999 provincial budgets were not financially and educationally realistic. On average, the education budget takes up 40 percent of the provincial budget, while 90 percent of the allocation is spent on personnel. The Review Team encouraged the reduction of the ratio over a period of time to 80:20 for better investment in non-personnel functions. For the interim, the Team proposed that the budget should shift progressively from 90:10 to 85:15 until the year 2005. This would allow the departments to retain educationally defensible staffing levels.³⁰

For the year 1999/2000 some of the provincial budgets have reflected the proposed shift, but the poorest provinces still showed a serious retrogression as regards non-personnel functions. This retrogressive allocation means that schools are still subjected to inadequate supply of learning materials and equipment. The skewed budgetary allocation also affected the school-building project and other capital works, particularly in poor rural provinces, which have inherited massive infrastructure backlogs.³¹

4 CONCLUSION

The national and provincial departments have taken steps to help realise the right to education. Examples are: the HIV/AIDS, funding and assessment policies. The provincial departments were in the process of implementing national policies; for example, Gauteng implemented the HIV/AIDS policy.

The measures instituted by the state are reasonable in that they are deliberately aimed at fulfilling the right to education, and are a first step in the progressive realisation of the right. Because the Constitution speaks of progressive realisation, the results can only be measured over time. However, progressive realisation imposes an obligation to move as expeditiously and effectively as possible towards the realisation of results.³² The NDE has done so by putting in place measures to facilitate the realisation of the right; provincial departments have also assisted with the provision of education. Research shows that numbers of learners have increased in 1999 to 12 313 899 and that the learner/teacher ratio has decreased to 32:8.³³

The measures are supported by budgetary allocations for implementation. Clearly there is a need to move quickly because of the backlog in education. Research shows that 13 262 schools have a shortage of classrooms, 3 293 have no toilets, 16 815 are without telephones, 15 911

³⁰ Ministry of Education *Status Report for the Minister of Education-June 1999* at <http://www.polity.org.za/govdocs/reports/education/statusreport.html>. Site visited 24/10/2000.

³¹ *Ibid.*

³² General Comment 3 (note 17 above) para 9.

³³ There were 12 071 355 learners with a learner/teacher ratio of 33:5 in 1998.

lack electricity and 6 503 have no water within walking distance. The department further reported that 8 141 195 learners are residing beyond a 5 km radius from schools.

There is a need to move expeditiously to provide facilities for education.

PART B: ANALYSIS OF REPORTS FROM ORGANS OF STATE

The national and provincial Departments of Education responded to questions in the protocols requiring information relating to the realisation of the right to education.

BASIC EDUCATION

1 POLICY MEASURES

1.1 National Sphere

The NDE stated that the report submitted was an update of the previous year's report. However, the section on policy measures was not sufficiently updated. The NDE only reported on Tirisano as one of the programmes instituted during the year under review.

Tirisano

Tirisano was a call for action made by the Minister of Education in July 1999. It is an implementation plan for a five-year period between 1999 and 2004. The plan was meant to ensure that existing policies were carried out with a sense of urgency and commitment to their success. Tirisano is also a tool for monitoring progress of existing policy. Tirisano focuses on nine priority areas.³⁴ The nine points intend to expedite implementation and delivery in education. Tirisano takes as urgent the delivery of education, and was a response to huge backlogs in education relating to lack of infrastructure, illiteracy rate and properly qualified educators. The call will see to it that learners in our schools receive education, and that quality was adhered to.

1.2 Provincial Sphere

Provincial departments instituted policy measures and programmes in line with national policies on the right to basic education. The Table below shows policies implemented by various provincial departments during the reviewing period. The Table shows that only four provinces reported on the policy measures instituted during the year under review. The reports

³⁴ Department of Education *Annual Report 1999* (1999) 12. The nine points are the following

- promoting co-operative government
- reduce illiteracy among adults in five years
- making schools centre of community life
- ending physical degradation of South African schools
- developing the professional quality of the teaching force
- urgent measure for dealing with HIV/AIDS
- implementing a responsive and unified higher education system
- creating a systematic FET
- implementing the outcomes-based education

by other provinces were either not specific to the year in question or contained no information on policy measures at all.

Table 1 Policies instituted at provincial level

INSTITUTED POLICY MEASURES	PROVINCES THAT HAVE INSTITUTED THE POLICY MEASURES
HIV/AIDS Policy	<ul style="list-style-type: none"> • Eastern Cape • Gauteng • Western Cape
Admissions Policy for Ordinary Public Schools	<ul style="list-style-type: none"> • Eastern Cape • Free State • Gauteng
National Norms and Standards for School Funding	<ul style="list-style-type: none"> • Eastern Cape • Gauteng • Western Cape
ABET Policy	<ul style="list-style-type: none"> • Eastern Cape • Northern Cape • North West • Western Cape

HIV/AIDS policy

The Eastern Cape, Gauteng and the Western Cape reported on the HIV/AIDS policy in their respective provinces.

The Eastern Cape formulated policy and strategies to address sex education and teenage pregnancy, as well as the HIV/AIDS policy.

Gauteng began the implementation of the National Policy on HIV/AIDS and has ensured that schools have the necessary equipment to deal with the safety of learners and educators in relation to exposure to HIV/AIDS by making available, first aid kits to disadvantaged schools. The department instituted a programme on teenage pregnancy. The programme was meant to address the provision of education to pregnant learners, including the right to attend both ordinary and hospital schools. The programme would ensure that learners complete the grade for the year in a safe environment.

In the Western Cape, para-educational services funded some of the expenses incurred for the primary school pilot project on HIV/AIDS, and School Aids Week.

Admission policy

The Gauteng, Eastern Cape and Free State Departments of Education instituted the Admission Policy.

During 1999, the GDE embarked on a process to ensure the implementation of the Admission Policy for access to public schools. The policy also addresses the rights and concerns of learners with special education needs in ordinary public schools. The policy also makes

provision for non-citizens.

The Free State circulated leaflets that provided information on the requirements and obligations for admission to public schools. The policy forbids the use of any form of testing for admission to public school. It also forbids refusal of admission if parents are unable to pay the required school fees.

The ECDE implemented the Admission Policy; and experienced a 20 percent drop in the enrolment of under-aged learners.

National Norms and Standard for Funding Public Schools

ECDE, GDE and WCDE reported on the national norms and standards for funding. The implementation of the National Norms and Standards for the Funding of Schools began during 1999.

The ECDE reported that the Norms and Standards for the Funding of Schools assisted with the registration of former Model C schools as Section 21 company schools, making them eligible for funding from the department.³⁵ The Eastern Cape reported that the funding policy has provisions for exemption from paying school fees for persons who cannot afford to pay.

In Gauteng the Norms and Standards was to be implemented at the beginning of April 2000. During 1999, the Poverty Survey was conducted to develop the Poverty Index that will be used to determine the level of funding for schools. A policy for the exemption of payment of school fees was instituted in 1998 as a mechanism for dealing with financial barriers to accessing basic education.

ABET policy

The Eastern Cape, Northern Cape, North West and Western Cape Departments of Education reported on programmes and policies in support of the national ABET programme. In the Eastern Cape a programme to transform night schools into Public Adult Learning Centres (PALC) was implemented. The PALC provide education for levels 2-7 in terms of the NQF instead of the matric and junior certificate. The Eastern Cape PALC has governing councils made up of educators, learners and community members. Through Adult Literacy Centres, adults were able to access education and improve their qualifications. The Ikhwelo Project was promoting skills development for adult learners in the province.

The Northern Cape Department of Education (NCDE) reported that no new policies had been instituted. However the department was implementing existing policies and programmes, such as the ABET policy and the Northern Cape Province Multi Year Implementation Plan (1998).

³⁵ A Section 21 Company is a company operating not for gain or profit.

The North West Department of Education (NWDE) reported that it had implemented the ABET Multi-Year-Plan and Policy. The department also reported that after the Ithuteng Campaign in the North West most people became aware of the provisions of ABET in the province.³⁶ Through training on OBE most people also became aware of their right to basic education in the policy formulation, governance and delivering ABET in the province.

The Western Cape Education Department's Adult Basic Education and Training adapted its Interim Policy and the Procedures for Community Learning Centres so that more adults could gain access to basic education.

1.2.1 Measures and constitutional obligations

The Eastern Cape reported that it respected the right to ABET by establishing Public Adult Learning Centres. The Admission Policy was effective in reducing the number of under aged learners.

The Free State took a non-tolerance stance towards discrimination in the province, especially racial discrimination. The Admission Policy was effective as it improved enrolment of other races in formerly whites-only schools.

The GDE indicated that the HIV/AIDS policy and the Teenage Pregnancy initiative protect the freedom of HIV-positive and pregnant learners against discrimination.

Rural schools in the Western Cape were established near learners' places of residence.

1.2.2 Vulnerable groups

Departments maintained that policies and programmes implemented paid special attention to needs of socially vulnerable groups. The Admission Policy and the National Norms on Funding Schools make special provision for learners from poor backgrounds. The Admission Policy forbids schools from refusing admission to a learner for failure to pay fees, while the funding policy provides for exemption of poor learners from paying fees. The policy also makes provision to fund schools from poor communities.

The HIV/AIDS policy addresses issues of discrimination against HIV positive learners and educators disallowing refusal of admission based on the learner's HIV status.

Refugee learners were also catered for by the Admission Policy. ABET policy takes care of adult learners or learners not in the mainstream

³⁶ The Department did not specify as to which category of people is being referred to.

education system. The policies in the education system did take the situation of vulnerable groups into account. All the measures mentioned above were particularly sensitive to learners with disabilities and female learners.

1.3 Critique

The response provided by the NDE was unsatisfactory. The department did not provide information on policies even though it had said the report was an update of the previous year's response. Numerous policies and programmes were instituted which the department could have reported on.

The measures that were instituted during the year 1999/2000 by the NDE, but not included in the report were the following:

- Admission Policy for Ordinary Public Schools
- HIV/AIDS policy for Learners and Educators in Public Schools, and Students and Educators in Further Education and Training Institutions
- Assessment Policy
- National Norms and Standards for School Funding

Admission Policy for Ordinary Public Schools

This policy aims to achieve regularity in the progress of age cohorts through the school cycle, and curb the abuses of under age and over age enrolment.³⁷ The statistical age norm was outlined as the grade number plus 6, for example Grade 1+6 = 7. The policy provides uniform norms for the age of admission and brings uniformity into the process of admission into public schools across all provinces. The purpose of this policy was to provide a framework for all the provincial departments of education and governing bodies for developing the admission policy for schools.

A full audit of provincial readiness conducted by a consortium of consultants contracted by the Department of Education with the European Union support indicated that the Free State, Gauteng, KwaZulu-Natal, Northern Cape and Western Cape would be ready for full implementation of the policy in January 2000. Mpumalanga, North West, the Eastern Cape and Northern Province were not ready, with the latter two being particularly behind schedule.³⁸

HIV/AIDS policy

The national Department of Education (NDE) did not provide information on HIV/AIDS Policy. Other sources indicated that the NDE launched the

³⁷ Department of Education (note 34 above) 132.

³⁸ Minister of Education Report to the President at

http://www.education.gov.za/Policies_Reports/Admission_ord_Public_Schools.htm. Site visited on 10/04/01.

HIV/AIDS Policy in September 1999. The crucial provisions of this policy are:³⁹

- non-discrimination of learners, students and educators infected with HIV
- the protection of confidentiality of learners and educators infected with HIV
- a safe school environment and HIV/AIDS education at all levels

This policy seeks to contribute towards promoting effective prevention and care within the context of the public education system. The premise of the policy was that learners, students and educators with HIV/AIDS will increasingly form part of the population of schools and institutions. The policy was therefore meant to protect all the learners in these circumstances through the promotion of equality and non-discrimination. No learner, student (or parent on behalf of a learner or student) or educator was compelled to disclose his or her HIV status to the school, institution or employer.

The policy also has provisions for all schools to implement universal precautions to eliminate the risk of transmission of all blood-borne pathogens, including HIV, in the school environment. The universal precautions were based on the assumption that in situations of potential exposure to HIV, all persons are potentially infected and all blood should be treated as such. All blood, open wounds, sores, breaks in the skin, gazes and open skin lesions, as well as body fluids and excretions, which could be stained or contaminated with blood, should be treated as potentially infectious.⁴⁰

Assessment policy

The assessment policy, which came into effect in 1999, applies to learning in the General Education and Training Band of the National Qualifications Framework (NQF) and grades R-9 in school education, and all four levels of Adult Basic Education and Training.⁴¹ The policy was developed in response to a need to phase in assessment practices compatible with the newly introduced Outcome Based Education. The approach was aimed at assisting students with learning problems.

According to this policy pupils have to meet expected levels of performance to be promoted from one grade to the next. Pupils should not spend more than four years in each phase and should, as a rule, progress with their age group. Continuous assessment will include a written and practical test at the end of the year. The process of assessment will involve a partnership between educators, students, parents and education support

³⁹ EPU *Quarterly Review of Education and Training* in South Africa Vol. 7 No.2 (2000) 19.

⁴⁰ Draft Education Policy on HIV/AIDS at <http://www.education.pwv.gov.za/HIVAIDS/AIDSPolicy.htm>. Site visited on 10/04/01.

⁴¹ National Department of Education Assessment Policy <http://www.polity.org.za/govdocs/regulations/1998/reg98-1718.html>. Site visited on 12/07/2000.

services. These education support services will include occupational and speech therapists and psychologists. In exceptional circumstances pupils who fail to meet expected levels of performance at the end of the year will be allowed to repeat that year. Learners experiencing problems need not repeat the year, they could receive additional support in a particular learning programme. Gifted children will also be identified and allowed to advance more rapidly through the education system.⁴² The policy will keep room available for the admission of learners into educational institutions.

National Norms and Standards for School Funding

The policy was meant to direct public funding to schools in a manner that promotes equity and redress, and contributes to the overall quality of education.⁴³ The main objective of the policy was to ensure that public funds for public schools were paid on a progressive scale according to need.

The Norms entail provincial education departments directing 60 percent of their non-personnel and non-capital resources towards the poorest 40 percent of the schools in the province. Schools were divided into five categories, based on needs. The poorest 20 percent receive 35 percent of resources, while the richest 20 percent of schools receive 5 percent of the resources available to provincial education departments. The NDE has set out certain categories according to which eligible, independent schools were subsidised.

Most of the provincial departments that reported on the policies and programmes instituted during the reporting period did not provide details on the measures. The departments failed to report on when the policies or programme were instituted, what the policy or programme entails, the purpose of instituting the policies and programmes and whether the policies and programmes fulfil their objectives and goals. The effectiveness of the policies or programmes to realise the right to basic education, including Adult Basic Education was not clearly stated. Most of the departments failed to indicate clearly the considerations given to vulnerable groups by the instituted measures.

The information provided suggests that no specific provisions were made to ensure that those previously disadvantaged enjoy the right to basic education, including the right to adult basic education. None of the provinces reported on a policy that ensures that the homeless and street children were afforded the right to basic education. Non-citizens (refugees and asylum seekers) seem to be receiving little attention because the responses had very little to report on them.

1.3.1 Critique of the Measures

⁴² Ibid.

⁴³ Department of Education (note 34 above) 47.

Admission policy

The Admissions Policy for Ordinary Public Schools should save government millions of rands because of the decreasing number of learners for grade R. The policy has shifted the burden onto parents to provide for childcare for their children who were below seven years. If there were a properly organised and affordable early childhood development system, there would not be a serious problem with the Admissions Policy. This is because the gap that has been created by the inaccessibility of early childhood development centres and the new age norm for grade R has infringed on the right to have access to basic education.

The department asserts that the policy is in accordance with international practice, and was justifiable on the grounds of the children's development level. Parents have expressed dissatisfaction with this new policy. Others pleaded for exceptions to the rule, whether on grounds of special aptitude, expectation or convenience. However, the department announced to the public that there would be no exception to the rule. The NDE stated that there was no test or criterion that could be applied equitably to judge special cases; all children would thus be treated equally.⁴⁴ During 2001 this became a subject of a court case in the Constitutional Court; the dispute being whether the age limit creates barriers to learning.

HIV/AIDS policy

The social and personal impact HIV/AIDS will have on learners, students and educators needs careful consideration. As the pandemic continues to spread a large number of learners and educators will be sick or dealing with illness or bereavement in the family, having lost parents, siblings or other close relatives. This also means schools will be severely affected by absenteeism, illness and death.⁴⁵ Therefore the department's policy on HIV/AIDS was a positive step towards dealing with the pandemic. The policy also protects the rights of those infected, by ensuring that any public institution of learning does not discriminate them against.

The provisions of the policy respect, protect, promote and fulfil the realisation of the right to basic education.

National Norms and Standards for Funding Public Schools

The policy ensures that the most needy schools receive the most funding. The provision shows departments' commitment to redressing the inequalities of the past, especially for previously disadvantaged schools.

⁴⁴ Minister of Education *Report on Education to the President* at <http://www.polity.org.za/govdocs/reports/education/report30-11-99a.html>. Site visited on 27/09/00.

⁴⁵ Department of Education Status Report for the Minister of Education -June 1999 at <http://www.polity.org.za/govdocs/reports/education/statusreport/html>. Site visited 24/10/2000.

Other sources have indicated that there were problems faced by provincial departments in implementing the policy. Funding according to the policy was in terms of three categories of expenditure, namely maintenance of school buildings, municipal services and utilities, and learner support materials. Therefore for learner support materials the schools should provide a basic package of R100 per learner. In most instances there were not enough funds for schools to provide the amount for the basic package. Thus priority was given to the most needy.⁴⁶

The challenge faced by provincial departments was to identify the most needy learners; they were required to produce a resource-targeting table, which was based on schools ranking to enable the progressive redistribution of funding to poor schools. The ranking of schools for each province has been complicated by the discrepancy between schools' rankings on the "poverty of the community" factor versus the "poverty of the school" factor. The flexibility of the policy on the definition of the "poverty of the community" has resulted in different interpretations being used by provincial departments. This resulted in inconsistencies in the allocation of funds across the provinces.

Clearly the policy was reasonable in its conception; the intention was to shift resources to where they were needed most. Implementation seems to pose problems in that provinces deviate from the set norms and standards, and also lack skilled numerical and statistical analysts.⁴⁷

1.4 Recommendations

There was a clear non-reporting by NDE; the department reported on measures reported in its previous report and also neglects to report on new developments that took place during the year under review. The department should report on policies instituted during the period under review. The reports should provide detailed information on policy measures instituted. In reporting on policies that are already in existence at the time of reporting, the departments should report on the effectiveness of the policies and whether they fulfil the intended purpose.

HIV/AIDS education must be intensified to save learners and educators from the ravages of this pandemic. Educators need to be well informed about the HIV/AIDS epidemic for them to be better able to teach about it. The NDE should seriously consider introducing sexuality education as part of the curriculum at an early stage.

The NDE needs to motivate for more expenditure on COLTS and the National School Building Programme for the continuation and acceleration of upgrading schools in terms of basic provisions. The NDE must develop strategies for the improved implementation and monitoring of COLTS.

⁴⁶ Redistribution of School Funding at <http://www.idasa.org.za/bis/briefs/brief48.htm>. Site visited 14/06/2001.

⁴⁷ Department of Education (note 34 above) 50.

The implementation of policies and programmes of the departments of education should prioritise the needs of vulnerable groups and the marginalised. More support by provincial departments to ECD centres is necessary to eliminate exploitation within the sector.

Tirisano is a good programme, which should be used as a tool with which existing policies could be evaluated and monitored.

The NDE should take effective measures to ensure that primary education is free to all.

2 LEGISLATIVE MEASURES

2.1 *National Sphere*

The NDE did not provide information on any new legislative measures; it just repeated legislation passed in previous years.

2.2 *Provincial Sphere*

Most provincial departments have adapted national to their respective provinces. However these legislative measures were outside the year under review and will not be discussed here.

In the Free State, the Free State Schools Education Act 2 of 2000 was passed. The Free State Act continues in the same principles as the national Schools Act. School Management Teams and School Governing Bodies were trained in the interpretation and implementation of the two laws.

The North West department has only provided measures instituted for the realisation of the right to Adult Basic Education. According to the report, the ABET Directorate in NDE has instructed ABET provincial heads to produce the ABET Bill which was expected to be promulgated at the end of 2000.

2.3 *Critique*

The response for the period under review was similar to the one submitted for the 1998/1999 reporting period.

Responses did not follow the format of the protocol. Questions on the right to basic education were mixed with the ones on further education. It should be noted that these are two distinct constitutional rights. The department was supposed to provide information on each of the rights.

Although the NDE has not reported on any legislative measures instituted during the year under review, independent research has shown that there

were two Acts passed. These were:

- Education Laws Amendment Act 48 of 1999
- Draft ABET Bill and Draft Regulations for the National ABET Board

The Education Laws Amendment Act amended various Acts relating to education in general. The amendments related to the South African Certification Council Act 85 of 1986, National Education Policy Act 27 of 1997, South African Schools Act 84 of 1996 and Employment of Educators Act 76 of 1998. The amendments related mainly to compositions of Boards and Councils and procedures.

The Draft ABET Bill sought to provide the legislative framework for the implementation of ABET policy.

It is unacceptable that more than half of the provinces has not submitted responses. It should also be emphasised that the provincial departments that failed to provide information have committed a serious violation of their constitutional obligation. Section 184(3) refers to all relevant organs of state, which include provincial departments.

The provincial departments that have responded did not provide satisfactory reports. To a large extent, the reports were not detailed. Only the Free State and Western Cape mentioned their own provincial legislation. Since provinces are responsible for implementing national legislation, provincial departments were supposed to have provided information on how they implemented such legislation. It is important though, that each province should have its own legislation adapted to provincial conditions.

It has been established, on the basis of research, that all provinces have passed their own legislation that regulate matters relating to education.⁴⁸ It is therefore incumbent upon provincial departments to provide information on those laws, and their impact on the constitutional right to basic education.

It should be acknowledged that the Constitution creates a positive obligation on the state to provide basic education, which includes adult basic education. The existence of the Education Amendment Act fulfils the requirement to have in place, legislative and other measures that are aimed at satisfying the right to education.⁴⁹ The Act passed during the year under review does not deviate from the state responsibility; it advances the purposes and objectives of the various principal Acts it amends. The Act is reasonable in that it does not constitute barriers to education. The Act is reasonable and does respect, protect, promote and fulfil the right to education.

⁴⁸ Butterworths Regional Legislation Service.

⁴⁹ General Comment 3 (note 17 above) para 3.

The publication of the ABET Bill also goes further in helping to realise the right to education. The Bill would ultimately provide a legislative framework for ABET implementation. The essence of making adult basic education a separate right is borne from the fact that there are differing educational needs for children and adults. In terms of international standards, basic education (fundamental education) extends to children, youth and adults, including older persons.⁵⁰ This requires that appropriate curricula and delivery systems be made available to learners of all ages.

There have been significant legislative developments in South Africa since the 1994 constitutional dispensation. However, there is still a high level of illiteracy and poor quality of education in the country, with 43 percent of children and 17 percent of youth being illiterate.⁵¹ The South African Schools Act does not provide basic education free, but only makes it compulsory for children between seven and 15 years to attend school. The Convention on the Rights of the Child provides that primary education should be compulsory and free to all.⁵² South Africa, as a State Party to the CRC, is obliged to comply with the CRC by making basic education free to all. Free and compulsory basic education will improve the level of literacy among the youth and children and enable adults and teenagers to participate freely and meaningfully in a democratic society.

The South African Schools Act of 1996 does not make provision for the respect of the right to basic education at private schools. It only provides that admission to public schools cannot be refused on the basis of inability to pay fees.

The responses from provincial departments did not provide adequate information on legislative measures. Though the Free State and Western Cape did provide information on their own legislation, they did not explain the impact of the legislation on the right to basic education. There has been no explanation of the impact of the South African Schools Act and how it was implemented in the provinces.

2.4 Recommendations

The right to basic education should be understood to include the right to adult basic education. This is in line with the Constitution and international law. The department should expedite legislative measures on ABET.

The NDE should provide separate reports on the right to basic education and further education. This is imperative for the purposes of assessing the status of each of these rights. The Constitution provides each of these rights as a separate right.

⁵⁰ See note 13 above.

⁵¹ UNESCO et al South Africa Report: Education for All 2000 Assessment (1999). See also the Overview Section *supra*.

⁵² Note 12 above.

3 BUDGETARY MEASURES

3.1 National Sphere

The information provided by the NDE on budgetary allocations showed that the allocation for education, as a percent of the GDP has decreased over the past three years. The allocation as a percent of the GDP, has decreased from 0,91 percent in 1998/1999 to 0,89 percent for 1999/2000. The budget allocation in real monetary terms is shown in the Table below.

Table 2 Total Allocation for Education

YEAR	TOTAL ALLOCATION	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
1998-1999	6 857 702 000	6 857 702 000	6 469 535 000
1999-2000	7 224 260 000	7 224 260 000	7 111 602 000
2000-2001	7 513 708 000	7 513 708 000	-

Table 2 indicates that the allocations for the NDE have increased over a period of three years. The Table also reveals a tendency to utilise less than the allocated amount by the department.

Budget adequacy: The NDE indicated that the allocation was not adequate, and that there was pressure for additional spending on education for redress, new services, demographic factors and the rationalisation process.

Due to the inadequate budget allocation the department encountered problems, especially with schools that had massive infrastructure backlogs. The inadequate budget has also resulted in inability to provide supplies and Learning Support Materials (LSM). The problem was worsened by the fact that +/-85 percent of the education budget was spent on personnel, and only +/-15 percent was available for non-personnel expenditure.

The NDE further stated that the massive inefficiencies in the system worsened budgetary inadequacies. For the year under review, the NDE secured a conditional grant of R272 million from Treasury in order to assist provincial departments to improve their management and professional services. Improving the management services would assist in reducing inefficiencies. The funds were also used in numerous projects in implementing some of the policies and programmes.

The additional grants that the NDE received were used in the most disadvantaged provinces such as the Eastern Cape, Free State, KwaZulu-Natal, Mpumalanga and the Northern Province. Although these provinces take precedence, other provinces were also considered.

Early Childhood Development

The budgetary allocation for ECD has increased from the previous year's allocation of R2, 880 million to R3, 900 million. However there is an

anticipated decrease in the allocation for the year 2000/2001 where approximately R2, 008 million will be allocated for ECD.

HIV/AIDS

Budgetary allocation for education on HIV/AIDS has increased from R34 000 in 1998/1999 to R300 000 for the financial year 1999/2000. According to the NDE the increase in the allocation was expected to continue for the year 2000/2001, to approximately R31, 295 million.

Adult Basic Education

Information from the NDE indicates that budgetary allocation for adult basic education will only begin in the year 2000/2001. For that year approximately R2, 233 million will be allocated for adult basic education.

The NDE did not account for variances in the budget allocation, and stated that the reason for not accounting for variances was that budgetary allocation for programmes was the responsibility of the provincial departments. Only the provincial departments were in the position to provide information on the budgetary allocation, expenditure and variances.

3.2 Provincial Sphere

Information provided by provincial departments of education on budgetary measures has been summarised in the Table below.

Table 3 Total budgetary allocations

PROVINCE	YEARS	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
Eastern Cape	1998/1999	6 910 311 000	6 584 959 000	6 584 959 000
	1999/2000	7 063 108 000	6 616 410 000	6 616 410 000
	2000/2001	7 187 095 000	7 297 132 000	5 458 589 000
Free-State	1998/1999	2 614 071 000	2 612 095 000	2 612 095 000
	1999/2000	2 847 392 000	2 785 296 000	2 785 296 000
	2000/2001	2 950 518 000	2 994 343 020	-
Gauteng	1998/1999	6 057 862 000	6 057 862 000	6 045 193 000
	1999/2000	6 475 246 000	6 475 246 000	6 310 203 000
	2000/2001	6 835 485 000	6 835 485 000	-
KwaZulu-Natal	1998/1999	6 869 000 000	-	7 123 820 000
	1999/2000	7 477 000 000	-	7 298 555 000
	2000/2001	7 840 000 000	7 840 464 000	-
Mpumalanga	1998/1999	2 665 130 000	-	2 624 320 000
	1999/2000	2 795 417 000	-	2 809 361 000
	2000/2001	2 817 630 000	3 000 000 000	-
Northern Cape	1998/1999	811 443 000	-	858 227 000
	1999/2000	838 328 000	-	850 828 000
	2000/2001	914 289 000	962 131 000	-
North West	1998/1999	3 096 125 000	3 315 668 000	3 195 735 000
	1999/2000	3 273 309 000	3 484 926 000	3 407 764 000
	2000/2001	3 517 050 000	3 517 050 000	3 517 050 000

Education rights

PROVINCE	YEARS	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
Western Cape	1998/1999	3 866 195 000	3 866 195 000	3 866 195 000
	1999/2000	3 740 658 000	3 740 658 000	3 740 658 000
	2000/2001	4 038 644 000	4 038 644 000	-

The Eastern Cape, Free State, KwaZulu-Natal and Northern Cape did not provide information on the per capita allocation for all programmes and services. Only Gauteng, Mpumalanga, Northern Province and the Western Cape provided the per capita allocation for some of the programmes as represented in the Table below.

Table 4 Per capita allocation per province

PROVINCES	YEARS	PER CAPITA ALLOCATION IN RANDS
Gauteng	1998/1999	3 546
	1999/2000	3 790
	2000/2001	4 025
Mpumalanga	1998/1999	2 785
	1999/2000	3 012
	2000/2001	3 117
North West	1998/1999	2 842
	1999/2000	2 976
	2000/2001	3 190

The Table shows that the per capita allocations in the three provinces were very similar.

The Eastern Cape, Gauteng, KwaZulu-Natal, Mpumalanga, North West and Western Cape did not provide reasons for the variances in the budget allocation for most of the programmes. The Free State Department of Education stated that due to savings for the year 1999/2000 on personnel expenditure and outstanding commitments an amount of R43, 825 was rolled over to the 2000/01 financial years.

The Northern Cape Department of Education reported that the variances in the total allocation were due to over-expenditure on personnel, mainly attributed to excess of educators that were still in the system.

Early Childhood Development

Gauteng and Mpumalanga provinces did not provide information on budgetary allocation for ECD. Information from the provinces that reported on the budget has been summarised in the Table below:

Table 5 Budget allocations on ECD

PROVINCE	YEAR	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
Eastern Cape	1998/1999	4 386 641	-	4 386 641
	1999/2000	5 052 077	-	5 052 078
	2000/2001	4 287 423	-	-
Free-State	1998/1999	500 000	-	-
	1999/2000	2 612 000	2 024 000	2 024 000

PROVINCE	YEAR	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
	2000/2001	2 678 000	2 678 000	-
KwaZulu-Natal	1998/1999	4 000 000	-	4 045 219
	1999/2000	4 800 000	-	4 744 101
	2000/2001	4 800 000	4 800 000	-
Northern Cape	1998/1999	2 144 000	-	2 008 000
	1999/2000	3 559 000	-	3 392 000
	2000/2001	3 401 000	3 401 000	-
North West	1998/1999	3 597 000	3 507 000	-
	1999/2000	3 507 000	3 507 000	-
	2000/2001	3 507 000	3 507 000	3 507 000
Western Cape	1998/1999	2 306 000	2 306 000	2 306 000
	1999/2000	3 490 000	3 490 000	3 490 000
	2000/2001	2 734 000	2 734 000	-

The Western Cape Department of Education provided information on ECD for children with special education needs. The budget allocation increased from R4, 000,000 in 1998/1998 to R4, 100,000 for the financial year 1999/2000. A further increase to R4, 200,000 was also anticipated for the year 2000/2001. The Western Cape reported that it spent a total of R20, 000 per capita for each year in the past three years, for early childhood development for learners with special education needs. For early childhood development for ordinary education the WCDE had a per capita allocation of R634 in the year 1999/2000, which was slightly more than R489 for the year 1998/1999. A decrease was foreseen for the year 2000/2001 when a per capita amount of R427 was to be allocated.

In the Free State the variance for 1998/1999 was due to a nominal fee that was provided for the launch of a pilot project, which was not implemented. In 1999/2000 the variance was a result of non-government organisations that had not been paid in the financial year.

As already mentioned above, provincial departments were requested to indicate whether the allocated funds were adequate for the provision of early childhood development programmes. The Eastern Cape reported that the funds were insufficient, because the province has approximately 1 million children between the ages of 0-6 years the majority of who lived in rural areas. The Free State also reported that the funds were inadequate because ECD requires vast amounts of funding. KwaZulu-Natal also reported that budget allocation for ECD was insufficient because it only catered for subsidies to 250 sites. The funding only targeted grade R (6 years old) learners and no funding was allocated for children from birth to 6 years.

Asked whether any problems were experienced due to the budgetary constraints, the Eastern Cape reported that with the inception of the admission policy, many 6-year-old children were excluded from schooling. These children had no place to go to because most areas did not offer grade R, and the department using the limited budget allocation managed

to open 246 pilot schools for grade R. Problems experienced by the Free State Department of Education due to budget constraints included offering ECD services to only 87 pilot sites and 104 grade R classes. Proper management and control of the pilot project sites were also impossible because of insufficient personnel. Some of the problems encountered by KwaZulu-Natal include providing early childhood development to only 80 000 children, out of a total of 240 000 children who were 6 years old. Other problems included lack of personnel for proper implementation and monitoring and lack of meaningful expansion of services.

Provincial departments were asked whether any measures were taken to address the problem of inadequate budgetary allocation for this programme. The Eastern Cape indicated that it formed partnerships with organisations such as DIFD, USAID, Swiss Agency, Shoma and the Telkom Foundation in order to receive funding. Measures that were taken by the Free State Department of Education included the formation of an ECD Council to develop policy and plan for future developments. The department also developed a draft action plan for the implementation of grade R. Some of the measures taken by KwaZulu-Natal to address budget constraints include accessing funding from donors for training educators, provision of additional personnel and improvement of facilities. The projects catered for learners in rural areas, informal settlements and learners with disabilities. No special considerations were given to refugees and asylum seekers.

The Northern Cape Department of Education reported that budget allocation for ECD for grade R was inadequate, because the department was unable to purchase toys and meals for children in the centres. Parents were asked to provide meals and toys for their children.

In the North West the budgetary allocation was inadequate for providing a sustainable intervention strategy and the development of the early childhood development sector.

The Western Cape reported that the budget was insufficient for ECD-ELSEN, because more schools were needed but could not be built. Although not clearly stated that the budget was inadequate, the WCDE highlighted the fact that with additional funding, more children could be reached. Funding from other sources assisted in alleviating some of the problems.

Education on HIV/AIDS

Very few provinces provided information on the budgetary allocation for education on HIV/AIDS. The North West department did not provide information on budget allocation for education on HIV/AIDS. Western Cape reported that funding and the budget for HIV/AIDS was controlled by the national Departments of Health and Education, as well as the European Union, and that the money had not been released yet. Information on the provinces that reported has been summarised in the Table below.

Table 6 Budget allocation for Education on HIV/AIDS

PROVINCE	YEAR	TOTAL ALLOCATION IN RANDBS	PROJECTED EXPENDITURE IN RANDBS	ACTUAL EXPENDITURE IN RANDBS
Eastern Cape	1998/1999	-	-	-
	1999/2000	-	-	-
	2000/2001	4 500 000	2 000,000	1 775 000
Free-State	1998/1999	10 000 000	-	-
	1999/2000	10 000 000	2 200 000	2 200 000
	2000/2001	1 000 000	1 000 000	-
Gauteng	1998/1999	2 500 000	2 500 000	1 779 895
	1999/2000	4 000 000	4 030 000	3 446 000
	2000/2001	6 300 000	6 300 000	-
KwaZulu-Natal	1998/1999	-	-	-
	1999/2000	-	-	-
	2000/2001	4 600 000	-	-
Mpumalanga	1998/1999	-	-	-
	1999/2000	123 000	-	154 000
	2000/2001	2 400 000	2 473 000	-
Northern Cape	1998/1999	-	-	-
	1999/2000	-	-	-
	2000/2001	1 000 000	1 000 000	-
North West	1998/1999	-	-	-
	1999/2000	1 000 000	1 000 000	1 000 000
	2000/2001	4 793 000	4 793 000	4 793 000

Only the Mpumalanga department provided information on per capita allocation for education on HIV/AIDS, and R0, 45 was allocated in 1999/2000. The per capita amount was scheduled to increase to R8, 65 during 2000/2001.

The Eastern Cape had no budget allocation for HIV/AIDS until the year 2000, hence no information could be provided. Lack of funding resulted in the department being unable to carry out effective HIV/AIDS education. However, during the year 1999/2000 the ECDE formed partnerships with the Departments of Health and Welfare and some initiatives were taken to promote education about HIV/AIDS.

Since the Free State was one of the provinces where the pilot project for Life Skills and HIV/AIDS education for the year 1999/2000 took place, funding for the department from the NDE was sufficient. The pilot project targeted schools in rural areas, the homeless, low-income groups and previously disadvantaged communities.

In Gauteng the variance in the allocation was due to late allocation and accessing of funds for the year 1998/1999. For the year 1999/2000 R1 000 was allocated to each primary and secondary school respectively in order to kick-start the school based Life Skills/ HIV/AIDS activities.

In the Northern Cape Department of Education, the unit dealing with HIV/AIDS education was only established at the beginning of the year 2000. The department further reported that the allocation was insufficient and as a result monitoring of HIV/AIDS and Life Skills education was not done.

The department also had a shortage of educators due to budget constraints. Measures taken by the department to address the problem of inadequate staff included lobbying for donor funding for projects not covered by the allocation of the department.

Primary Education

Most provincial departments provided information on budgetary allocation for primary education. Only Gauteng, Mpumalanga and Northern Province did not provide information. Budgetary allocation for the other provinces is summarised in the Table below.

Table 7 Budget allocation for Primary Education

PROVINCE	YEARS	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
Eastern Cape	1998/1999	2 653 569 000	2 653 369 000	2 653 369 000
	1999/2000	2 804 901 000	2 804 901 000	2 804 901 000
	2000/2001	3 187 005 000	3 187 005 000	2 410 072 000
Free-State	1998/1999	1 041 396 000	1 041 396 000	1 057 254 000
	1999/2000	1 102 528 000	1 102 528 000	1 087 735 000
	2000/2001	1 125 025 000	1 132 917 000	-
KwaZulu-Natal	1998/1999	3 715 137 000	-	3 593 443 507
	1999/2000	3 805 730 000	-	3 873 893 999
	2000/2001	4 109 289 000	4 109 289 000	-
Northern Cape	1998/1999	326 724 000	-	313 833 000
	1999/2000	333 224 000	-	323 727 000
	2000/2001	488 868 000	-	-
North West	1998/1999	1 579 380 000	1 669 735 000	1 604 494 000
	1999/2000	1 671 636 000	1 756 711 000	1 701 521 000
	2000/2001	1 771 641 000	1 771 641 000	1 771 641 000
Western Cape	1998/1999	1 762 038 000	1 762 038 000	1 762 038 000
	1999/2000	1 733 892 000	1 733 892 000	1 733 892 000
	2000/2001	1 832 203 000	1 832 203 000	-

The North West province allocated a per capita amount of R2 332 for 1999/2000. The amount had decreased from a per capita allocation of R2 403 during 1998/1999. According to the North West department the amount was to increase to R2 466 for the financial year 2000/2001.

Per capita allocation for primary education for learners with special educational needs for the WCDE was R2 000 for the past three years. The allocation for learners in primary school was R3 324 for 1999/2000, whereas in 1998/1999 the department had spent R3 646. A slight increase was envisaged for the year 2000/2001 when R3 394 per capita will be allocated.

According to the information received from the Eastern Cape Department of Education, the increase in budget allocation resulted in an increase in allocation for primary education. Nevertheless, the department stated the amount was insufficient. As a result of budget constraints most primary schools lacked essential resources such as books and stationery. This made it impossible to implement OBE. Due to budget constraints some

schools had overcrowded classrooms, which also made it impossible to implement OBE.

ECDE could also not provide sufficient training to educators. Measures instituted by the ECDE to deal with budget constraints included lobbying for more funds for the year 2000/2001. The Imbewu project redesigned training for educators to be able to handle the classroom situation. Most of the departments' funds were spent in rural areas as the province was largely rural.

Funding for primary education was also insufficient in the Free State. In order to address this problem the department requested additional funding from the Provincial Treasury and the national Department of Education. The insufficient budget resulted in the department spending on current commitments only.

The Department of Education in KwaZulu-Natal reported that budget allocation for primary education fell far short of the required amount. As a result, the province had a high learner/educator ratio compared to all other provinces, and many supervisory and advisory posts were frozen. To try and address this problem the KZNDE directed funding to the most needy schools in the province. The redeployment and rationalisation process in the province had ensured that disadvantaged areas were better staffed. In the North West Department of Education also reported that the budget allocation was insufficient to afford quality education. The Northern Cape Department of Education reported that funding for primary education, including donor funds was sufficient for the provision of LSM and training.

The Department of Education in the Western Cape was the only one that provided information on the variances in the budget for primary education. The variance for 1998/1999 to 1999/2000 in the budget was due to the drop in enrolment as a result of the new admissions policy for grade one. For 1999/2000 to 2000/2001 the variance was a result of salary increases.

Adult Basic Education

The Gauteng and Mpumalanga Department of Education did not provide information on budget allocation for Adult Basic Education. Information on budget allocation for provincial departments on adult basic education programmes has been summarised in the Table below.

Table 8 Budget allocation for Adult Basic Education

PROVINCE	YEARS	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
Eastern Cape	1998/1999	99 773 000	99 772 000	50 000 000
	1999/2000	109 469 000	108 469 000	102 600 000
	2000/2001	967 772 000	95 900 000	-
Free-State	1998/1999	13 220 000	12 220 000	19 340 000
	1999/2000	43 868 000	43 868 000	28 704 000
	2000/2001	43 872 000	43 872 000	-

Education rights

PROVINCE	YEARS	TOTAL ALLOCATION IN RANDB	PROJECTED EXPENDITURE IN RANDB	ACTUAL EXPENDITURE IN RANDB
KwaZulu-Natal	1998/1999	14 708 000	-	14 708 000
	1999/2000	20 316 000	-	20 316 000
	2000/2001	31 592 000	31 592 000	-
Northern Cape	1998/1999	6 393		2 572
	1999/2000	4 508	-	4 111
	2000/2001	4 537	4 537	-
North West	1998/1999	33 568 000	48 857 000	51 403 000
	1999/2000	35 595 000	39 618 000	46 157 000
	2000/2001	41 200 000	41 200 000	41 200 000
Western Cape	1998/1999	15 879 000	13 951 000	13 951 000
	1999/2000	13 800 000	18 097 000	18 097 000
	2000/2001	14 747 000	14 713 000	-

The only provinces that provided information on per capita allocation ABET was the North West and Western Cape. Per capita allocation in the North West was reported as R653 for the year 1998/1999, and increased to R693 for 1999/2000. An increase to R801 for the year 2000/2001 was expected. The Western Cape spent R856 during the year 1999/2000, which was slightly more than the previous year's allocation of R711, but more than the R647 allocation for the year 2000/2001.

According to the Eastern Cape, programmes for ABET were suspended during 1998/1999, while priority was given to other programmes. However for the year 1999/2000 the department found it difficult to implement the programme due to budget constraints. The Public Adult Learning Centres did not have the necessary equipment and learning materials. Lack of resources made it difficult for district co-ordinators to effectively run the programme, hence some learners dropped out. Measures taken by the department to address the budgetary constraints include applying for funding from USAID, SIDA and the European Union.

The KwaZulu-Natal department reported that although the budget for ABET was inadequate, it was in keeping with the department's present capacity to provide such education. To address the problem of lack of facilities, the department has requested that school-governing bodies allow the facilities to be used for adult basic education.

Funding was also insufficient for the Northern Cape and the department had to decrease the number of educators and cut down on the hours for tuition for adult learning centres. Due to budget constraints the department had to solicit funding in order to be able to purchase LSM and the development of educators.

Due to budget constraints in the North West, ABET did not reach the targeted audience. In the Western Cape insufficient budget has resulted in shortage of staff. However additional funding was received from business through partnerships formed with the department.

3.3 Critique

The national, as well as most provincial Departments of Education failed to provide information on the questions asked. There was no information provided relating to the reasons for the variances in the budget allocation, per capita allocation and projected expenditure, funds received from other sources and information on specific programmes. National and provincial departments did not answer questions relating to budgetary allocations giving special considerations to vulnerable groups. Although departments were asked to provide reasons for the lack of information, most of them did not do so.

The NDE reported that a conditional grant was made available to provincial departments for improving management and professional services. The department gave no indication on whether that money was used efficiently. When such funds were made available to provincial departments, there should be proper monitoring to ensure that the funds are used effectively and efficiently.

The North West Department of Education did not provide the actual amount spent for the financial year 1998/1999 and 1999/2000 on the ECD programme. Lack of information made it impossible to make a meaningful assessment of expenditure on the provision of ECD.

Generally the allocation of the budget to the provinces showed a nominal increase in terms of the total allocation and for some of the programmes.

Under/over spending: the information provided by the NDE indicated that not all the allocated funds were spent for the year 1999/2000, and even for the year 1998/1999. The information provided by the NDE for the year 1998/1999 showed that approximately R388 167 of the total allocation was not spent. In the year 1999/2000 the department did not spend approximately R112 658. This has serious implications for the provision of the right to education, especially when the same department claims that the allocation was inadequate for addressing backlogs in the provision of facilities. Information on the total budget allocation from the provincial departments indicated that the Eastern Cape, Free State, Gauteng and KwaZulu-Natal under-spent for the year 1999/2000 as indicated in Table 2 above.

The trend to under spend was also evident in the different programmes. The Free State, KwaZulu-Natal and Northern Cape departments under spent on the Early Childhood Development programme. Of the three provinces KwaZulu-Natal failed to spend an amount of R55 899 during the year 1999/2000. The KZNDE did not provide any reasons for under spending and yet according to its report not all the children could be reached, and there were insufficient personnel for proper implementation of the programme. Information on primary education also showed that provinces such as the Free State and Northern Cape under spent. No

reasons were given.

The expenditure trend of the total budget allocation of departments such as Mpumalanga, Northern Cape and North West showed over-spending for the period from 1998 to 2000. There was also over-spending by the KwaZulu-Natal and North West on primary education.

Under spending or over-spending exhibits that the department did not follow proper monitoring procedures. The fact that this went on shows that little attention was paid to the public finance management requirements

Personnel expenditure: the disproportionate allocation of the budget between personnel and non-personnel functions was the main cause of many problems. Information from the report of the Auditor-General indicated that the Minister of Education had declared that the acceptable norm for personnel expenditure should not exceed 80 percent of the departments' total allocation.⁵³ The report further indicated that departments must begin readjusting budget allocation, and that by the year 2005 all provincial departments should have achieved the target of 85 percent. The Table below suggests that most provincial departments were still struggling to rationalise personnel budgets.

Table 9 Personnel budgets as a percentage of the total budget at the provincial sphere

PROVINCE	1998/1999	1999/2000	2000/2001
Eastern Cape	92.0	85.9	90.9
Free State	80.0	88.0	85.7
Gauteng	86.5	88.6	88.4
KwaZulu-Natal	91.2	89.5	89.6
Mpumalanga	90.6	89.8	91.0
Northern Cape	84.3	82.7	83.9
Northern Province	91.2	94.0	90.1
North West	90.3	90.9	91.4
Western Cape	87.7	88.9	87.3

The Table above indicates that not much progress has been made towards reaching the set norm. Provincial departments need to reduce the proportion of personnel costs, to enable improved financing of non-personnel education services whose distribution was inadequate and inequitable.

Provinces need to rationalise personnel expenditure, whilst trying to provide sufficient educators for schools. Some schools still have insufficient educators, especially those teaching essential subjects such as mathematics, science and accounting;⁵⁴ whilst other schools have

⁵³ Auditor-General Summarised findings of Performance Audits conducted at certain Provincial Education departments at http://www.agsa.co.za/Reports/Performance%20Audit/RP45_2001.doc. site visited 13/06/2001.

⁵⁴ Ibid 6.

educators who have to work with limited resources to make the classroom environment conducive to teaching and learning.⁵⁵

The NDE has tried through its rationalisation process to ensure equal distribution of educators to all provinces, with emphasis on rural areas. However, slow progress has not improved the situation. There are still some schools that still have a shortage of educators. There was a farm school in the North West, which had no science teacher for almost half the school year, while the biology and history teacher came late for work.⁵⁶ Budget cuts also meant that vacant posts could not be filled.

Maladministration: Not only do the provincial departments encounter budget constraints due to the inadequate budgetary allocation, but also inefficiencies have made matters worse. The NDE has acknowledged that inefficiencies in the system have worsened the situation. Other sources revealed that inefficient procurement and distribution systems and the problematic tendering processes have caused the delays in delivering LSM on time.⁵⁷ Some schools receive their books very late in the year.

The failure by most provincial departments to update their leave records has resulted in the loss of millions of rands. The Auditor-General's report revealed that absenteeism amongst educators without proper leave forms submitted has affected teaching in schools, and cost provinces such as Mpumalanga millions paying for educators who only spend 27-56 percent official hours teaching compared to the stated norm of 85 percent.⁵⁸ The Eastern Cape and Gauteng departments were also experiencing the same problem of paying for educators who were absent from school most of the time. This problem of absenteeism impinges on the enjoyment of the right to education for learners, where learners were without a teacher for a long time because the principal was not given enough time to organise a substitute teacher.

Per capita allocation: the information provided by the provincial departments on the per capita allocation indicated that although the North West was allocated more funds, Mpumalanga still spent more (R3 012) per capita than the North West province at R2 976 per capita. The information provided on the ABET programme in terms of the total budget allocation, the WCDE received far less than the NWDE. However, the Western Cape still spent less per learner than the North West province for adult education for the year 1999/2000. The allocation was R711 per learner in the Western Cape and R963 per learner in the North West. According to the Norms and Standards for School Funding, schools should be funded according to their needs. Nevertheless, most provincial education departments were challenged by the size of total redress funding, given

⁵⁵ Oxfam International *Education – Break the Cycle of Poverty*, 239.

⁵⁶ 'Conditions in schools' *The Educators Voice* (2000), June/July, 14.

⁵⁷ Department of Education (note 34 above) 59.

⁵⁸ This was the norm set and published in Circular No. 154 of 1998.

the small share of non-personnel expenditure.⁵⁹ This constraint restricted the ability of provincial departments to effect meaningful distribution of redress funds to the majority of poor learners.

The A-Gs report also highlighted the fact that huge variances in the per capita allocation across provinces for education were due to over-age and under-aged learners at schools. Approximately 369 964 over-aged and under-aged learners were admitted to schools from 1996 to 1998 costing the departments R524 million.⁶⁰

The number of learners who repeat their grades also increased the burden on the per capita budget allocation.⁶¹ Therefore the remedial programmes that have been proposed by the Assessment Policy would greatly assist in ensuring that the number of children who repeated grades greatly reduced overtime. Hence it was important that the necessary institutional arrangements for the proper implementation and monitoring of the Assessment Policy be put in place.

Information from other sources reveals that the formula used to allocate the educational component of the equitable share to provinces was based on the distribution among the provinces of children between the ages of seven and eighteen. For the 1999/2000 financial years, 40 percent of the total equitable share to provinces was targeted towards education.⁶²

The total amount of money necessary to meet educational standards varies across and within provinces. The difference was to a large extent influenced by the environment and conditions in schools and the family backgrounds of the children. In some provinces a substantial proportion of learners were under the age of seven or over the age of eighteen.⁶³ The under- and over-age enrolment has had the effect of reducing resources available to educate school age learners.⁶⁴

Early Childhood Development: the government has a policy on ECD and for the year under review the departments allocation showed an increase from the previous years allocation of R2, 880 million to this years allocation of R3, 900 million. What was of concern was the envisaged decrease in the allocation for the year 2000/2001, where R2, 008 million was to be allocated for ECD. The NDE failed to indicate how the funds were allocated to the different provincial departments. Especially in view of the fact that in the previous section on policy, other sources reported that there was very limited assistance on early childhood development by government. One would assume that with the new

⁵⁹ Auditor-General Summarised findings of Performance Audits conducted at certain Provincial Education departments at http://www.agsa.co.za/Reports/Performance%20Audit/RP45_2001.doc. Site visited 13/06/2001.

⁶⁰ Ibid.

⁶¹ Financial and Fiscal Commission Recommendations (2001-2004) 27.

⁶² Ibid 27.

⁶³ Note 61 above, 28.

⁶⁴ Ibid.

admissions policy resulting in more children being out of school, more funds would be made available for early childhood development. The report from the NDE did not mention anything about ECD for learners with special education needs, and whether this budget includes provision for such. Early intervention services and facilities are important for learning and development, especially for learners with special education needs.

The WCDE should be commended for providing information on the budget allocation for ECD for learners with special education needs. None of the provinces seemed to have that information.

HIV/AIDS policy: in the year 1998/1999 the NDE had not fully set aside resources for the implementation of this policy. The increase from R34 000 to R300 000 for the year 1999/2000 attests to commitment to addressing this problem.

Provincial budget allocation for education on HIV/AIDS as indicated by Table 6 above has been very minimal. Most provinces were thus unable to fully implement the policy.

The Gauteng Department of Education stated that an amount of R1 000 was allocated to each school for activities on HIV/AIDS. However, no indication was given as to whether the funds were supplementing already existing funds in schools or the R1 000 was the only money schools were dependent on for such activities.

Adult Basic Education and Training: the high illiteracy rate of 17 percent for young adults and 33.4 percent for the youth has made the provision of adult basic education a priority. Combating illiteracy is a priority for both the ABET policy and Tirisano, hence the NDE started allocating funds for the implementation of the ABET policy. Lack of budgetary allocation for the financial year 1998/1999 and 1999/2000 suggests that the provision of adult basic education had not been given much attention in terms of implementation. Only until the year 2000/2001 when funds will be allocated for adult basic education can one assume that government was moving more towards the implementation of the policy.

3.4 Recommendations

It appears that provincial departments have a problem with spending budgets effectively. The departments should follow the Public Finance Management Act when they deal with the allocations. The NDE should incapacitate provincial departments so that they have better administration; spend resources effectively and efficiently. Where provinces fail the NDE should take over the administration of the budget.

For an equitable share of the budget, education allocation should be calculated on a per capita share per province taking geographic and demographic factors into account. There should be constant review of the

expenditure process so as to identify shortfalls and facilitate implementation of corrective measures.

Provincial departments must develop measures that will assist in increasing the proportion of non-personnel expenditure. Management training should also encompass financial management for improved management of schools and resources available.

4 OUTCOMES

4.1 National Sphere

The departments were required to provide information on the number of children in ECD and primary schools. They were also required to provide information on learner/educator ratio and to be specific on the Net Enrolment Ratio and Gross Enrolment Ratio. The departments were also required to provide information on the number of primary schools and ECD centres and their conditions.

The NDE reported that there were 223 417 learners accessing early childhood development in the country. The number includes both pre-primary learners attached to schools and those in separate pre-primary/ECD centres.

In providing information on primary education the NDE reported that there were 8 085 136 learners that had access to primary school education. Of those, 3 973 829 were females and 105 390 were learners with special education needs. The average learner/educator ratio at primary schools was 35:1.

The Net Enrolment Ratio (NER), which is the number of appropriately aged learners who were in primary school as a proportion of the corresponding age group in the population is 88 percent. The total Gross Enrolment Ratio (GER), which is the number of learners enrolled in primary school as a proportion of the appropriate age group in the population, is 106 percent. The NER and GER for females as reported by the NDE are 63 percent and 95 percent respectively.

The NDE reported that there were 294 566 learners who were receiving adult basic education. Of that total, 200 882 were female learners. The learner /educator ratio for learners receiving adult education is 18:1 for males and 19:1 for females.

According to the NDE approximately 15,7 percent of children between the ages of 6-14 years were out of school in the country as a whole. The following Table shows the breakdown of the different categories of out-of-school children:

Table 10 Out-of-School Children

CHARACTERISTIC	PERCENTAGE
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CHARACTERISTIC	PERCENTAGE
Residence: Urban	11.4
Rural	19.1
Population group: Africans	17.3
Coloureds	9.4
Indians	4.5
Whites	9.3
Provinces: Eastern Cape	18.8
Free State	11.3
Gauteng	12.0
KwaZulu-Natal	16.5
Mpumalanga	15.6
Northern Cape	14.6
Northern Province	18.0
North West	17.8
Western Cape	9.9
Gender: Males	16.6
Females	14.9

The Table shows the percentage of learners not attending school according categories relating to population group, gender and province.

The information on general indicators showed that the adult literacy (15-18 years) rate was 83.3 percent, 85.4 percent amongst females and 81.1 percent amongst males. The Adult literacy rate for persons aged 18 years and above was 66.6 percent, 65.9 percent and 67.4 percent for females and males respectively.

Approximately 4 719 489 learners had access to feeding schemes for the year 1999/2000. The number of learners for the year 1998/1999 was 4 830 098 and 5 021 575 for 1997/1998, thus showing a decrease in the number of learners receiving assistance through this programme. This may be explained by the decline in the number of primary school learners from 8 046 455 in 1998/1999 to 7 928 844 in 1999/2000.

4.2 Provincial Sphere

The only provincial education departments that provided information for the outcomes section were the Free State, Gauteng, Mpumalanga, Northern Cape and the Eastern Cape. The information was insufficient.

Early Childhood Development

The Eastern Cape Department of Education had 8 473 learners with access to ECD. The Northern Cape Department of Education reported that it had approximately 58 550 learners in Grade R-3, and 2 131 learners in informal settlements and rural areas. The Western Cape Department's report indicated that there were over 200 ECD learners with special education needs. The number of these learners in informal settlements and previously disadvantaged racial groups was 28. There were 90 000 eligible learners for ECD.

Primary Education

The information on the number of learners in primary school in the provinces showed that the Eastern Cape has 1 321 523 and the Free State has 746 669 learners. Of those learners in the Free State 338 267 were females, 492 801 were from the rural areas and 11 471 were learners with special needs. In addition to this information the FSDE indicated that there were 34 339 learners over the age of 15 in primary school. Of those, 17 887 were females and 22 703 were from rural areas. The number of learners from previously disadvantaged racial groups was 671 669 in total, 349 267 of which were females, 44 301 were from rural areas and 6 147 were learners with special needs. In the Northern Cape there were 93 922 learners in primary school, 46 429 of these were females. The number of learners from previously disadvantaged racial groups was 78 731, and 41 321 were females.

Information received from the Western Cape Department of Education indicates that there were 604 534 learners in primary schools. Of those, 298 546 were females. The Net Enrolment Ratio for learner's aged 7-13 was 0.95 percent and 0.95 for females. The Gross Enrolment Ratio for learners aged 7-15 was 1.0 and 0.99 for females. The department reported separately on primary education for learners with special education needs. The learner/educator ratio for ELSEN primary schools was 1:12. The number of learners was approximately +/-11 000, and the pass rate for learners per grade was 90 percent. The number of children completing school above the normal age of 15 was +/-100 percent. The schools have +/-75 percent learners from previously disadvantaged racial groups. Only the Western Cape provided information on the number of learners in prison, which was 403.

With regard to information on the learner/educator ratio, the Eastern Cape Department of Education reported that for primary schools the ratio was 37:1, whereas in the Free State it was 30:1. In the Northern Cape the learner/educator ratio was 31:1, for females it was 15:1, in the rural areas the ratio was 13:1, and for learners with special education needs, 11:1. The Western Cape had a learner/educator ratio of 25:1 in primary schools.

Adult Basic Education and Training

Information provided by the Eastern Cape Department of Education on adult basic education showed that there were 65 538 adult learners in the provinces. Of that total, 21 491 were learners from rural areas, 43 547 were learners from urban areas and 46182 were females. In the Free State there were 12 288 adult basic education learners and 8 076 of this number were females; the total number of disabled learners was 35.

In the Northern Cape the number of learners receiving adult basic education was 6 000, and of those 3 600 were from rural areas and 3 780 were females. The Northern Cape Department of Education reported that there were 900 learners in informal settlements, of those 540 were learners

from rural areas, 570 were female learners. According to the Northern Cape Department of Education there were 2 580 unemployed learners, of those 1 548 were from rural areas and 1 625 were females.

The Western Cape Department of Education reported that there were 25 493 learners receiving adult basic education, of those 17 706 were in the urban areas and 7 787 in rural areas. The number of learners in informal settlements was 8 996, of those 8 732 were in urban areas and 264 in the rural areas.

In the Eastern Cape the learner/educator ratio was reported as 1:36. The number of learners from informal settlements was approximately 21 496 learners who come from townships where informal areas were closely adjacent to the centres. Information from the Northern Cape indicates that the learner/educator ratio was 1:25, for urban areas the ratio was 1:30 and 1:20 for rural areas.

School Feeding Programme

The Eastern Cape Department of Education reported that feeding programmes assisted 967 331 learners, who were from previously disadvantaged racial groups. Of those, 258 000 were from informal settlements. In the Free State 7 958 learners were from rural areas and 21 454 were from urban areas who benefited from the feeding programme. The Northern Cape Department of Education reported that 1 183 555 learners benefited from the feeding programme. Within that total 49 275 were learners from urban areas and 69 065 were from rural areas. The WCDE did not provide information on the feeding programmes.

General Indicators

The provincial departments of education were required to provide information on the literacy rate for persons below 15 years of age, 15 to 18 years and persons aged 18 and above. The departments were also required to provide information on school going children who were not able to attend school.

Most of the provinces provided the literacy rate as a whole number and not as a percentage. The Eastern Cape was one of those provinces which reported that 65 638 persons aged 18 years and above were literate. Within that total 46 182 were females and 18 856 were males. The Free State has 963 persons aged between 15 and 19 years. Of that total, 593 were females and 370 were males. In Mpumalanga 53 percent of the adult population were illiterate.

The Northern Cape Department of Education reported that for persons below the age of 15 years, 65 percent of them were literate.

4.3 Critique

Information on the number of learners in ordinary public schools (Primary and Secondary) that was provided by the NDE was similar to the information provided in the 1998/1999 reporting period. Most of the statistics remained unchanged. The NDE used data from the 1996 schools register of needs. This makes it difficult to assess whether there has been progressive realisation of the right. Information on early childhood development, primary education, adult basic education, feeding programme for previously disadvantaged racial groups, refugees and asylum seekers was not provided. The NDE also failed to indicate the pass rate per grade on primary education.

Most provincial departments failed to respond to questions in the protocol. Lack of information on the outcome section questions the effectiveness of the measures instituted by the departments. KwaZulu-Natal indicated that all the statistics for the outcomes section were unavailable. The North West Department of Education did not provide the information for the outcome measures but indicated that would provide the information at a later stage. The Free State, Gauteng, Mpumalanga, Northern Cape and the Eastern Cape Departments of Education provided insufficient information.

The Gauteng Department of Education reported on outcomes but did not provide all the information on basic education. The department did not have information on the literacy rate; stating that statistics were not available.

Although the KwaZulu-Natal Department of Education had reported that statistics were not available for the outcome section, information on the learner/educator ratio for primary education was provided. The same ratio was reported for females, and for learners with special needs the ratio was 10:1. Information on the number of children excluded due to lack of school fees, as well as the number of children excluded due to lack of school uniforms was not provided.

The learner/educator ratio increased from 30.1 in 1997 to 33.1 in 1999, showing that there was an increase in the number of learners.

Lack of information from KwaZulu Natal made it impossible to assess the realisation of the right. Other provinces provided incomplete information, especially with regard to vulnerable groups.

The learner: educator ratio showed an increase in the number of learners. Mpumalanga was the only province, which showed a ratio above 38:1. The other provinces show an average of 32:1. Gauteng had the lowest ratio of 25:1. However there was no corresponding increase in the number of educators or the number of classrooms, meaning that there were few educators for an increasing number of learners and shortage of classrooms for these learners.

The information provided by provincial departments, shows that the number of female learners receiving education was increasing.

The Department of Education was not performing its duties efficiently to realise the right to education. There was slow progress in redressing past inequalities because the number of children out of school from learners living in rural areas was higher than for urban areas. The majority of the learners were Africans, the previously disadvantaged and most vulnerable.

The Eastern Cape Department of Education provided inconsistent and unreliable information on ABET. This kind of information is not acceptable. Immediate action has to be taken by the Mpumalanga Department of Education to address the serious problem of illiteracy, which affects half the population in the province.

4.4 Recommendation

The section on outcomes reveals that provinces did not have information on many of the questions asked. This shows that the monitoring system is not functioning properly. The departments should keep proper information systems so that they are able to produce data that is requested.

5 NATIONAL ACTION PLAN (NAP)

5.1 National Sphere

Information provided by the department on the National Action Plan indicates that there were 27 066 schools in the country. Of this total 13 262 had a shortage of classrooms, 3 293 schools had no toilets, 16 815 had no telephones, 15 911 had no electricity and 6 503 had no water within walking distance. The department further reported that 8 141 195 learners were residing beyond the 5 km radius from schools.

Information on facilities that contribute to the quality of education showed that 25 226 schools had no computers, 25 506 had no laboratories, 73,5 percent had no libraries and 13 345 had no access to recreational facilities.

5.2 Provincial Sphere

The provincial departments were requested to provide information on the total number of schools, those in disrepair, and those with lack of services and infrastructure. Information received from provincial reports on the total number of schools is summarised in the Tables below.

Table 11 Total numbers of schools

PROVINCE	TOTAL	URBAN	RURAL
Free-State	2 533	999	1 543
Gauteng	529	495	34
KwaZulu-Natal	5 969	4 742	1 227
Mpumalanga	2 317	-	2 317

Education rights

PROVINCE	TOTAL	URBAN	RURAL
Northern Cape	485	366	119
North West	2 322	1 871	451
Western Cape	1 509	-	-

Information provided on the number of schools with buildings in disrepair indicated that the Free State had 216, and of those 182 were in urban areas and the remaining 34 in rural areas. In KwaZulu-Natal there were 1 528 schools in a state of disrepair. Of these, 1 352 were in urban areas, and the remaining 176 were in rural areas. According to the report provided by the Mpumalanga Department of Education there were only 58 schools in a state of disrepair, all of which located in rural areas. The North West province has 145 schools in disrepair, and of those 107 were in urban areas and 38 in rural areas. The Northern Cape only had 7, 2 in urban areas and 5 in rural areas. The Western Cape has the second highest number of schools in disrepair at 706. The GDE provided a complete breakdown in terms of the nature of the disrepair in the Table below.

Table 12 GDE Schools in Disrepair

CHARACTERISTICS	TOTAL	URBAN	RURAL
Roof	382	319	63
Windows	263	203	60
Doors	377	307	70
Walls	264	216	48
Floors	349	295	54

Most provinces still had a shortage of classrooms due to inadequate allocation as indicated in the previous section on budgetary measures. Only the GDE reported that there were no schools with classroom shortages. In the Free State there were 243, of that total 172 were in urban areas, whilst 71 were in rural areas. KwaZulu-Natal had more schools with a short supply of classrooms with 3 671, more than half (3 106) were in urban areas and only 262 were in rural areas. The Mpumalanga province only had 782 schools in rural areas that have class shortages. In the North West there were 1 579 schools that have class shortages, and 1 317 were in urban areas, with the remaining schools found in rural areas. The Northern Cape had only 26 schools with class shortages, of which 7 schools were in urban areas and 19 in rural areas. The Western Cape had 186 schools with classroom shortages.

Only Gauteng and Mpumalanga Departments of Education provided information on schools that have inadequate textbooks. There were 114 such schools in Gauteng and 2 317 in Mpumalanga. Of the ones in Gauteng 104 were in the urban areas and only 10 in the rural areas, whilst in Mpumalanga all the schools were in the rural areas.

There was very little information provided on learners that reside beyond the 5km radius from schools. In Mpumalanga there were 15 220 learners and in the North West there were 168 201 learners that resided beyond this radius.

5.3 Critique

From the information provided many schools still had inadequate facilities for proper learning and teaching, compromising the quality of education received by learners in these schools. The information provided by the NDE is outdated, whilst most of the provinces indicated that the departments do not collect the information requested. The quality of education depends on the conditions in the learning institutions, and the realisation of the right to basic education is hampered by appalling conditions. The long distances to school exclude many children from education. Lack of access to water in schools, and inadequate toilet facilities pose health risks to children, and also create a deterrent to enrolment and a poor learning environment.⁶⁵

Basic education includes the elements of availability, accessibility, acceptability, and adaptability.⁶⁶ The element of availability is not sufficiently met by the Department of Education as seen from information in the outcomes section. The information showed that out of a total number of 27 000 learners, only 2000 had access to laboratories, computers and libraries.

Accessibility requires that those education institutions and programmes be accessible to everyone without discrimination, within the jurisdiction of the state party.⁶⁷ Learners from rural areas are not within easy access of the school, and have to walk long distances to school. Problems like these affect the rights of learners to enjoy the right to basic education and they need to be addressed as a matter of urgency. It is also unfortunate to find information from the Departments of Education indicating that Africans from rural areas top the list of dropouts. Although no reason was provided for this, an assumption can be made that long distances is one of the reasons for the high dropout rate, especially for girl children.

The Copenhagen Declaration provides that there should be formulation of national strategies for the eradication of illiteracy and universalisation of basic education, which includes early childhood education, primary education and education for the illiterate in all communities.

The right to basic education cannot be achieved as long as there are still children who are subjected to inadequate access to teaching materials, shortage of classrooms, lack of access to library facilities, lack of access to laboratories, lack of access to computers and schools without electricity or telephones.⁶⁸ Budgetary allocations should be geared towards the provision of basic infrastructure, facilities and learning materials.

5.4 Recommendation

⁶⁵ Ibid 239.

⁶⁶ General Comment 13 (note above 5) para 6.

⁶⁷ Ibid.

⁶⁸ Financial Commission (note 61 above).

Education rights

The situation in most primary schools is not conducive to learning. departments should move swiftly to address this problem; wherever possible they should move funds to the provision of infrastructure for education. Where appropriate the departments should engage other state departments in providing infrastructure.

FURTHER EDUCATION

1 POLICY MEASURES

The NDE was asked to provide information on the measures it has instituted to help with the progressive realisation of the right to further education. The response indicated that most of the policy measures and programmes instituted with regard to basic education are also applicable to further education. Therefore measures discussed under basic education will not be discussed again in this section.

1.1 National Sphere

The NDE did not provide information on policy measures or programmes instituted during the year under review which were specific to further education.

1.2 Provincial Sphere

Most provincial departments of education were in the process of implementing the national policy on further education. Only the Eastern Cape, Gauteng, KwaZulu-Natal, Northern Cape, and North West Departments of Education provided information on further education. The national policy on whole school evaluation was still being developed at the national sphere and it had not yet filtered down to the provinces.

Education White Paper on FET

The Eastern Cape Department of Education (ECDE) reported that it started implementing the policy on further education institutions, (these being secondary schools and colleges). The ECDE was also in the process of implementing the national and provincial strategy for further education and also reorganising the FET sector.

Information provided by the Gauteng Department was not specific to the FET policy. The information was on secondary schools, excluding colleges. The department reported on the programme called the Education Action Zones and Poorly Performing Schools, which dealt with the improvement of learning opportunities in secondary and feeder schools. The other programme reported was the Senior Secondary Improvement Programme, which was aimed at improving learner performance in subjects such as Mathematics, Physical Science, English Second Language, Biology and Accounting.

The KwaZulu-Natal Department of Education reported that they had only started planning towards the establishment of the FET sector. Mpumalanga Department of Education was still drafting its policy on further education. The Northern Cape Department of Education appointed a task team that had already identified secondary schools, comprehensive schools and

technical colleges as targets for the initial stage of the FET transformation process.

The North West Department of Education (NWDE) produced a detailed plan for the promotion of the FET sector.⁶⁹ The plan included the setting aside of schools and colleges as FET institutions. To promote further education the NWDE earmarked generous funding for the recruitment of tutors for the FET institutions. The department was also to encourage partnerships with institutions of higher learning. The measures would benefit school going children, out of school youths, young adults and the broader community.

The Western Cape also introduced the draft FET legislation in the provincial legislature. The draft legislation introduces policy on merger of technical colleges and other institutions of further education, and the formation of a Trust to promote access to technical colleges and to provide new sites in previously under-serviced areas.

1.2.1 Measures and constitutional obligations

The GDE reported that its Teenage Pregnancy initiative, which allows pregnant learners to continue with their schooling, along with HIV/AIDS policy promote access for learners in those categories.

MDE guidelines on FET were developed in such a way that the Constitutional right of learners was respected and protected.

NWDE reported that its FET sector did respect, protect, promote and fulfil the right to education because colleges increased their intake of needy students. Accommodation at these colleges was offered at reasonable costs.

1.2.2 Special considerations given to vulnerable groups

GDE reported that all its policies and programmes applied equally to all learners and focus on redress and equity for disadvantaged communities.

NWDE indicated that accommodation at college was reasonably priced for learners from rural areas and where possible it provided satellite colleges. For people living in informal settlements the NWDE supported community-based FET institutions in Rustenburg and Mabopane. NWDE also catered for the disabled learners by providing career oriented FET programmes in their schools. For learners from low-income groups the NWDE have available, a bursary and skills enhancement programmes that may lead to self-employment and income generation.

⁶⁹ Department of Education *Further Education and Training Policy Research Proposal and Business Plan* (2000).

1.3 Critique

As already mentioned the NDE provided the same information as in the 1998/1999 report for the policy section. The report failed to mention important developments that took place during the year under review. Research reveals that the following measures were instituted.

- Education White Paper 3 - A Programme for the Transformation of Further Education and Training
- National Policy on Whole School Evaluation

Education White Paper on FET

The White Paper establishes government's policy on further education and training. Its main aim is to re-conceptualise further education and training, and align it with the needs of the country and the economy. The objective of the White Paper is to provide a broad range of learning areas and interests for learners, and redefine the role of technical and community colleges to become progressive further education and training institutions. The National Board for Further Education and Training was appointed to devise strategies to implement the Paper.⁷⁰ The White Paper states that for the next five years (starting from 1998), the provincial departments will develop policy and targets for the senior secondary phase of schooling. During this period individual schools will be required to develop their missions and plans as provided for in the South African Schools Act (SASA).⁷¹

The transformation process will, for the interim not affect the funding of schools, as all schools would still continue to be funded in terms of the National Norms and Standards for School Funding determined by SASA. For the interim, partnerships between schools and further education colleges will be encouraged for the sharing of resources, and the creation of meaningful opportunities for learners in the sector. One of the short to medium term goals of the White Paper was the inclusion of support services and counselling, which are central to the FET system. The NDE has also initiated a review of the Youth/Community Colleges Programme to align it with the Further Education and Training Policy.⁷²

The NDE indicated that FET did not intend to exclude any group of learners. The policy was aimed particularly at including learners from rural areas and female learners in study fields.

The further education and training system is a very significant part of education. The sector is important for the social, economic and human resource development of the country. In the overview section it was

⁷⁰ Ibid.

⁷¹ South African Schools Act 84 of 1996.

⁷² Department of Education (note 69 above).

mentioned that education must be relevant to needs of learners and society, and must help promote a person's sense of dignity and enable all persons to participate effectively in a free society. The transformation is geared to making further education relevant for the needs of the country. It also attempts to expand the field of further education to include a large number of learners. It maintains three bands of education in the education system in various forms.

The right to education has implications for the enjoyment of all human rights. Hence the Committee stated that the right to receive education imposes an obligation on the state to develop and maintain a system of education at all three levels in all its form.⁷³ The White Paper shows the state's commitment to providing quality education at different levels for a wide variety of learners.

The provisions of the White Paper respect and protect learners' right to receive education in the field they choose. The Paper is conceptually reasonable in that it brings into the mainstream learners other than those in the conventional academic fields. This fulfils some of the essential elements of education, which are the provision of acceptable and relevant education at the three levels. Presently the effectiveness of the policy is difficult to measure due to the fact that provinces are only beginning to implement the policy. Therefore the impact of the transformation cannot be assessed at this stage.

The measure was also reasonable in that it considers learners from various backgrounds. The White Paper intends to extend the FET to rural areas. It also seeks to help learners from poor backgrounds and female learners. The White Paper also considers learners with disabilities by including their training in the mainstream FET.

Policy on Whole School Evaluation

The NDE was in the process of developing quality management and quality assurance policy framework for schools.⁷⁴ The policy was being developed due to lack of a national system for evaluating the performance of schools and to complement the already existing quality assurance process. The Whole School Evaluation process would be used for maintaining and controlling standards, evaluating performance, and advising and supporting schools in their continual efforts to improve their effectiveness.

The approach was built upon interactive and transparent processes that recognise good schools and support weak ones. These processes included school self-evaluation, ongoing district-based support, monitoring and development, and external evaluations conducted by the supervisory units. The school evaluation reports that will be compiled

⁷³ General Comment 13 (note 5 above) para 6.

⁷⁴ National Policy on Whole School Evaluation, at http://www.education.pwv.gov.za/Policies_Reports/policies/Whole_School_Ev.htm. Site visited on 28/03/2001.

during the process will be used for future reviews and serve as important tools for self-evaluation at all levels.

The Northern Province Education Department did not report at all on the right to education whereas the Free State and Western Cape Departments of Education did not provide information on policy measures for further education. Lack of information made the task of assessing the progressive realisation of the right difficult.

Reasonable measures must be determined in light of the different roles of different spheres of government. The national sphere has to provide a framework for policy and implementation while the provincial sphere has to put in place measures in accordance with the national framework in order to help facilitate delivery.⁷⁵ Failure to co-ordinate measures this way diminishes the reasonableness of the measures.

The national policy on Whole School Evaluation ensures that learners receive quality education and within acceptable standards. The policy is reasonable in as far as it attempts to improve and maintain an acceptable standard in the quality of education, especially through assisting vulnerable schools. The measure protects, promotes and fulfils the right to education, because it aims to put in place a monitoring mechanism, which will reveal shortfalls in schools so that appropriate corrective measures are taken.

Most provincial departments are in one way or another moving towards transforming further education. However, due to the fact the most provinces are still at the early stages of transforming the FET sector, implementation has not begun or it is still slow, hence the ineffectiveness of the measures. However the existence of the policy on FET at the provincial spheres helps in the progressive realisation of the right. It shows that steps are being taken towards the realisation of the right. By moving towards implementing the White Paper the provinces fulfil their constitutional obligation to implement national policy or to develop and implement provincial policy.⁷⁶

The North West Department of Education made attempts of promoting the right through increasing access for needy and female students. The department provided financial assistance and accommodation where needed. The action has protected the right because it considered the needs of some vulnerable groups. Only the North West Department of Education reported that it introduced technical college programmes for people with disabilities. The other provinces did not report on measures taken to advance the needs of people with disabilities.

1.4 Recommendations

⁷⁵ *Grootboom* (note 22 above) para 39.

⁷⁶ Section 125 of the Constitution says that the provincial executive is responsible for developing and implementing provincial policy.

The NDE did not respond to all questions in the protocol. The NDE should report on all policies and programmes for the year under review. When reporting on these measures the NDE should provide details on the objectives of the measures and their intended results. The details should also provide specific information on how the measures affect the right of access to further education for learners from vulnerable groups. The response should also give full account of the implementation plans of national policy.

The NDE should provide adequate institutional support for proper implementation of the Further Education Policy at the provincial sphere.⁷⁷ This can be done by seconding people with expertise to the provincial departments. The NDE should ensure that the structures required for the implementation of the evaluation policy were in place in all schools. Where NDE cannot incapacitate the province then it should take over the implementation process.⁷⁸

The provincial departments should in their policies and implementation thereof adhere to performance indicators, as required by Tirisano. In its implementation the NDE and provincial departments should pay special attention to vulnerable groups.⁷⁹

2 LEGISLATIVE MEASURES

The Education Laws Amendment Act 48 of 1999 was passed for education in general including basic education and further education. The Act was discussed above.

3 BUDGETARY MEASURES

The budget allocation for further education was the responsibility of provincial Departments of Education. Information requested on the budgetary allocation for secondary education has been summarised in the Table below.

Table 13 Budget allocation for secondary education per province

PROVINCE	YEARS	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
Eastern Cape	1998/1999	1 894 138 000	-	-

⁷⁷ Section 125 (2) of the Constitution says that where provinces lack capacity the national government should provide assist the provinces to develop the capacity necessary to deliver.

⁷⁸ Section 100 of the Constitution says that when a province cannot or does not fulfil an executive obligation in terms of legislation or the Constitution the national executive may intervene by taking any appropriate steps to ensure fulfilment of the obligation, including issuing a directive to the provincial executive or assuming responsibility for the relevant obligation.

⁷⁹ *Grootboom* (note 22 above) para 41.

PROVINCE	YEARS	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
	1999/2000	1 968 164 000	-	-
	2000/2001	2 373 617 000	-	-
Free State	1998/1999	1 081 131 000	1 081 131 000	1 097 301 000
	1999/2000	1 148 221 000	1 148 221 000	1 132 337 000
	2000/2001	1 171 985 000	1 179 985 000	-
Gauteng	1998/1999	2 040 065 000	1 979 166 000	1 940 310 000
	1999/2000	2 066 571 000	1 954 921 000	1 958 702 559
	2000/2001	2 081 607 000	2 081 607 000	-
KwaZulu Natal	1998/1999	2 156 500 000	-	2 291 359 206
	1999/2000	2 344 119 000	-	2 399 989 212
	2000/2001	2 531 024 000	2 531 024 000	-
Mpumalanga	1998/1999	718 200 000	-	-
	1999/2000	770 800 000	-	731 432 000
	2000/2001	785 331 000	-	898 995 000
Northern Cape	1998/1999	275 416 000	-	219 126 000
	1999/2000	208 265 000	-	225 555 000
	2000/2001	191 819 000	191 819 000	-
North West	1998/1999	937 442 000	-	952348 000
	1999/2000	1 003 482 000	-	1 021 422 000
	2000/2001	1 072 259 000	-	1 072 259 000
Western Cape	1998/1999	1 289 046 000	1 289 046 000	1 289 046 000
	1999/2000	1 341 171 000	1 341 171 000	1 341 171 000
	2000/2001	1 461 334 000	1 461 334 000	

- Information not supplied

Only Gauteng, Mpumalanga, North West and Western Cape provided information on the per capita allocation. The information has been summarised in the table below.

Table 14 Per capita allocation per province

PROVINCE	YEAR	PER CAPITA ALLOCATION IN RANDS
Gauteng	1998/1999	3 989
	1999/2000	3 960
	2000/2001	3 931
Mpumalanga	1998/1999	2 678
	1999/ 2000	2 709
	2000/ 2001	2 801
North West	1998/ 1999	2 695
	1999/ 2000	2 887
	2000/ 2001	3 755
Western Cape	1998/1999	5 237
	1999/ 2000	5 026
	2000/ 2001	5 045

The per capita allocation shows that the total allocation does not mean that the province that has allocated more will spend more per learner. For instance Gauteng has allocated more than the Western Cape for the total allocation, but the Western Cape allocated more per capita.

The Northern Cape Department of Education reported that the variances in the total allocation were due to schools being combined during the year 1998/1999, while the Western Cape Department of Education reported that the variances were due to salary increases.

Most provincial departments indicated that the budgetary allocation for secondary schools was inadequate. Only the Gauteng Department of Education reported that the allocation was adequate because it followed current provisioning policy. The Eastern Cape in its report stated that as a result of budget constraints no new classrooms were built, stationery was not supplied and no new textbooks were bought. This affected the morale of learners and contributed to poor results at the end of the year. The Free State reported that due to under funding in 1998 there was over spending in the subsequent years. KwaZulu Natal in its report indicated that the department had to readjust priorities in order for it to provide quality education. In Mpumalanga the increase in the number of learners affected the quality of education, because it resulted in the decrease in the share of the provincial budget. The Northern Cape Department of Education indicated that it had to reduce the number of educators in order to remain within budget allocation.

The Gauteng, KwaZulu Natal, Mpumalanga and the North West Departments of Education indicated that the budget was allocated in accordance with the national norms and standards on funding public schools, which makes provisions for consideration of vulnerable groups.

Technical Colleges

The provincial departments also made the allocation for technical colleges. The allocations were represented in the Table below.

Table 15 Budget allocation for Technical Colleges

PROVINCES	YEAR	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
Eastern Cape	1998/1999	132 000 000	-	-
	1999/2000	114 000 000	-	-
	2000/2001	101 000 000	-	-
Free State	1998/1999	44 782 000	44 782 000	44 553 000
	1999/2000	53 424 000	53 424 000	59 943 000
	2000/2001	103 888 000	103 888 000	-
Gauteng	1998/1999	213 313 000	213 313 000	204 090 000
	1999/2000	209 921 000	209 921 000	324 910 000
	2000/2001	233 338 000	233 338 000	-
KwaZulu Natal	1998/1999	109 155 000	-	109 155 000
	1999/2000	114 513 000	-	114 513 000
	2000/2001	124 000 000	124 000 000	-
Mpumalanga	1998/1999	42 612 000	-	35 437 000
	1999/2000	45 525 000	-	42 658 000
	2000/2001	49 204 000	4 9 204 000	-
Northern Cape	1998/1999	21 215 000	-	16 205 000
	1999/2000	18 196 000	-	17 501 000
	2000/2001	19 799 000	-	-

PROVINCES	YEAR	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
North West	1998/1999	21 292 000	34 680 000	50 250 000
	1999/2000	22 506 000	46 047 000	51 124 000
	2000/2001	67 625 000	67 626 000	67 626 000
Western Cape	1998/1999	93 828 000	93 828 000	93 828 000
	1999/2000	107 740 000	107 740 000	107 740 000
	2000/2001	106 120 000	106 120 000	-

- Information not supplied

The Table indicates that generally there was an increase in the allocations. The allocation in the Northern Cape appeared to be decreasing.

Only the Gauteng, Mpumalanga, North West and Western Cape departments of Education provided information on the per capita allocation as shown in the Table below.

Table 16 Per capita allocation per province

PROVINCE	YEAR	PER CAPITA ALLOCATION IN RANDS
Gauteng	1998/1999	5 090
	1999/ 2000	4 790
	2000/ 2001	5 100
Mpumalanga	1998/ 1999	4 587
	1999/ 2000	4 273
	2000/ 2001	4 270
North West	1998/ 1999	7 550
	1999/ 2000	8 022
	2000/ 2001	9 672
Western Cape	1998/ 1999	6 445
	1999/ 2000	6 814
	2000/ 2001	6 185

The above Tables show that although the budget allocation for the North West was less compared to other provinces such as the Western Cape and Gauteng, the province still managed to spend more per capita for technical colleges. The Table shows that despite the low allocation the Western Cape spent more per capita compared to Gauteng.

The Eastern Cape, Gauteng, North West, Mpumalanga and Western Cape departments of Education correctly point out that this sector of education represents an area where much investment was needed. Most of these colleges have been neglected; there was more emphasis on practical learning, but limited supply of equipment. Colleges in Gauteng and the North West could not accommodate the desired number of students. Students who were in colleges in the Eastern Cape graduated without receiving practical experience.

The departments indicate that funding in the FET will follow the National Norms and Standards on Funding Public Schools. Norms give special

considerations to disadvantaged schools

3.1 Critique

The provincial reports did not provide the required information, and no reasons were provided. The Eastern Cape and Free State Departments of Education did not respond to the question on the variances in the budget allocation. Mpumalanga reported that there were no significant variances. The information provided by the North West was not helpful for the purposes of this analysis.

The provincial departments did not answer questions on special considerations given to vulnerable groups, who represent a significant section of society. The government claims to have measures that will address their needs and yet cannot account for the measures. The right to education affects the enjoyment of rights such as equality and freedom. Therefore this requires the state to take special measures to affirm those who are most affected by the denial of the right. Lack of measures affecting vulnerable groups diminishes the chances of the enjoyment of other human rights.

The information from the provinces indicates that the budget allocation for further education was not adequate for the needs of the sector. The introduction of the restructuring of further education and training institutions and its impact seems not to be catered for in the budget allocation. The restructuring of the FET sector will impact on the use of resources and might for the interim require more resources for administration. The disproportionate allocation of funds for personnel and non-personnel expenditure will not make matters any better, because current spending patterns affect the progressive realisation of the right. The share of the budget from national revenue for education was adequate for the provision of the right. As already mentioned in the section on basic education, it was the ratio of personnel to non-personnel spending that was problematic. According to the Limburg Principles the available funds have to be used efficiently.⁸⁰

Under spending for secondary education as in the case of Gauteng affects the realisation of the right, because it means that available resources were not adequately spent. Over spending as in the secondary education budget for the Northern Cape in 1999/2000, also weighs down on the availability of resources because it affects the allocations for the following years. These phenomena do not respect the right to further education because it was the action of the State that result in both under-spending and over-spending and excessive personnel expenditure.

Most provinces did not mention the measures taken to accommodate the needs of vulnerable groups in the allocation of the budget. This omission

⁸⁰ Limburg Principles (note 9 above) para 25.

affects the reasonableness of the measures as far as they concerned the affected categories.

3.2 Recommendations

It became clear that allocations made by provincial departments were intended to achieve a governmental goal. However the good intention of the allocations was marred by inefficient utilisation of the monies allocated. Efficient financial management systems should be developed for the effective use of resources. The NDE should co-operate with provinces to ensure proper planning; co-ordination may include the national department defining priorities for provinces especially for the provision of facilities and services.⁸¹ Provincial departments may then have to prioritise according to educational problems the particular provinces.

Budget allocation amongst provinces should consider the effects of past policies and legislation on resources allocation. The needs of vulnerable groups should be prioritised, especially people with disabilities in the provision of further education and training.

Provinces should reshuffle funds for personnel and non-personnel expenditure to meet the 80:20 target.

4 OUTCOMES

National and provincial departments were required to provide information for secondary and further education. The learner/educator ratio, number of learners, NER,⁸² GER,⁸³ learners between 15-18 years not attending school, learners with disabilities excluded due to lack of facilities, dropouts, and learners above 18 years who complete high school.

4.1 National Sphere

The NDE only provided information on the total number of learners, learner/educator ratio, NER and GER. According to the department there were 4 111 177 learners in secondary schools, of those 2 195 611 were female learners. Information provided for the NER and the GER was for the year 1997, when the ratios were 59 percent and 89 percent respectively. The learner/educator ratio provided by the department was also for the year 1997 when it was 30:1. However other sources indicate that for the year 1999 the learner/educator ratio in secondary schools was 33:1.⁸⁴

⁸¹ Paragraph 28 of the Limburg Principles encourages states to prioritise realisation of the rights mindful of the need to satisfy everybody a satisfactory subsistence.

⁸² Defined as the number of appropriately aged learners who are in secondary school as a proportion of the corresponding age group in the population, expressed as a percentage.

⁸³ Defined as the number of learners enrolled in secondary school as a proportion of the appropriate age group in the population, expressed as a percentage.

⁸⁴ Department of Education (note 34 above) 158.

4.2 Provincial Sphere

The KwaZulu Natal Department of Education only provided information on matriculants for the outcomes section. Information provided by other provinces on secondary school learners, the learner/ educator ratio, has been summarised in the Table below.

Table 17 Learners in Secondary Schools

PROVINCES	LEARNERS	FEMALE LEARNERS	LEARNER: EDUCATOR RATIO
Eastern Cape	591 882	-	34:1
Free State	12 407	6 112	-
Gauteng	572 014	298 469	24:1
Mpumalanga	903 408	-	38:1
Northern Cape	199 277	98 608	30:1
North West	179 001	96 514	31:1
Western Cape	301 649	160 993	33:1

The Table shows that Eastern Cape and Mpumalanga had the highest number of learners in secondary school. There were also, higher learner/educator ratios.

The Gauteng Department of Education was the only province that provided information on NER, which was 65.3 percent. The Mpumalanga provincial department reported that the given figure in the Table was also a figure for learners from rural areas.

The breakdown of the different categories or groups of learners for the total number of learners is summarised in the Table below.

Table 18 Different categories of learners per province

CATEGORIES	FREE STATE	GAUTENG	NORTHERN CAPE
Rural areas	974	37 958	14 273
LSEN	13	26 882	1 365
Africans	10 524	283 046	66 587
Coloureds	29	29 007	105 971
Indians	2	457	965
Whites	1 832	161 143	25 754

Only Mpumalanga and North West departments reported on the number of children aged 15-18 years who were not attending secondary school. The total for Mpumalanga was 322 307, and of that total 171 150 were females from rural areas. In the North West, 181 746 children were not attending school. The province of the North West had 39 learners of refugees and asylum seekers.

Provinces that provided information on the number of learners who enrol and leave school early in the year include the Free State with a total of 182 learners who dropped out, and of those 95 were females, 28 were from the rural areas and 178 were African. The Northern Cape has a total of 76 learners who dropped out, 21 of these were females, 44 were from the rural areas, 6 were learners with special education needs, 25 of them were

African, 39 were Coloureds, 1 Indian and 11 Whites. The North West had 52 457 learners who left school during the financial year 1999/2000.

The North West and Mpumalanga were the only two provinces that reported on the number of persons above 18 years who complete secondary school, which is 1 449 and 5 483 respectively.

In response to the question on the matric learners, the Eastern Cape reported that for the year 1999 there were 123 948 matric learners. Of that total only 71 077 wrote the final exam, only 5 191 passed with exemptions and 23 214 achieved a school leaving certificate. The Free State Department reported that for the year 1999 there were 33 242 learners in matric, and of those 18 047 were females. For that year only 14 017 passed and 6 972 were female learners. Of the learners that passed 3 611 of them passed with exemptions, and 1 816 of them were females. KwaZulu-Natal had 95 047 learners in matric, and 54 696 of them passed in the year 1999, 48 of those learners were learners with disabilities. Out of that total number of learners who passed, only 15 607 passed with exemption.

In Mpumalanga there were 38 395 learners in matric for the year 1999, and 21 099 of them were female. Of the 18 627 learners that passed, 9 441 of them were female, and only 4 245 learners passed with exemption, with 2 021 of them being females. The Northern Cape Department of Education reported that there were 7 178 matric learners for the year 1999. Only 3 801 passed and 810 passed with exemption. The North West had 40 097 learners in matric, and of those 18 113 were females. There were only 26 learners with disabilities at matric level (N3)⁸⁵ and 12 of them were females. A total of 18 316 learners passed, and 9 568 of them were females. In the total number of learners that passed only 5 058 passed with exemption, with 2 582 of them being females. According to the Western Cape Department of Education there were 37 199 matriculants, 29 303 passed and 9 090 of the learners passed with exemption.

Only Northern Cape provided the literacy rate, which was 63 percent for people in the rural areas and 51,6 percent for females. The Mpumalanga Department of Education provided information that made it impossible to deduce what the literacy rate was for the province.

4.3 Critique

The department provided outdated information. They did not follow the format of the protocols. Most of the provinces also indicated that the information requested is not collected by the departments, hence most leave out questions and do not include information on the categories of vulnerable groups as requested.

⁸⁵ N3 at Technical Colleges is equivalent to a matric at an ordinary school.

Most of the statistics on infrastructure and services remained unchanged, making it difficult to tell if there was improvement. For example the NDE used data from the 1996 schools register of needs. This makes it difficult to assess whether there was progressive realisation of the right. The quality of education depends largely on conditions in the learning institutions. Appalling conditions can negatively affect delivery of quality education.

Inadequate information provided by KwaZulu Natal made it impossible to assess the realisation of the right. Other provinces provided incomplete information, especially with regard to vulnerable groups.

The learner/ educator ratio shows a rise in the number of learners. Mpumalanga is the only province, which showed a ratio above 38:1. Other provinces showed an average of 32:1. Gauteng had the lowest ratio of 25:1. However there was no corresponding increase in the number of educators or the number of classrooms, thereby affecting quality of education.

In response to the question on the matric pass rate, most of the provincial departments of education provided incomplete information. The provincial departments failed to provide a complete breakdown in terms of urban, rural, and the different racial groups.

4.4 Recommendations

Most of the information provided by departments is incomplete and outdated. Departments should provide complete and up to date information. If the departments are unable to do so reasons should be given.

Outcomes should show a relationship between stated policy objectives and the actual result. There should be an efficient monitoring system in place to help departments assess the effectiveness of the instituted measures and where possible, the system should help rectify identified shortfalls.

Departments should have clearly defined targets or results they wish to achieve, especially for vulnerable groups.

5 MONITORING

The NDE has a branch responsible for planning and monitoring the different aspects of the education system. The department developed an Education Management Information System (EMIS) as a national core database. To begin feeding information into the system, the NDE conducted a survey for the School Register of Needs in 1996.

The Eastern Cape department undertook planned and informal visits to regional and district and school level regularly. The department had

quarterly submissions of learner statistics and undertook mobilisation and advocacy campaigns in communities.

The Free State Department of Education reported that the education Management Information System is in place and is used to monitor the realisation of the right. The department was assisted by private institutions with which it had partnerships. KwaZulu Natal used the Strategic Planning Executive (SPEX) to monitor the implementation of its action plans. SPEX regularly reported to senior management meetings.

Mpumalanga Department of Education had a strategic planning section, which reports to the head of the department about the progressive realisation of the right. In the Northern Cape there was advocacy through the media and distribution of flyers. There were also regional co-ordinators and cluster programme managers who have to meet to plan on targets.

5.1 Critique

Monitoring at national level seemed to be well conceptualised. However if the monitoring cannot show the progress in terms of the number of new classrooms or which schools were in rural areas, then it means that there is a problem with its effectiveness. Monitoring should be understood in the context of the obligation to achieve results. Monitoring should provide a scenario of how far departments are with the realisation of the right. From monitoring, departments should be able to see where its measures are lacking, and assist in taking appropriate corrective measures. As a result of an inadequate monitoring system the NDE failed to report adequately to the Commission. It is unable to detect problems in the implementation of the measures and consequently fails to take appropriate corrective action.

The monitoring systems in the provinces seem to be well conceptualised and in existence. They aim to collect information on the education situation and assess the effectiveness of other measures. However the functioning of the monitoring is questionable where departments fail to provide information, which should be readily available. Most of the provinces, in spite of their monitoring systems, could not provide the information, required by the protocols, suggesting that the monitoring and the assessment of the measures were not effective and thus not serving their intended purpose.

5.2 Recommendations

The purpose of a monitoring system should be the assessment and evaluation of measures taken and the impact thereof. To this end the monitoring system needs to set standards and benchmarks to which the measures must adhere. The system should then be able to pick up the shortfalls and help with corrective intervention.

Education rights

There should be linkages with the national EMIS with the provinces for the collation of information. All provincial systems must be linked to a common database nationally.

The system should collect information as envisaged by the NAP. Information should be human rights-related; which should make it easier for the departments to report to the Commission.

HIGHER EDUCATION

1 POLICY MEASURES

Provincial departments are not responsible for higher education. The NDE was therefore required to provide information on policy measures or other programmes it had implemented or undertaken during the relevant year to advance access to higher education.

1.1 Critique

The transformation of the higher education sector came about as the present system was incoherent, wasteful and uncoordinated. These problems and weaknesses were seen to be severely compromising the ability of the higher education sector to effectively and efficiently achieve important national goals. Central to this vision was the establishment of an integrated, nationally co-ordinated and differentiated system, which would meet the learning needs of the country and the reconstruction and development needs of society and economy,⁸⁶ and provide an adaptable and flexible education system. The White Paper also considered the issue of equal access to institutions of higher learning. Institutions would be expected to establish student equity targets with the emphasis on the programmes in which black and women students are under-represented and to develop strategies to ensure equity of outcomes.

The process of transformation involved liberating higher education institutions from the past to be more responsive to the needs of the country in the 21st century. The CHE also indicated that the configuration of the higher education sector would also try to form strong linkages with further education and training.

To ensure equal access the National Student Financial Aid Scheme (NSFAS) was set up and tasked with providing financial assistance to deserving and needy students, so that they are able to enter institutions of higher learning.⁸⁷

Looking at the provisions of the Report of the CHE an inference could be made as to the possible implications of the Report. The Report aims to make higher education more accessible and provide a coherent and responsive higher education system. The attempt to increase the number of learners from disadvantaged groups and female learners in programmes they were under represented is credible. One of the major responsibilities of government is to remove discrimination in order to increase accessibility for the most vulnerable groups.⁸⁸ To this end states may institute special measures for the most vulnerable in order to address

⁸⁶ National Plan for Higher Education, February 2001 at

http://www.education.pwv.gov.za/DoE_Site/higher_Education/HE_Plan/

⁸⁷ Minister of Education's message to the higher education community at

http://www.education.pwv.gov.za/Media/Statements_2001/Feb_2001/message_HE.

⁸⁸ General Comment 13 (note5 above) para 6 (b).

discrimination.⁸⁹ The provisions in the Report promote and fulfil the right through ensuring that tertiary institutions do institute policies that aim to promote groups that have been underrepresented. Such measures, including affirmative admission policies would be reasonable in their endeavour to achieve advancement of people who would be most effected by exclusion.⁹⁰

The report also promotes the right through restructuring of the curriculum to make it more relevant and responsive to societal needs. The measure also protects the right to education in that it promotes equity in the provision of opportunities to enter higher education programmes and succeed.

Nonetheless whether the measures promote the right depends on how the department informs and educates communities about available financial resources such as the National Student Financial Aid Scheme. Presently the NDE does not seem to be doing enough to inform students about the availability of the financial aid scheme. At the beginning of each academic year students are forced to stay at home due to financial exclusions.⁹¹

1.2 Recommendations

Attempts at increasing the number of formerly under represented students should consider readjusting admission requirements of most institutions. The transformation of the higher education sector should clearly address the selection criteria used for admitting students to higher education institutions.

The national NDE should embark on public awareness campaigns to educate the public about available programmes and services such as the financial scheme for poor students.

2 LEGISLATIVE MEASURES

The NDE did not report on any legislative measures relating to higher education that took place during the year under review.

2.1 Critique

Independent research shows that there were legislative measures instituted during the year under review. The following Acts were passed:

- Higher Education Amendment Act 55 of 1999
- National Student Financial Aid Scheme Act 56 of 1999

⁸⁹ Ibid, para 32.

⁹⁰ *Motala v University of Natal* 1995 (3) BCLR 374 (D) 383.

⁹¹ *Top people tells how she did it*, Sowetan 01/04/2001.

Higher Education Amendment Act amends the Higher Education Act 101 of 1997. The amendment does not make substantial amendments except for substitution of definitions, administrative matters and composition of tertiary institutions' councils.

The National Student Financial Aid Scheme Act provides for the establishment of a national student fund to grant loans and bursaries to eligible students at public higher education institutions. The objective of the Act is to redress past discrimination and ensure representivity and equal access, and to respond to human resource needs of the country. The Act puts in place a sustainable student fund to help fund education of poor South Africans.

The existence of the Acts fulfils the requirement to have in place measures; legislative and otherwise aimed at satisfying the right to education.⁹² The Acts passed during the year under review do not deviate from state responsibility. The Acts were reasonable in that they did not constitute barriers to education; they were deliberately aimed at fulfilling the state responsibility.⁹³

Higher Education Amendment Act continues with the purpose and objects of the principal Act. The National Student Financial Aid Scheme Act seeks to make higher education available and accessible to all eligible South Africans. The Acts therefore meet the requirement to remove barriers to access education.

The Committee on Economic, Social and Cultural Right states that there is progressive realisation of the right where the state has put in place appropriate measures aimed at fulfilling state obligations. Putting measures in place should be done immediately without delay. Both Acts fulfil this responsibility and indicate that there is progressive realisation of the right.

2.2 Recommendations

The NDE should set national standards for admission into institutions with the view of achieving representivity.

3 BUDGETARY MEASURES

The national Department of Education (NDE) provided information on its budget allocations for the different programmes and services on higher education.

The department provided information on allocations to universities and technikons as summarised in the Table below.

⁹² General Comment 3 (note 17 above) para 3.

⁹³ Ibid para 2 says that States should take steps immediately aimed at the fulfilment of a right.

Table 19 Budget allocation for Universities and Technikons

INSTITUTION	YEAR	TOTAL ALLOCATION IN RANDS	PROJECTED EXPENDITURE IN RANDS	ACTUAL EXPENDITURE IN RANDS
Universities	1998/1999	4 336 687 000	4 336 687 000	4 336 687 000
	1999/2000	4 648 252 000	4 648 252 000	4 648 252 000
	2000/2001	5 001 196 000	5 001 196 000	5 001 196 000
Technikons	1998/1999	1 663 101 000	1 663 101 000	1 663 101 000
	1999/2000	1 896 873 000	1 896 873 000	1 896 873 000
	2000/2001	1 976 701 000	1 976 701 000	1 976 701 000

The Table shows that the NDE allocated considerably lower amounts for technikons as compared to universities. It is clear from the Table that all allocations were spent to the fullest.

The allocation for universities and technikons represent 57 percent and 23 percent of the total department budget respectively. The per capita allocation for universities for the financial year 1999/2000 was R14 077; for technikons, R10 015.

In response to the question on the variances in the allocation of the budget, the NDE stated that the question is not applicable to higher education. Reporting on the inadequacy of the budget allocation the department indicated that funding for higher education had decreased from 65 percent in 1998/1999 to 63,4 percent in 2000/2001. According to the NDE 65 percent is the absolute minimum funding level for higher education, which was calculated using budget requirements of these institutions.

The problem experienced by the NDE due to budget constraints was the inability to provide adequate funding for the full functioning of higher education institutions. As a result the learning institutions ended up exhausting their financial reserves due to unrecovered tuition and residence fees of previous years from students. The learning institutions were unable to increase student fees to compensate for lower government funding, because the increase in fees would trigger student unrest in many higher education institutions.

In an attempt to provide for vulnerable groups the NDE allocated an amount of R300 million in 1998/1999, R390 million in 1999/2000 and R443, 5 million for the National Student Financial Aid Scheme (NSFAS). The Scheme supported academically deserving, but financially constrained students who want to access higher education. Redress funds were also made available in 1999/2000 at R60 million and in 2000/2001 at R30 million.

3.1 Critique

The budgetary allocation for higher education showed a movement towards a better provision of education. For instance the NSFAS was an attempt to ensure access for students who otherwise would not be able to

do so due to lack of financial resources. However, the inability of the NDE to provide sufficient funds for universities and technikons means that NSFAS will be overburdened by the demand from poor students.

The problem was worsened by the fact that institutions of higher learning increase their fees every year to recover costs. This burden is shifted to students thereby affecting accessibility, particularly for students from poor backgrounds. Therefore every year South African institutions are faced with financial difficulties because students fail to pay their fees.

The allocation of redress funds for higher education represented a reasonable attempt to provide funds to institutions of higher learning so that they are able to admit more learners from impoverished backgrounds. The measure ensures progressive realisation of the right in that there are funds employed towards the fulfilment of the right.

The NDE maintains that the allocation applies equally to learners from vulnerable groups and that there is no discrimination. Allocation should be geared towards inclusion and affirmation of the vulnerable. Budget allocations that do not make these contingencies are unreasonable.⁹⁴

3.2 Recommendations

Annual increases in fees affects mostly poor students, and the NDE could address this problem by making more redress funds available to institutions. This will ensure that most students from poor backgrounds are not excluded due to financial constraints.

There is a general lack of information on services available. The NDE should put in place mechanisms of informing students about the different financial aid schemes available.

4 OUTCOMES

Information provided by the NDE on tertiary education has been summarised in the Table below.

Table 20 Students in Higher Education

CATEGORIES	UNIVERSITIES (1998)	TECHNIKONS (1999)
Total number of learners	351 787	190 120
Learner educator ratio	35	60
Females	192 086	86 670
Africans	180 438	129 961
Coloureds	16 256	12 190
Indians	27 913	7 886
Whites	125 867	38 756
Unknown population group	1 313	1 327

⁹⁴ The Limburg Principle para 39 suggest special measures to help certain groups that require the to enjoy Economic and Social Rights, The Grootboom case held that government programmes that fail to do this where they clearly should are unreasonable.

Education rights

The Table shows the number of students at institutions of higher learning. The NDE indicates that the number of students in universities decreased during the year 1999 to 330 100. Of this number 149 587 were males and 180 513 females.⁹⁵

⁹⁵ Department of Education (note 34 above) 161.

PART C: CONCLUSION

Education is a requirement for the exercise and appreciation of human rights.⁹⁶ The major aims and objectives of education are, to enable a human being to be able to exercise his/her rights freely and with dignity, and to participate effectively in society. The national and provincial departments have instituted policy and legislative measures supported by budgetary allocations. The measures were aimed at removing barriers to education, and attaining state objectives, through making education available. The measures facilitated the realisation of the right, and demonstrated a comprehensive plan deliberately aimed at providing quality education in the country.

It can be deduced from all the responses that the state has enacted and adopted measures to realise the right to education, but these measures seem not to be implemented in a manner that is reasonable and effective for the progressive realisation of the right. This was due to problems of mismanagement in the administration of provincial budgets. Such practices are disturbing, especially in view of the fact that 85 percent of the budget was being spent on personnel. Non personnel matters were not being given enough attention, hence many schools still have a shortage of classrooms, no toilets, no water within walking distance and no electricity and telephones. Lack of basic infrastructure impacts negatively on the quality of education, and affects not only the morale of learners but that of the educators as well. For instance lack of water and toilets, results in girls missing out on some lessons due to the fact that they have to fetch water before going to school.

The poor quality of education received due to inadequate facilities affects all levels of education. In 1999 the number of students registered in universities and technikons decreased. This was despite an increase in the funding to the National Student Financial Aid Scheme. Financial resources are not the only barrier to accessing higher education, the educational attainment of learners from previously disadvantaged schools also contributes. Although there has been a decrease in the enrolment of students in institutions of higher learning, the number of female students has increased from 44 percent for technikons and 45 percent for universities to 46 percent in 1999. This shows a movement towards the achievement of policy objectives of promoting access by female students to higher institutions.

Much still needs to be done to improve the level of education for the large part of the population. To begin improving this situation the departments of education should start addressing the inefficiencies in the system that continue impacting on the expenditure of the budget if not handled appropriately. This reiterates what has been said earlier in the report, and that is, it is not only the amount of funding that determines the provision of the right, but also how those resources are utilised to best attain the

⁹⁶ A Eide et al (eds) *Economic, Social and Cultural Rights* (1995) 189.

intended goal that is important. Until all the intended beneficiaries are reached in the provision of education, the goal of making education accessible for every one will remain a distant goal, especially for those who need it most.

ABBREVIATIONS

ABET	- Adult Basic Education and Training
COLTS	- Culture of Learning, Training and Service campaign
ECDE	- Eastern Cape Department of Education
EU	- European Union
FSDE	- Free State Department of Education
GDE	- Gauteng Department of Education
HIV/AIDS Syndrome	- Human Immune Virus/Acquired Immune Deficiency Syndrome
KZNDE	- KwaZulu-Natal Department of Education
NDE	- National Department of Education
NQF	- National Qualification Framework
SASA	- South African Schools Act
SIDA	- Swedish International Development Agency
USAID	- United States Agency for International Development
WCDE	- Western Cape Department of Education

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