Fall 2017

Understanding the Right to Education in the Early 21st Century South African Context

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UNDERSTANDING THE RIGHT TO EDUCATION IN THE

EARLY 21st CENTURY SOUTH AFRICAN CONTEXT

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EDUC096: Thesis

December 23, 2017

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ACKNOWLEDGEMENTS

ABSTRACT

Evaluating the implementation of human rights norms as broad as the right to education at the domestic level requires the use of supplemental analytical frameworks. In this project, I discuss the implementation of the core norm of the right to education as it manifests in the prescriptive norms guided by the Millennium Development Goals (MDGs). Using the framework set forth by Betts and Orchard, I find that the current structural and ideational factors influencing access to primary education in South Africa are impacted by the country's historical legacy of racial inequality and the economic decisions of the post-apartheid government in the 1990s. I also draw attention to the methodological gaps of the current frameworks currently in use to evaluate norm implementation.

Keywords: South Africa, Education, International Development, Human Rights, Human Rights Norms, Implementation, International Politics, Primary Education, Millennium Development Goals, Neoliberalism, Comparative Education, Racial Inequality, United Nations, Sub-Saharan Africa

INTRODUCTION

There is a boarding school in the eastern South African province of KwaZulu-Natal,

called Michaelhouse, that has a sleekly-designed, modern-looking website. Michaelhouse serves

boys from E block, or grade eight, to A block, or grade twelve. Schooling in South Africa is not

compulsory beyond grade nine or age fifteen, but all students at Michaelhouse are expected to

continue with their studies until grade twelve, where they "write the examinations of the

Independent Examinations Board (IEB)," which are equivalent to "GCE AS level and the

Scottish Higher Standard."[1] The option to write the South African government's National Senior

Certificate (NSC) is mentioned much further below, and it reads like a footnote on the website,

added almost as an afterthought. Across all students who wrote the NSC in KwaZulu-Natal, the

2016 matric class earned a pass rate of 69.5%.[2] 100% of the students from Michaelhouse passed

the NSC in 2016.

The majority of students in South Africa do not experience the kind of education

Michaelhouse offers. Most South African students do not walk past "avenues of trees, over [the]

playing fields and enter… [the] red-brick quadrangles,"[3] of their school. Four hours away from

Michaelhouse, at eMlokothwa High School, "young men [were] forced to sleep on hard steel

after they were instructed to bring their own mattresses – only the girls are provided with

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[1] Michaelhouse. "Academics". Michaelhouse.org, 2017.
https://www.michaelhouse.org/academics/

[2] Eyewitness News. "2016 MATRIC CLASS OBTAINS 76.2% PASS RATE"
EWN.co.za, December 2016. http://ewn.co.za/2017/01/04/2016-matric-class-obtains-72-5-pass-rate

[3] Michaelhouse, "About". Michaelhouse.org, 2017. https://www.michaelhouse.org/about/

mattresses."[4] Boarding students at eMlokothwa pay 9,000 South African Rand per year in school fees – about $715 USD. Boarding students at Michaelhouse pay R255,053 – about $20,250 USD. Most of the time, going to school in South Africa looks more like going to eMlokothwa, not like going to Michaelhouse. The saying "You get what you pay for" is the reality for students in South Africa, more often than not.

Neither of these two schools are necessarily representative of what all schooling in South Africa looks like. There are schools that cost less than Michaelhouse that offer reasonable educational resources for students in KwaZulu-Natal – consider Durban North College, ninety minutes away from Michaelhouse. For grades eight to twelve, its fees[5] are roughly R24,000 – about $1,900 USD – and it boasts a matric pass rate of 98% for 2014.[6] But with the GDP per capita of South Africa at about $7,500 USD[7] in 2016, it is difficult to claim that the education at Durban North College is within reach for a significant number of South African families. Where a student gets to go to school in South Africa is largely determined by a family's ability to pay – even though, under South African law, turning away a student from public school that charges fees because they are unable to pay said fees is illegal.

Most South African students face great challenges to make it to a point where they can consider choosing a school that will increase their chances of passing matric, as the NSC is

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[4] Democratic Alliance of KwaZulu-Natal. "This is KZN's Worst School". DAKZN.org.za, January 27, 2015. http://www.dakzn.org.za/this-is-kzns-worst-school/

[5] M. Höbel. "School Fees 2016." Durban North College, November 4, 2015. http://www.durbannorthcollege.co.za/wp-content/uploads/downloads/2015/11/School-Fees-Letter-2016.pdf

[6] Durban North College. "Academics." durbannorthcollege.co.za, 2013. http://www.durbannorthcollege.co.za/academics/

[7] Trading Economics. "South Africa GDP per capita. TradingEconomics.com, 2017. https://tradingeconomics.com/south-africa/gdp-per-capita

locally called. *BusinessTech ZA* reported in January 2017 that according to data provided by Equal Education, a prominent South African education-focused NGO, "between 40% and 50% of students drop out of school before they reach grade 12" in the country.[8] Thus, the data provided by the government about pass rates on matric is heavily skewed, because a large number of students who should be writing matric and should be in school to the point they could write the exam in the first place never get the chance to do either.

The factors that influence the differences between what has been agreed upon as the ideal set of norms for schooling and what actually happens in daily practice in South African education in the 2010s can be traced back to a number of roots. In this paper, I attempt to identify and analyze some of the structural factors that have impacted access to schooling in South Africa. Through my analysis, it becomes clear that the lasting historical legacies of colonialism and *apartheid*, the post-colonial practice of legalized segregation by race in South Africa, combined with economic and political decisions made by the post-apartheid government in the 1990s and beyond, have all contributed to an education system that still fails to meaningfully educate a significant number of students. In South Africa today, coming from a wealthy family and being white rather than Black, Coloured[9], or Indian are strong predictors of a student's long-term educational success.

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[8] BusinessTech Staff Writer. "Matric pass rate obsession masks South Africa's real education crisis". BusinessTech.co.za, January 4, 2017. https://businesstech.co.za/news/lifestyle/148791/matric-pass-rate-obsession-masks-south-africas-real-education-crisis/

[9] The four main racial groups in South Africa, as established during the apartheid era, were White, Coloured, Black, or Indian. These categories do not align exactly with understandings of race in the United States. According to David Wiley at Michigan State University, "Coloured" refers to South Africans "neither white nor 'native,' a catch-all category primarily for people of mixed race."(n.d., definitions retrieved from http://overcomingapartheid.msu.edu/sidebar.php?id=65-258-2)

       In this project, I will examine the structural factors that affect access to education in South Africa from the perspective of norm analysis by applying Betts and Orchard's framework of norm implementation to the country's system of schooling. First, I trace the history of the conception of a universal right to education up through the 21st century, and discuss how different scholars of norms have further articulated strategies for analyzing their impacts. Afterwards, I give a brief overview of South African history, with a particular focus on the development of South African schools – this is necessary because the structural factors impacting education today are informed by the country's historical legacy. Then, I lay out Betts and Orchard's framework for analyzing norm implementation, and identify the norm bundle informed by the provisions set forth in the Millennium Development Goals (MDGs) of 2000 as the particular norm bundle to be discussed. An analysis of both the ideational and material structural factors impacting education in South Africa at length follows. I conclude by considering the ways that the core norm of the right to education, as articulated through the prescriptive norm bundle informed by the MDGs, may or may not actually be serving to facilitate the realization of rights in South Africa and in the world, more broadly.

CHAPTER ONE. Understanding Norms

Throughout history, a number of polities have recognized the obligation to protect individual people and treat them in a certain "right" or "proper" way. The Code of Hammurabi set guidelines for the way people should be treated in ancient Mesopotamia.[10] The holy texts of most major religions, such as the Hindu faith's Vedas, the Bible, and the Analects of Confucius also address the question of how humans should treat one another[11]. Most of these texts did not engage with the idea of universal human rights, as they are understood today. Not necessarily dissimilar, they offered recommendations for the way to treat individuals of a given faith group or a specific nation state; the latter is true in the case the Magna Carta of the United Kingdom (1215) and the United States' Constitutional Bill of Rights (1789).

The establishment of a set of rules providing guidance for how all nations treat people became prominent in the wake of the mass genocide and other atrocities committed by Nazi Germany during the second World War.[12] The development of a framework of universal human rights was intended to prevent similar crimes against humanity from happening in the future. 50 states convened at the United Nations Conference on International Organization in San Francisco in 1945 to draft and subsequently ratify the Charter of the United Nations,[13] which established

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[10] L. W. King. "The Code of Hammurabi". *The Avalon Project,* in Lillian Goldman Law Library, Yale Law School, 2008. http://avalon.law.yale.edu/ancient/hamframe.asp

[11] Nancy Flowers. "A Short History of Human Rights" in *Human Rights Here and Now.* Human Rights Educators' Network of Amnesty International USA, the Human Rights Resource Center, and the Stanley Foundation, via University of Minnesota, 1998. http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm

[12] Ibid.

[13] United Nations. "Charter of the United Nations: Historical Background." United Nations Dag Hammarskjöld Library, Dec 4, 2017 http://research.un.org/en/docs/uncharter/drafting

the UN as an international organization. The UN's Commission on Human Rights then drafted

the Universal Declaration of Human Rights (UDHR) in 1948, which formally outlined the rights

to which all individuals are entitled.[14] The UDHR represents a turning point in the history of

international human rights, for it is the first time a set of individual human rights are specifically

outlined in writing and subsequently understood as applicable to all persons. Eleanor Roosevelt,

the head of the commission, described the UDHR as the "international Magna Carta for all."[15]

Outlining Education for the World

The UDHR, along with the legally binding International Covenant on Civil and Political

Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)

are collectively understood as the International Bill of Human Rights.[16] Within the IBHR is a

relatively exhaustive list of specifically enumerated rights, ranging from the right to self-

determination, to the right to freedom of movement, to the right to marry and found a family.[17]

The right to education is a specifically enumerated right, outlined in several different places

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[14] Ibid.

[15] United for Human Rights. "CHAMPIONS OF HUMAN RIGHTS:
ELEANOR ROOSEVELT (1884–1962)" Humanrights.com, 2017.
http://www.humanrights.com/voices-for-human-rights/eleanor-roosevelt.html

[16] United Nations General Assembly. "Fact Sheet No.2 (Rev.1), The International Bill of
Human Rights" December 10, 1948. United Nations Human Rights, Office of the High
Commissioner.
http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf

[17] Australian Human Rights Commission. "Rights and freedoms: right by right."
Australian Human Rights Commission. N.d. https://www.humanrights.gov.au/rights-and-
freedoms-right-right-0

across the documents of the IBHR. This includes Articles 13 and 14 of the ICESCR, Article 26 of the UDHR, and Article 18 of the ICCPR.[18]

The publication and ratification of the IBHR is the first time a universal right to education was articulated. Previously, the right to education was discussed in cross-national dialogue, and what Mundy et al. highlight are nation states' tendency to practice "cross-national education policy borrowing" which served as a precursor to discussions of a globalized right to education.[19] For example, they point out an international curiosity with eighteenth century Prussian Normal schools[20], which became the bedrock for France's Guizot reforms and for the work of American education reformer Horace Mann.[21] However, these international education models were always considered from the position of particular nation-states, and were thus dependent on the involved parties' understandings of who was "deserving" of education. The origins of a formal declaration of a universal right to education for all persons lie in the documents of the IBHR.

Different texts of the IBHR outline the right to education in ways not necessarily congruent nor aligned with one another. Table 1 in Appendix I outlines some of the language of these texts.[22] The most significant differences confer levels of specificity. ICESCR includes the

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[18] Excerpts of the texts of the IBHR are available in Appendix I. For brevity's sake, the full references of all of the texts are included in references section of this document.

[19] Mundy et al. "Introduction: The Globalization of Education Policy" in *Handbook of Global Education Policy*. (Wiley-Blackwell; 1 edition, May 2, 2016), 2.

[20] Chas. DeGarmo. "The German System of Normal Schools" in *Science*. (American Association for the Advancement of Science; Vol. 10, No. 255, Dec. 23, 1887), 302-304 http://www.jstor.org/stable/1763090?seq=1#page_scan_tab_contents

[21] Mundy et al, *Handbook of Global Education Policy,* 3.

[22] See Appendix I

most text directly addressing the right to education; the UDHR contains less, and the ICCPR mentions education only within the context of the individual liberties of parents. The UDHR and the ICESCR both mandate states to provide universal and "free primary education"; what constitutes primary education, however, is left undefined in both documents.

Moreover, the specific prescriptions for member states in regards to secondary education have conflicting guidelines. The ICESCR states that secondary education should be made "generally available and accessible."[23] The UDHR does not make reference to secondary education; rather, its closest analog appears to be "technical and professional education," for which it only states must be made "generally available."[24] There are no definitions provided to detail what the responsibilities of a given nation-state are under a framework to provide "generally available and accessible" secondary education, nor how it differs from simply "generally available" secondary/technical education. This discrepancy, along with others embedded in the IBHR with regards to education, both necessitate and explain the proliferation of a multiplicity of divergent approaches to addressing the right to education across nation-states and across time. Different states, different non-governmental actors, and various meetings and conferences have all made attempts to approach the task with a different set of strategies, which produce mixed results.

Thus, understandings of the universal right to education in the latter half of the 20th century and the beginning of the 21st century are based upon the efforts of many to interpret and implement programs to work towards the provisions set forth in the IBHR. These provisions can be considered part of the "core norm" of the right to education. As the prominence and visibility

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[23] Ibid.

[24] Ibid.

of specific stakeholders have ebbed and flowed over this time frame, so did the interpretations of realizing the right to education. The interpretation and implementation of norms relating to the practice of realizing the right to education have changed substantially over time. Said differently, the prescriptions for compliance with such norms, or the "prescriptive norms" that have developed over time, have experienced significant changes over time.

Building Norms

Scholars frequently discuss the ways that human rights norms are guided from their conceptualization at the international level to their realization at the local or individual level. The right to education is no different. Finnemore and Sikkink suggest that "understanding social purpose and legitimacy was essential to understanding politics" through the 1950s and 1960s and was indeed informed by the establishment of the United Nations.[25] However, it was fairly clear that the discipline was not self-aware of the practice; rather, Finnemore and Sikkink describe the methodological practices of IR scholarship as "[recognizing] that much UN activity involved establishing norms, but it often failed to theorize these normative processes."[26] The move to rational choice theory by both liberal and realist IR scholars in the 1970s sidelined norms. It was then revived with the rise of constructivism in the late 1980s, which sought to understand the international system as a social construct rather than an objective reality.[27] Constructivists

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[25] Martha Finnemore and Kathryn Sikkink. "International Norm Dynamics and Political Change" (*International Organization*, MIT Press, Vol. 52, No. 4, International Organization at Fifty: Exploration and Contestation in the Study of World Politics Autumn, 1998). http://www.jstor.org/stable/2601361. 889

[26] Ibid.

[27] Maysam Behravesh. "Constructivism: An Introduction. *" (E-International Relations,* 2011.) //www.e-ir.info/2011/02/03/constructivism-an-introduction/

viewed norms as an effective way to explain phenomena in the international system.

O'Faircheallaigh argues that scholars have integrated the study of norms into IR scholarship in two distinct waves – the first wave posited norms as media by which nation-states interact with the international political, and the second wave recognized that norms "also affect state behavior through domestic political processes, and seeks to understand how and under what conditions these processes facilitate or inhibit norm adoption."[28] Scholars at the current forefront of discussions of norms are particularly concerned with the ways that these international norms translate into real changes at the domestic and local community levels.

To that end, scholars have developed a number of models. Simmons recently called Risse, Ropp, and Sikkink's late-1990s "spiral" model of the relationship between international norms and on-the-ground practice as "…one of the most carefully executed and theoretically motivated explorations," in the field.[29] The spiral model traces the way human rights norms interact with and subsequently become internalized mechanisms of formerly noncompliant states, from an initial phase of repression of rights, through a period of tactical concessions to the international human rights system, followed by rule-consistent behavior.[30] Acharya's 2004 theory of "norm localization," an exploration of the ways that "the differential ability of local agents to reconstruct [international] norms to ensure a better fit with prior local norms," is

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[28] Ciaran O'Faircheallaigh. "IR theory and domestic adoption of international norms." In *International Politics*. (Basingstoke, Vol. 51, Iss. 2. 2014). 156.

[29] Beth A. Simmons. "From ratification to compliance: quantitative evidence on the spiral model". in *The Persistent Power of Human Rights: From Commitment to Compliance*, eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink. (Cambridge, 2013). 43.

[30] Gerald Robert Pace. "Human Rights from Paper to Practice: How Far Have We Come?" in *Human Rights and Human Welfare* (Center on Rights Development, 2001.) https://www.du.edu/korbel/hrhw/volumes/2001/1-1/risse.pdf. 10.

another noteworthy contribution to the discussion.[31] Alexander Betts and Phil Orchard are

among the most recent scholars to put forth a different understanding of norm localization; they

prioritize an examination of the "institutionalization-implementation gap," and decry the

widespread preoccupation of IR theorists with supranational discussions of norms. Instead, they

investigate "the translation mechanisms through which international norms encounter and are

changed within different domestic political contexts."[32] They label the process by which norms

navigate through these mechanisms as "norm implementation." This paper engages most closely

with Betts and Orchard's theory of norm implementation and applies it to South Africa. In

particular, I focus on current understandings of the *norm bundle*[33] surrounding the right to

education, in this case, the prescriptive norm bundle guided by the MDGs. A norm bundle, as

understood in this paper, is not dissimilar from Paddon Rhoads' discussion of "composite

norms", which she explains are a type of norm that "is not free standing but is in fact an

aggregate of other principles – each of which can change and is open to contestation, singly or in

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[31] Amitav Acharya. "How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism", in *International Organization* (MIT Press, Vol. 58, No. 2, Spring, 2004). 239.
http://www.rochelleterman.com/ir/sites/default/files/acharya%202004.pdf

[32] Alexander Betts and Phil Orchard. "Introduction" in *Implementation and World Politics: How International Norms Change Practice.* (Oxford University Press, 2014.) 18.

[33] Job and Shesterinina make reference to Betts and Orchard's use of the phrase "norm bundles" in their chapter of the text, despite an apparent lack of use of the specific term in other portions. However, Sociologist Mark Frezzo puts forth the idea to understand human rights in terms of rights bundles- "packages of organically linked rights that cut across conventional categories" (75). I transfer this understanding here to *norm bundles,* meaning a package of organically linked discourses that cut across conventional categories. It is useful to think of human rights norms related to education as a bundle because of the complex and diverse understandings of what education means to various stakeholders, and also because the provisions necessary to realize the right to education span across various institutions and policy arenas. See *The Sociology of Human Rights,* Frezzo (2014.)

contestation."[34] Thus, throughout the following analysis, it is important to maintain the perspective that "how" and "why" the norm of education as a human right is constantly changing and being reinterpreted as different actors and factors engage with it.

The Life Cycle of the Norm Bundle on the Right to Education

Finnemore and Sikkink have theorized a norm "life cycle," by which norm influences (or norm bundle influences, in this context) can be understood in different stages. As they discuss:

> The first stage [in the norm life cycle] is "norm emergence"; the second stage involves broad norm acceptance, which we term, following Cass Sunstein, a norm cascade"; and the third stage involves internalization. The first two stages are divided by a threshold or "tipping" point, at which a critical mass of relevant state actors adopt the norm.[35]

This framework is helpful in tracing the major players and the broader trajectory of the development of a norm bundle in regards to the right to education. Particularly interesting is the rapid emergence of the right to education. There appears to be very little time in between the formal emergence of the right to education at the international level and its tipping point. The tipping point is the adoption of the IBHR and its provisions regarding the right to education by UN member states. Before the IBHR, very little documentation of a formalized universal right to education existed. It might have been the case that member states had already recognized the right to education (in some capacity) as a *de facto* universal human right prior to the convening of the United Nations. This reasoning explains the relative lack of difficulty and lack of fanfare with

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[34] Emily Paddon Rhoads. "Introduction" in *Taking Sides in Peacekeeping: Impartiality and the Future of the United Nations*. (Oxford University Press, 2016). 5.

[35] Finnemore and Sikkink, "International Norm Dynamics", 895.

which the language regarding the universal right to education was accepted after the

ratification of the IBHR. Thus, the discussion of the norm bundle with regards to the right

to education that will take place is primarily one of Finnemore and Sikkink's third stage

of the life cycle: that of internalization by individual nation-states.

The newly formed sub-organizations of the United Nations that influenced the

norm bundle of the right to education in the mid-20th century were primarily focused on

facilitating the internalization of the norm bundle by member states. These organizations

originally included the World Bank, the United Nations Educational, Scientific and

Cultural Organization (UNESCO) and the United Nations Children's Fund (UNICEF.)

The originally independent Organization for Economic Co-operation and Development

(OECD), founded in 1961, also quickly became an early major player in the

internalization of the right to education, as education related to economic development in

the context of the new idea of human capital theory.[36] The concept of human capital can

be explained as those "expenditures on education, training, medical care, etc... [that]

produce human, not physical or financial, capital because you cannot separate a person

from his or her knowledge, skills, health, or values the way it is possible to move

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[36] The OECD is now a United Nations Observer organization. On HCT: Human Capital Theory is the idea that there exists "a set of skills/characteristics that increase a worker's productivity," as Acemoglu and Autor understand it, and by extension the productivity of a nation-state, and the assumption of the corollary to human capital theory that educational institutions produce human capital, contributed to an understanding at the international level that education can, and should be, directly related and subject to the economic forces within and beyond a given nation-state See Acemoglu and Autor's "The Basic Theory of Human Capital" in *Lectures in Labor Economics*, 4.

financial and physical assets while the owner stays put."[37] The OECD became interested in education as a result of these increasingly drawn correlations between education and economic output. As a result, the array of organizations actively involved in the influencing of the norm bundle regarding the right to education was fairly diverse.

UNICEF and UNESCO are the two sub-organizations of the United Nations that hold mission statements with an intentional and visible commitment to the norm bundle on the right to education. UNESCO was originally viewed as the frontrunner organization, However, Mundy and Manion note that "Western governments failed to fund UNESCO at levels sufficient to allow it to play a major role in the implementation of educational programming."[38] UNESCO's limitations are representative of the limitations of many actors in the field: they are dependent on the contributions of donors and their subsequent demands for how donations must be used. UNICEF and the World Bank were not as significantly constrained by the wishes of member states and were subsequently able to navigate the international system with more autonomy, which partially explains their contemporary overshadowing of UNECSO in terms of visibility.[39]

This does not mean that the organizations are free from issues of their own. The World Bank was established in 1944 with significant capital investment from the United

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[37] Gary S. Becker. "Human Capital Revisited" in *Human Capital: A Theoretical and Empirical Analysis with Special Reference to Education (3rd Edition)* (The University of Chicago Press, January 1994.) http://www.nber.org/chapters/c11229. 16.

[38] Karen Mundy and Caroline Manion. "The Education for all Initiative: History and Prospects Post-2015". In *Education and International Development: An Introduction*, Eds. Tristan McCowan and Elaine Underhalter. (Bloomsbury, 2015). 51.

[39] Elaine Unterhalter. "Education and International Development: A History of the Field." In *Education and International Development: An Introduction*, Eds. Tristan McCowan and Elaine Underhalter. (Bloomsbury, 2015). 18

States and other Western states. It has subsequently situated itself as a major player in the field via the sponsorship of a significant portion of education global development ventures and scholarship. The fact that the World Bank policy agenda is primarily informed by the guidelines set forth in the UDHR, not the more detailed provisions set forth in the ICESCR, is worth noting because it allows the organization greater latitude to interpret the right to education more broadly than other international organizations. Furthermore, the fact that no nation-states from Latin America nor Sub-Saharan Africa are listed as a top-20 UNICEF government resource partner in 2016 is similarly worth noting.[40] Depending on whether a neorealist/neoliberal perspective or a constructivist perspective is used, these facts may be either a replication of international power dynamics in the anarchic global system, or a telling indicator of lasting historical inequities on the international stage.

At the turn of the millennium, the bundle of norms on the right to education began to shift from higher education to focus on access to primary education, and specifically quality primary education. Stakeholders argued that compliance with the right to education was most effectively evaluated by international assessments and compliance with specifically articulated international benchmarks that were designed to measure the degree to which a specific nation-state had progressed in the realization of the universal right to education. Two major programs that embody this shift towards assessment are the implementation of the Programme for International Student Assessment (PISA) surveys and the Millennium Development Goals advocated for by the Bill & Melinda Gates Foundation.

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[40] UNICEF. "Compendium of Resource Partner Contributions 2016". UNICEF. https://www.unicef.org/publicpartnerships/files/UNICEF_Compendium_2016(1).pdf. 8.

In particular, Mundy and Manion label the Millennium Development Goals as an attempt by the international community to pivot away from its failure "…to achieve the goals established for education in the 1990s, at the World Conference on Education for all in Jomtien, Thailand".[41] Held in September 2000, the Millennium Development Summit and its accompanying Millennium Development Goals established an ambitious series of targets for the international community to achieve by 2015, including the achievement of universal primary education.[42] The Millennium Development Goals were augmented by the publication of 'Education for All' goals formulated at and published by UNESCO's World Education Forum in Dakar, Senegal in April 2000.[43] While the goals of EFA are free-standing and not tied to other development priorities, the MDGs have been adopted by member states as a comprehensive package for the future of international development, within which provisions for education development are included.

It is important to consider the ramifications of the immediate publication of two independent frameworks that guided discussions on access to education. While the two systems might have more effectively triangulated a set of ideal policy goals, parallel frameworks ran the risk of diverting the energy and resources of a given implementer (whether it be a nation-state or an INGO) to more policy objectives than it can feasibly handle. According to Mundy and Manion's assessment, it appears that the international community has backed and supported the goals of EFA more robustly than the broader

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[41] Mundy and Manion, "The Education for all Initiative", 55.

[42] UNESCO. "The Dakar Framework for Action." World Education Forum. http://unesdoc.unesco.org/images/0012/001211/121147e.pdf. 1.

[43] Mundy and Manion, "The Education for all Initiative", 56.

framework of MDGs. Specifically, they claim that "the international community [declared EFA] a global public good in need of collective rather than unilateral action in the decade after 2000".[44] The annual publication of the UNESCO Education for All Global Monitoring Report is one benchmark that attests to this collective interest.[45]

The period for the evaluation of the targets of the MDGs has passed as of 2015, and the United Nations, along with its member states, adopted the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development at the 2015 UN Summit in New York. The immediate adoption of a new framework at the conclusion of the time frame for the MDG targets is a testament to the apparent need for a continued framework in international development – no doubt informed by the failures of member states to successfully reach all of the MDG targets in time. As the most recent large-scale framework for international development, the SDGs are currently at the forefront of the norm bundle of the right to education. As Toukan explains, "Regarding education, goal 4 of the agenda is to 'ensure inclusive and equitable quality education and promote lifelong learning opportunities for all' … [it] has seven related targets and three sub-points, each of which proposes specific outcomes, values, initiatives and deadlines,"[46] including provisions that address vocational training, literacy, and gender equity in education.

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[44] Mundy and Manion, "The Education for all Initiative", 59.

[45] UNESCO. "Reports", Global Education Monitoring Report. https://en.unesco.org/gem-report/allreports

[46] Elena VanderDussen Toukan. "Expressions of Liberal Justice? Examining the Aims of the UN's Sustainable Development Goals for Education". (*Interchange*, Springer Science + Business Media, Dordrecht, 2017). https://link.springer.com/content/pdf/10.1007%2Fs10780-017-9304-3.pdf, 295.

Over the course of the second half of the 20th century, continuing into the 21st century, the evolution of the norm bundle regarding the right to education has been transformed, mostly due to the actors who are taking the lead as entrepreneurs at the international level at any given time. The "core norm" of a universal right to education has not changed much since the mid-20th century; however, the "prescriptive norm bundle" that guides how the core right should be realized has changed. In the earlier stages, UN organizations like UNESCO and UNICEF took the lead on defining and monitoring compliance with rights norms in education. In more recent history, rights norms in the context of education are most often integrated as a part of a larger framework for international development, as agreed upon by UN member states. Both the MDGs and SDGs fall into this latter category.

In 2013, South Africa stated as a part of its Country Report 2013 that it was "committed to fulfilling its constitutional obligations to deliver socio-economic rights within the context of its national plan of action, Vision 2014, and the Millennium Development Goals (MDGs)."[47] Specifically, the government claims that it has "in effect achieved the goal of universal primary education before the year 2015,"[48] while also recognizing that "serious interventions are needed to improve the quality and functionality of education,"[49] particularly with regards to underserved populations in

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[47] United Nations Development Programme. "UNDP's role & MDGs in South Africa." UNDP, 2017. http://www.za.undp.org/content/south_africa/en/home/post-2015/mdgoverview.html

[48]United Nations Development Programme. "Achieve universal primary education: Where we are?" UNDP, 2017. http://www.za.undp.org/content/south_africa/en/home/post-2015/mdgoverview/overview/mdg2/

[49] Ibid.

South Africa. This caveat in the South African government's statement regarding MGD 2, in addition to the following analysis, are both grounds on which I claim that South Africa's claims of universal primary education are more complicated and less certain than they appear.

In order to set up such an analysis, the following section discusses the history of the state of South Africa. In order to understand the ways that inequality currently manifests in the country and how its education system continues to prevent some students from realizing a right to education, the eras of colonialism and apartheid must be considered.

CHAPTER TWO. The Case of South African Education

South Africa is a particularly compelling case study because it is a country that is

currently at a crossroads. An editorial by the Guardian in April 2017 articulates how the Sub-

Saharan African nation-state's future hangs in the balance: "The [African National Congress]

must choose its future: to drift on as a clientelist party engaging in lowest common denominator

politics while nourishing unhealthy relationships with tycoons; or it can embrace its moral

heritage and democratic traditions ..."[50] Evaluating the implementation of the norm bundle

regarding the right to education in light of South Africa's current context can offer a multitude of

valuable insights. Among these are a consideration how implementation of other norm bundles

might succeed in the country, and a consideration of how other countries with similar

demographic and political landscapes might localize the norm bundle on the right to education.

In this pursuits, this paper is aligned with the broader goals of much of the literature in the field

of comparative education.

The following sections of the paper will provide a short history and contemporary context

for the state of education in South Africa. Subsequently, the paper will analyze the ways in

which Betts and Orchard's framework of norm implementation is impacted within this context,

considering the structural factors at play.

ZA Education: History

A child walking into a classroom in South Africa in 2017 interacts with and is impacted

by centuries of history. Over time, classrooms in South Africa have been directly involved in the

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[50] The Editorial Board of *the Guardian*. "The Guardian view on South Africa: fighting for the ANC's future". *The Guardian*, April 13, 2017. https://www.theguardian.com/commentisfree/2017/apr/13/the-guardian-view-on-south-africa-fighting-for-the-ancs-future

conflicts and complexities created by colonialism and systemic racism. Racial and ethnic identities have been a strong predictor of a child's chances of educational success or failure in primary, secondary, and tertiary education in South Africa. This impact starts early in a child's educational career path: Moran Blueshtein found in 2013 that male black South African children by age 12 have, on average, completed almost a year and a half less schooling than their white counterparts.[51] The current advantages of white students in the South African education system are a legacy of both colonialism and apartheid-era favoritism in education, and unequal treatment in education based on race is just beginning to be addressed in the post-apartheid period, with far more work still left to be done to achieve some degree of educational equity.

The history of education in South Africa can be divided into three sections: education under colonial control, education during apartheid, and education post-apartheid, which includes the present day. Education policy experienced major shifts during each of these periods. In each section of educational history, race and ethnicity appear over and over again as key influences in the trajectory of South African education development and reform.

Beginnings in Colonialism

Seroto points out that most formal accounts of history in southern (including South) Africa begin with the arrival of European colonialists on the coasts.[52] However, informal

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[51] Moran Blueshtein. "Racial Disparities in Schooling: Evidence From Cape-Town, South Africa" (2013). Publicly Accessible Penn Dissertations. 612. http://repository.upenn.edu/edissertations/612. 66.

[52] Johannes Seroto. "Indigenous Education During the Pre-Colonial Period in Southern Africa." *INDILINGA – African Journal of Indigenous Knowledge Systems.* (University of South Africa, Vol 10-1, 2011.) 78.

transfers of knowledge between generations of Khoi, San, and Bantu-speaking peoples, primarily

via oral histories and oral traditions, occurred for generations prior to the arrival of Europeans.

The Dutch East India Company took interest in the region that now includes Cape Town

in the Western Cape and was recognized as the primary governing body as it conducted business

and trade during the early colonial period.[53] The Company governed to the extent that it was

necessary to conduct its operations; thus, the primarily Dutch settler population educated their

children via a number of schools managed by the Dutch Reformed Church, which taught a

curriculum that emphasized religious and language education. Great Britain formally acquired

the Cape colony at the 1814 Congress of Vienna.[54] Subsequently, largely motivated by

unemployment in Great Britain, British colonists began to develop settlements in both the

Western and Eastern[55] Cape in the 1820s.[56] Colonial development, and by necessity the informal

network of religious schools, moved eastward in the 19th century because of disgruntled Dutch

settlers known as "Voortrekkers" rejecting the conditions of British colonial influence in the

Western Cape.[57]

Hartshorne moves beyond the standard characterization of South African schooling in the

19th century "in terms of a 'dual stream' – British rule and the Boer [read: Dutch] Republics" and

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[53] A.L. Behr. "The Roots of Our Educational System" in *Education in South Africa: Origins, Issues, and Trends: 1652-1988.* (Academica, 1988, Cape Town) 10.

[54] The Editors of Encyclopædia Britannica. "Cape Province." Encyclopædia Britannica. https://www.britannica.com/place/Cape-Province.

[55] The location of the earliest British Eastern Cape settlements is now occupied by Port Elizabeth.

[56] South African History Online. "Colonial expansion in South Africa after 1750." South African History Online. Sep 2017. http://www.sahistory.org.za/article/britain-takes-control-cape

[57] Behr, "The Roots of Our Educational System", 10.

instead identifies four distinct groups of stakeholders:[58] 1) independent religious organizations with varied affiliations from the Swiss Mission to Roman Catholic; 2) individual European colonialists and their native-born descendants; 3) diamond and gold miners in the Kimberely and Witwatersrand districts[59] (respectively;) and 4) Boer and British colonial bureaucrats.[60]

These four constituencies are by no means presented as equal in terms of political capital. Rather, Hartshorne stresses that colonial governments were the primary architects of education policy in the later colonial period.[61] The appointment of a British Superintendent-General of Education for the region in 1839 and the establishment of the Cape Education Department[62] in the same year marks a formal recognition of government-administered schooling by colonial rulers and, as Behr explains, "signaled the transfer of responsibility for education from Church to State[sic.]"[63] The transfer of educational responsibility from church to state in South Africa did not alter the scope or overarching mission of colonial schooling to the degree in which such a transfer might typically warrant. Rather, this transfer ensured that the education of white colonists remained a priority, despite the fact that interactions with and colonial dominion over "Native" African communities became increasingly common.

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[58] Ken Hartshorne. "The evolution of education policy in South Africa." In *The Making of Education Policy in South Africa.* Oxford University Press, 199. 18.

[59] Behr, "The Roots of Our Educational System", 9. The Witwatersrand district is now the location of Johannesburg and Pretoria, two of the country's major cities and capital(s.)

[60] Hartshorne, "The evolution of education policy", 18.

[61] Ibid, 21.

[62] Ibid, 19.

[63] Behr, "The Roots of Our Educational System", 9.

Hartshorne points out that the decision to orchestrate an exclusion of local non-white

children from the developing educational system by colonial bureaucrats "can best be described

as 'studied neglect' as far as the interests of the dominated [non-white] were concerned."[64]

Annexations of previously un-colonized land by British High Commissioner and Governor of the

Cape Sir George Grey were not accompanied by policy initiatives to settle white people in these

areas which already included a substantial Black population.[65] Naturally, the need to provide a

system of education in these non-white areas received little attention. Despite a series of

commissions and legislative committees, Behr emphasizes that "the 18th and 19th centuries were

in law and in fact a period of complete *laissez faire* as far as educational provision and control

were concerned."[66] In reality, the policies enacted by colonial governments with regards to

education and schooling in South Africa in the 19th century allowed for the continuous benefit of

white colonists at the expense and/or neglect of non-white South Africans.

Union, but further inequity

The four previously autonomous governments that controlled various parts of the region,

the Cape Province, Natal, Transvaal, and the Orange Free State, formally unified under the

provisions of the South Africa Act of 1909.[67] The Senate of the newly formed bicameral

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[64] Hartshorne, "The evolution of education policy", 19.

[65] Behr, "The Roots of Our Educational System",13.

[66] Ibid, 19.

[67] The Editors of Encyclopædia Britannica. "South Africa Act." Encyclopædia
Britannica. https://www.britannica.com/event/South-Africa-Act

Parliament included provisions for only 4 black African senators out of a Senate of 40 seats.[68]

The over-representation of the white minority in the newly established government predisposed

the continuation of pro-white education policy. The new government delegated the management

of primary and secondary education to each individual province while maintaining central

control of higher education.[69] Hartshorne concludes that this policy allowed for the continuation

of the neglect of non-white schoolchildren.[70] But the national government further increased the

restrictive attributes of nonwhite education with the passage of the 1925 Native Taxation and

Development Act, which mandated that all funding for schools beyond a nationally distributed

minimum would need to be supplemented by additional taxation of Black South Africans, a

policy which Hartshorne explains "determined that the sector of society least capable of

generating funds through taxation should be responsible for its own education development."[71]

Despite these clear policy directives, another series of committees and commissions in the 1930s

discussed the lack of funding as a cause for the inadequate schooling being received by non-

white South Africans.[72] These discrepancies in education policy at the national level disguised a

covert tendency to favor policy initiatives that prioritized the success of white children in South

Africa. The rise of Nationalist Afrikanerdom and the apartheid era removed such ambiguities and

replaced them with overt discriminatory practices.

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[68] Ibid.

[69] The Editors of Encyclopædia Britannica. "Education: South Africa." Encyclopædia Britannica. https://www.britannica.com/topic/education/South-Africa#ref303462

[70] Hartshorne, "The evolution of education policy", 21.

[71] Ibid, 22

[72] Ibid, 23

Apartheid's arrival

The apartheid era in South Africa is understood to begin with the general election of May 1948, in which the white supremacist National Party (NP) won seventy seats in the South African Parliament.[73] The NP immediately began implementing a series of governmental reforms to calcify the segregation of races in South Africa. Under the leadership of Dr. DF Malan, the NP released a statement which argues "… a course of equality [of races in South Africa] … must eventually mean national suicide for the White race."[74] The racist ideology of the party was not covert, nor was it "color-blind" – this policy of separateness, or apartheid, was clearly and explicitly stated in writing. A significant amount of these apartheid-inspired reforms took place in the education sector, beginning with the Bantu Education Act of 1953.

The Bantu Education Act was a piece of legislation designed to implement the recommendations of the Eiselen Commission. Lead by Afrikaner anthropologist and bureaucrat WWM Eiselen, the all-white Commission produced a 1951 report detailing the need for the "separate development" of the different races of South Africa.[75] As discussed in the podcast series *When Things Fall Apart,* the Bantu Education Act brought all schools that served a predominantly black South African population under the control of the Bantu Education

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[73] South African History Online. "The South African general elections: 1948" South African History Online, 2017. http://www.sahistory.org.za/article/south-african-general-elections-1948

[74] Johannes Seroto. "A revisionist view of the contribution of Dr Eiselen to South African education: New perspectives" *Yesterday and Today,* 2013, (9). http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2223-03862013000100006

[75] Hartshorne, "The evolution of education policy", 25.

Department.[76] The act also made school funding contingent on provinces adopting this new

apartheid-era system. In effect, this legislation mandated that schooling for black students be

separate and inferior to schools for white students in South Africa. By 1965, Coloured and Indian

schools were also managed by separate departments of education.[77]

The logic and legislation of separate development caused substantial, state-endorsed

stratification of educational outcomes across the country. Francesca Villette reports that:

> In 1975/76, the state spent R644 annually on each white pupil, R189 per Indian pupil,
> R139 on a coloured pupil, and only R42 on an African pupil. There was also a lack of
> black teachers, and many of those who did teach were underqualified. In 1961, only 10%
> of black teachers held a matriculation certificate. This perpetuated an inferior schooling
> system for the country's majority.[78]

In sum, the creation of separate management systems for different racial groups in South Africa

allowed for the perpetuation and intensification of state-sponsored racism. Black education

suffered during apartheid because the state deferred the management of schooling to black

educators while making the black population responsible for the funding of their schools, after

decades of exclusion that made black South Africans unable to access jobs or other opportunities

for social mobility. The legacy of apartheid has been significantly damaging for black students

and other nonwhite students in South Africa.

The system of apartheid remained largely the same through the 1980s, and the quality

and stability of education in black communities continued to decline. Pressure from businesses to

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[76] Maegan Currie, et al. "When Things Fall Apart." Podcast via *War News Radio*. Prod. Katherine Kwok, April 2017. http://warnewsradio.org/2017/04/27/things-fall-apart-episode-1/

[77] South African History Online. "Bantu education and the racist compartmentalizing of education." South African History Online, 2017. http://www.sahistory.org.za/article/bantu-education-and-racist-compartmentalizing-education

[78] Francesca Villette. "The effects of apartheid's unequal education system can still be felt today." Cape Times, via IOL. June 16, 2016. https://www.iol.co.za/capetimes/news/the-effects-of-apartheids-unequal-education-system-can-still-be-felt-today-2035295

produce more productive black workers and repeated attempts at resistance from black

communities (such as the Soweto uprisings in the 1970s) failed to produce significant policy

outcomes or structural changes to the management of education.[79] Hartshorne notes that "up to

1980, education policy had contributed to social, economic, and political function, and had

become part of the problem instead of part of the solution."[80] Instead of changing course, the

injustices of the education system only accelerated past 1980. This period saw a consolidation of

white power in the structures of government, most notably with the passage of the Republic of

South Africa Constitution Act of 1983 and the subsequent establishment of three separate

parliaments: a predominantly white parliament to which an Indian and Coloured parliament

answered.[81] The white parliament, known as the House of Assembly, passed the 1984 Education

Act that further exacerbated the divisions of apartheid-era education before the other two

parliaments were established, effectively excluding authentic representations of non-white voices

from the legislative process. Overall, the decisions by policymakers and lawmakers in the 1980s

in South Africa with regards to education and beyond set the stage for the instability that

necessitated the end of apartheid in the next decade.

Apartheid's Fall

Over the course of the apartheid regime's roughly 50-year existence, objections to the

clear violations of human rights from the international community gained increasing momentum.

According to the US Department of State, grassroots movements in Western countries eventually

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[79] Hartshorne, "The evolution of education policy", 28 and Zipp, Currie, et al.

[80] Ken Hartshorne. "Key education policy period", In *The Making of Education Policy in South Africa.* Oxford University Press, 199. 71.

[81] Ibid, 75.

resulted in the implementation of economic sanctions that took a toll on the South African economy, adding stress to an already unstable system.[82] Particularly damaging were the United States' passage of the the Comprehensive Anti-Apartheid Act in 1986 and its coincidence with the withdrawal of major transnational corporations from the South African economy.[83]

Amid mounting external and internal tensions, South African President P.W. Botha became unable to serve due to illness. Frederik Willem de Klerk succeeded Botha and, with the knowledge that apartheid no longer held the necessary political support to be viable, began a rapid deconstruction of apartheid-era policies. The deconstruction included the release of political prisoners, including Nelson Mandela, and the repeal of a ban on the existence of the anti-racist African National Congress, a political organization formerly classified as a terrorist group for its underground anti-apartheid activism throughout the era.[84] De Klerk guided the repeal of apartheid-era legislation that impacted education during this period, including the repeal of the Separate Amenities Act in 1990, the Bantu Education Act in 1991, and the Population Registration Act in 1991.[85]

The post-apartheid elections of 1994 were the first in South Africa to reject the use of a formal voting register in favor of verifying the identity of voters on election day – a strategy that

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[82] US Department of State. "The End of Apartheid." US Dept. of State Archives, 2009. https://2001-2009.state.gov/r/pa/ho/time/pcw/98678.htm

[83] Ibid.

[84] The Editors of Encyclopædia Britannica. "F.W. de Klerk." Encyclopædia Britannica. https://www.britannica.com/biography/F-W-de-Klerk, 2017. and Tunde Adeleke. "African National Congress (ANC.)" Blackpast.org. http://www.blackpast.org/gah/african-national-congress-anc

[85] N.A. "Apartheid Laws & Regulations: Introduced and Rescinded." Digital Innovation South Africa. 2017. http://disa.ukzn.ac.za/sites/default/files/pdf_files/sljun95.3.pdf

contributed to 16 million new voters participating in the elections.[86] These elections were declared free and fair by observer organizations including the UN and the Organization of African Unity (OAU.)[87] Nelson Mandela was elected as President and the African National Congress won a majority of seats in the National Assembly.[88]

Despite the major political changes of the decade, Hartshorne identifies a "feeling of disappointment at the apparent slowness of change and development in the field of education in this period… [and] it cannot be said that in practice education appeared to be a high or immediate priority of the new government."[89] The poor performance of the South African economy made for a lackluster national education budget, effectively hamstringing most major education reform efforts.[90] One of the highest priorities of the Mandela government in the education sector was the bureaucratic transition from ethnically-based departments of education management to provincially managed departments.[91] It is important to consider the fact that the transition from ethnic to non-ethnic based management of educational systems did not provide any specific redress of the causes of inequality under the apartheid regime, such as the longstanding impacts of unreasonable tax code, lack of access to employment opportunities, and lack of substantial teacher education programming for black teachers.

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[86] Padraig O'Malley. "The 1994 Elections." Nelson Mandela Centre of Memory. N.D., https://www.nelsonmandela.org/omalley/index.php/site/q/03lv02039/04lv02128/05lv02130.html

[87] Ibid.

[88] Ibid.

[89] Ken Hartshorne. "Education in the 1990s", In *The Making of Education Policy in South Africa.* Oxford University Press, 1999. 105-106

[90] Ibid, 107.

[91] Ibid.

The key pieces of legislation that guided post-apartheid education reform were the

Constitution of South Africa (1996) and the National Education Policy Act (NEPA) (1996.)[92] As

explained in a 2001 report by the South African Department of Education:

> 'The Constitution (1996) provided the framework for a unitary system of education,
> managed by the national Department of Education and nine provincial departments. (The
> exception is higher education, where the national department has sole responsibility.) The
> National Education Policy Act (1996) gives the Minister of Education the power to
> determine national norms and standards for educational planning, provision, governance,
> monitoring and evaluation."[93]

The South African constitution is an ambitious document that recognizes a set of universal

human rights for all citizens. But it also goes beyond recognition; a section of Chapter 2, known

as the Bill of Rights, states that equality (in South Africa) "includes the full and equal enjoyment

of all rights and freedoms."[94] This failure to define the specific framework for realizing a right

mirrors broader concerns with the provisions of the constitution as a whole. Most notably, the

Constitutional Bill of Rights outlines the rights granted to South Africans, but does not include

language regarding the obligations of the government when rights have been violated.[95]

This lack of specific language to mobilize a redress of rights violations extends to the

right to education. The constitution guarantees the right to a basic education and "further

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[92] South Africa Department of Education. "Education in South Africa: Achievements since 1994." May 2001.
http://www.dhet.gov.za/Reports%20Doc%20Library/Education%20in%20South%20Africa%20Achievements%20since%201994.pdf. 14.

[93] Ibid.

[94] South Africa Department of Justice. "Chapter 2: Bill of Rights", in *The Constitution of the Republic of South Africa, 1996.*
http://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf. 5.

[95] Fabrice Tambe Endoh. "Democratic constitutionalism in post-apartheid South Africa: the interim constitution revisited." University of Fort Hare. Published via Africa Review, Volume 7, 2015 - Issue 1. Taylor & Francis Online.

education, which the state… must make progressively available and accessible."[96] Further

education refers to grades 10-12, technical training, and university-level education. The specific

benchmarks that constitute "progressively available and accessible" further education have not,

as of yet, been clearly defined by the South African government. As in other areas of the

constitution that guarantee rights to South Africans, it is unreasonable to claim that South

Africans universally enjoy the right to education because the 1996 constitution and subsequent

legislation compliant with that constitution fail to sufficiently identify specific strategies and

redresses, and fail to provide adequate resources to those aims. If South Africa intends to provide

an equitable education for all, as its official policies claim, then it becomes necessary to identify

the factors that have inhibited the implementation of necessary additional resources in the

country that would promote greater equity in education.

21st Century South African Education

The failure of the South African government to specifically enumerate policy reform for

the redress of the violations of the rights of black South Africans and its refusal to allocate

resources to that aim have resulted in a noticeable lack of progress towards educational equity in

the country, despite the ambitions of a relatively well-articulated constitutional right to

education.

For example, the South African Schools Act does define the provisions necessary for

equitable primary education more explicitly than further education (although not necessarily to

an adequate degree.) It made schooling compulsory for all South African students until either the

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[96] South Africa Department of Justice. "Chapter 2: Bill of Rights" in *The Constitution of the Republic of South Africa, 1996.*

age of fifteen or grade nine, an important legislative provision that has yet to actually be achieved equally across ethnicities in South Africa.[97]

There are several identifiable major areas of concern with regards to realizing the right to education in South Africa in the 21st century. Racial inequality remains a major problem - *the Economist* illustrates that "the gap in test scores between the top 20% of schools [in South Africa] and the rest is wider than in almost every other country... [of] 200 black pupils who start school just one can expect to do well enough to study engineering... [ten] white kids can expect the same result."[98] The International Center for Transitional Justice reports that "while access rates to education have increased among black South Africans, students drop out in large numbers and the failure rate is high."[99] In particular, black South African women continue to grapple with a lack of access to education – the University of Pennsylvania reports that 23% have had no formal schooling at all, and 28% are illiterate.[100] Another visibly sharp divide in access to education lies in the urban-rural divide – the pass rate for grade six students from rural

[97] Library of Congress (US). "Constitutional Right to an Education: South Africa." 2016. Library of Congress. https://www.loc.gov/law/help/constitutional-right-to-an-education/southafrica.php

[98] Teboho Moja. "In South Africa, Education as Redress Has Seen Mixed Result." International Center for Transitional Justice, 2016. https://www.ictj.org/news/south-africa-education-redress-mixed-results

[99] *The Economist*. "South Africa has one of the world's worst education systems: Why it is bottom of the class." *The Economist*. Jan 7th 2017. https://www.economist.com/news/middle-east-and-africa/21713858-why-it-bottom-class-south-africa-has-one-worlds-worst-education

[100] Penn Graduate School of Education. "Gender and Education in South Africa." N.d. http://www.gse.upenn.edu/gender-and-education-in-south-africa

areas in South Africa is roughly half the pass rate of their urban counterparts, which is not stellar itself at 46%.[101]

In the following sections, I analyze the current situation in South Africa so that it is possible to further understand the reasons why the end of apartheid has failed to result in the universal enjoyment of the right to education in South Africa. Neither the structural factors at the domestic level nor how those domestic structural factors relate to international norms regarding education have been studied closely enough in the South African context. Thus, Betts and Orchard's framework is a useful framework to consider.

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[101] Michael Gardiner. "Education in Rural Areas." *Issues in Education Policy, Number 4.* Center for Education Policy Development, (Johannesburg, 2017). 13.

CHAPTER THREE. Evaluating Implementation

The study of comparative education is informed by a variety of disciplinary approaches and epistemological traditions. In this section, I aim to draw upon the work of scholars of international relations and norm theory as a framework to approach an understanding of the way the norm bundle regarding the right to education, as discussed previously, is presently iterated in contemporary South Africa. In applying this framework in particular, I hope to identify the discrepancies between the expectations of the implementation of the norm bundle regarding education and its on-the-ground manifestation in the county in the 21st century. In other words, I hope to explain what it means, specifically in South Africa, to implement policies and practices aligned with a given norm bundle and how that implementation impacts the lives of South Africans. Two items must be properly identified before such an analysis can proceed: what specifically constitutes this 'norm bundle' and the conceptual framework being used for the analysis.

Identifying the Norm Bundle

As discussed in previous sections, the United Nations remains the most visible and most influential architect of norms in human rights discourses in the 21st century. At the dawn of the millennium, the development and dissemination of the Millennium Development Goals (MDGs) guided human rights practice in the international human rights community from 2000-2015.[102] Scholars have noted that the use of the MDG framework produced mixed results across the globe, with substantial variance in progress levels in focus areas such as undernourishment,
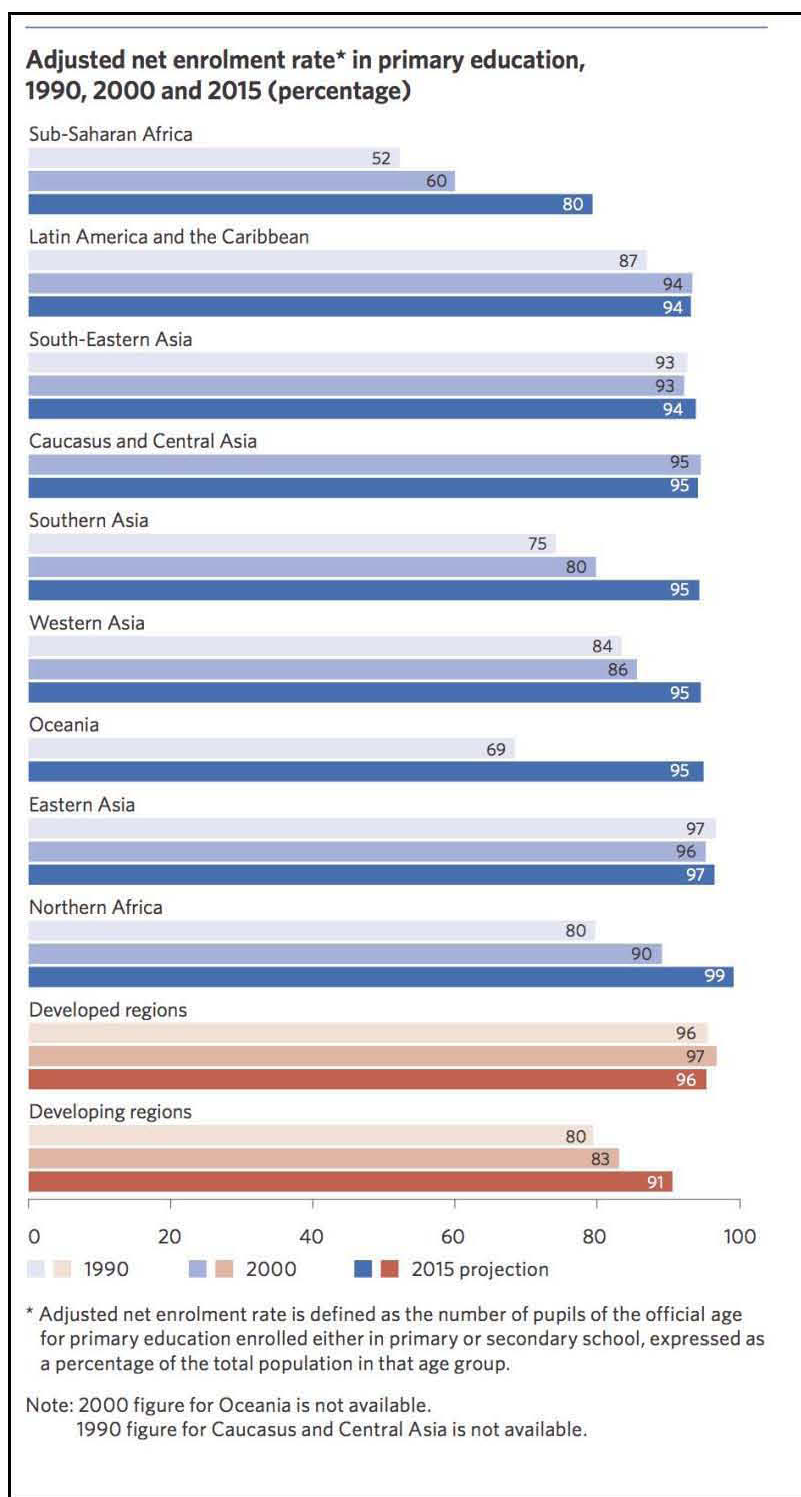
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[102] John McArthur and Krista Rasmussen. "How successful were the Millennium Development Goals?" *Future Development,* via the World Bank at Brookings.edu. January 11, 2017. https://www.brookings.edu/blog/future-development/2017/01/11/how-successful-were-the-millennium-development-goals/

primary school completion, and extreme income poverty across states.[103] The mixed results of the MDGs set the stage for the near immediate introduction of the new 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development at the 2015 UN Summit in New York as a new and more feasible framework within which states and human rights practitioners could operate at the conclusion of the time frame for the MDGs.[104]

At the time of publication of this work, the SDGs had only been in circulation in the international community for little over two years. It is difficult, then, to apply an evaluative or analytical framework to comprehensively document or discuss the way the norm bundle has been the subject of state-level implementation at the present moment. This is predominantly due to the fact that the process of norm implementation does not occur instantaneously, and two years is only a small proportion of the proposed target trajectory of 15 years for the SDGs. Much more productive is a discussion of the structural mechanisms of implementation that caused a discrepancy between the stated goals of the MDGs and the realities of state-level realization of rights in regards to education in the time period roughly from 2000-2015. This is not to disregard the importance or the necessity of the SDGs – but they are, first, too recent to evaluate productively, and second, not very dissimilar from the spirit of the MDGs. Thus, a discussion of the MDGs is more productive in the context of this project.

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[103] Ibid.

[104] United Nations. "The Sustainable Development Agenda." The United Nations, n.d. http://www.un.org/sustainabledevelopment/development-agenda/

Adjusted net enrolment rate* in primary education, 1990, 2000 and 2015 (percentage)

Sub-Saharan Africa: 52, 60, 80

Latin America and the Caribbean: 87, 94, 94

South-Eastern Asia: 93, 93, 94

Caucasus and Central Asia: 95, 95

Southern Asia: 75, 80, 95

Western Asia: 84, 86, 95

Oceania: 69, 95

Eastern Asia: 97, 96, 97

Northern Africa: 80, 90, 99

Developed regions: 96, 97, 96

Developing regions: 80, 83, 91

Legend: 1990, 2000, 2015 projection

* Adjusted net enrolment rate is defined as the number of pupils of the official age for primary education enrolled either in primary or secondary school, expressed as a percentage of the total population in that age group.

Note: 2000 figure for Oceania is not available.
     1990 figure for Caucasus and Central Asia is not available.

Figure 1: UN-Reported enrolment rates in primary education. Graph in "The Millennium Development Goals Report, 2015" via the United Nations (2015). 24.

The primary education directive within the MDGs is the equitable access to universal primary education for all children. This reflects broader trends of increased interest in the value of primary education, away from the 1990s' international interest in postsecondary education. Specially, MDG Target 2.A, the only subsection of MDG2, aims to "ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling."[105] It is not unreasonable to agree with the UN's claim in its 2015 progress report that 'considerable progress has been made' in terms of expanding access to primary

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[105] The United Nations. "The Millennium Development Goals Report, 2015". the United Nations, (2015). http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf. 24.

education. Using ninety-seven percent as the threshold to indicate universal or near-universal access to primary education, the UN claims in 2015 that primary education is now universal or near-universal in in Eastern Asia and Northern Africa, and is "close to being reached in all regions except sub-Saharan Africa," (See Figure 1.)[106] While the data presented in Figure 4 indicate a substantial increase in the number of children enrolled in primary school in Sub-Saharan Africa, the region still does noticeably lag behind others regions. South Africa provides a case study for an analysis of the factors that lead to this discrepancy, although it is important to consider that it is the second largest economy in the region, and therefore offers a perspective that diverges from that of neighboring states.

Through the establishment of the MDGs and the subsequent production of evaluative literature on their effectiveness, the UN has taken the lead in shaping how the rest of the international community proceeds to defend and realize the rights of individuals with regards to education. The following analysis focuses its discussion on the gap in South Africa in regards to structural-ideational and structural-material factors.

The adoption and dissemination of a human rights framework informed by the MDGs is not without criticism. As is often the case with ambitious high-level agreements and frameworks, the translation of most, if not all, human rights frameworks from the international to the local is rife with challenges. MDG 2 and the other provisions that have guided the early 21st-century norm bundle in regards to the right to education are no exception. The UN System Task Team on the post-2015 UN Development Agenda recognized that a significant issue with the MDG agenda was the "lack of clarity on how to tailor global targets to national realities and regional

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[106] Ibid, 25.

dynamics."[107] Meanwhile, Clemens and Moss lamented MDG 2 as unreasonably mandating developing states, particularly in Sub-Saharan Africa, to "now attain in about a decade what rich countries took nearly a century to complete."[108] Because of this lack of clarity and the ambitious expectations in the overall understanding of the norm bundle, it becomes necessary to draw upon the evaluative frameworks of IR and human rights scholars in order to more comprehensively analyze and discuss the way such norms regarding the right to education manifest at the level of a particular state, such as South Africa.

Understanding implementation

Betts and Orchard provide an effective framework for understanding the causal factors behind the implementation of international norms at the domestic/state level. They define implementation as a specific "process" by which norms can manifest, in opposition to mere institutionalization of a norm, or to Sikkink, Risse, and Ropp's commonly discussed norm 'commitment' and norm 'compliance.'[109] Betts and Orchard stress that their evaluative causal framework, as they outline it, gives space to consider the nonlinear and non-static emergence of a norm at the domestic level.[110] Indeed, the multidimensionality of Betts and Orchard's framework offers exciting possibilities for a discussion of the landscape of norm implementation

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[107] UN System Task Team on the post-2015 UN Development Agenda. "Review of the contributions of the MDG Agenda to foster development: lessons for the post-2015 UN Development Agenda", via the United Nations. (March 16, 2012). http://www.un.org/en/development/desa/policy/untaskteam_undf/group_a_mdg_assessment.pdf. 4.

[108] Michael Clemens and Todd Moss. "CGD Brief: What's Wrong with the Millennium Development Goals?" Center for Global Development (September 2005). https://www.cgdev.org/files/3940_file_WWMGD.pdf. 2.

[109] Betts and Orchard, "Introduction", 6.

[110] Ibid, 7.

in a given context, in such a way that provides ample space to consider various facets of the process in comparison to other contexts. In short, this framework allows for scholars to trace "how international norms are then diffused from state capitals through a range of regional and local levels."[111]

Betts and Orchard recognize that the three sets of factors (ideational, material, and institutional) may overlap and blur together; rather than focus on their distinguishing characteristics, the authors encourage a consideration of how these factors may behave in either a convergent or divergent manner at given points in the time frame of norm implementation.

Table 1.1 Implementation's causal factors

Domestic structural influences on norms	Constitutive *changing the norm*	Constraining *channelling the norm*
Ideational	Cultural context (e.g. Acharya 2004)	Legal system (e.g. Simmons 2009)
Material	Actor interests (e.g. Krasner 1999)	State capacity (e.g. VanDeveer and Dabelko 2001)
Institutional	Bureaucratic identity (e.g. Checkel 2005)	Bureaucratic contestation (e.g. Deere 2009)

Figure 2: Causal factors of norm implementation, as outlined by Betts and Orchard. In Implementation and World Politics (Oxford, 2014.) 13.

Furthermore, they explain the two columns of the framework by pointing out that each of the three factors listed on the left can behave in a way that enables or limits each factor's "impact and salience within domestic policy and practice."[112] In other words, this structure recognizes that the same factor or mechanism may impart a different set of outcomes on the process of norm implementation, dependent on the domestic and situational context in which it lies.

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[111] Ibid, 12.

[112] Ibid, 13.

The following sections will consider domestic structural influences on the contemporary norm bundle regarding the right to primary education, applied to the case study of South Africa. Each section will give space to reflect on both the constitutive (norm-changing) and constraining (norm-channeling) impacts of domestic structures on norm implementation. One chapter is devoted to a discussion of ideational factors, and another chapter discusses material and institutional factors.

While this paper focuses primarily on structural factors, Betts and Orchard's framework also includes a substantive discussion of agentic factors in the context of implementation. They note that "designated experts' play a critical role in translating international norms into implementable policies at the domestic level... [and so does the] environment agents operate in."[113] I do not intend to suggest that these agentic factors are not essential to an understanding of norm implementation; however, the inclusion of such considerations is beyond the scope of this work.

The following subsection sets the stage for a discussion of the structural factors affecting implementation by offering a snapshot of the current state of education in South Africa, as it is currently being evaluated in the context of the MDGs.

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[113] Ibid, 14.

Current Evaluations of MDG Progress

The final report by the South African government on the status of MDG progress was released in 2015. The progress of South Africa in regards to achieving the goals outlined in MDG Target 2.A is less than complete. While the government reports the achievement of universal primary education at 99.3 percent in 2013 and gender parity within that context, only 76% percent of learners passed the National Senior Certificate (taken at the end of secondary schooling) in the same year.[114] The link between primary education and the NSC is important to consider because of the high dropout rates in the country, as reported by Equal Education.[115] The fact that primary schools do not prepare students with the skills they need to continue with their education to grade 12 is one of the ways that the challenges the country is facing in primary education can have long-lasting impacts on individuals and on society more broadly.

The South African government also includes in its MDG evaluation report a number of factors that are not specific provisions of an MDG-informed policy agenda, but which nonetheless add valued context to the current state of education in South Africa. For example, the drastic increase in the number of schools with electricity at 95 percent in 2015, up from just 54.9 percent in 2000, is noteworthy.[116]

Perhaps the most pressing concern within the evaluation of MDG 2 at the national level in South Africa is the noticeable lack of substantive discussions regarding the highly stratified population of the country across several axes of identity. While oblique references are made to

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[114] Republic of South Africa. "Millenium Development Goals: Country Report 2015." via Statistics South Africa. http://www.statssa.gov.za/MDG/MDG_Country%20Report_Final30Sep2015.pdf, xxii.

[115] BusinessTech Staff Writer. "Matric pass rate obsession".

[116] Republic of South Africa. "Millenium Development Goals", xxii.

post-apartheid South Africa's 'poor educational infrastructure' and a 'pro-poor education budget,' little is said in the 2015 report about the lasting impacts of racial segregation on educational outcomes – a critical oversight that glosses over an essential component of education reform in the country.

However, a sparse collection of data on school enrollment by race in South Africa is available, as produced by individual publications and individual researchers. Fleisch, Shindler, and Perry report the following data from 2007, which clearly indicates a disparity between school enrollment by race:

Figure 3: Percent enrolment by sex and race, ages 7-15, 2007. in "Who is out of school? Evidence from the Community Survey 2007, South Africa." B. Fleisch et al., International Journal of Education Development (2010, Elsevier). 5.

Table 7
Percentage enrolment by sex and race, 2007.

Sex	Race	Attend	Not attend
Male	Black	95.5	4.5
	Coloured	93.2	6.8
	Indian/Asian	98.8	1.2
	White	98.8	1.2
Female	Black	95.7	4.3
	Coloured	94.3	5.7
	Indian/Asian	98.4	1.6
	White	98.9	1.1

Note: All the statistics are statistically significant at 0.001 level.

It is of serious concern that such particulate, non-longitudinal data is the only data that exists on educational outcomes by race in South Africa. However, this snapshot makes it clear that access to schools is still very much so impacted by racial and gender identity in 21st century South Africa.

Other research supports long-term impacts of these inequities through the post-apartheid era. For example, econometric analysis by Keswell indicates that "The translation of educational opportunities into labour market gains has diverged for Africans and Whites over the last

decade" in South Africa.[117] In particular, he explains that explicit racial biases in employment opportunity have lessened, but the determination of the value of educational attainment in the labor market (which is currently directly impacted by the legacy of apartheid-era policy) is now predominant.[118] Thus, the labor market in South Africa increasingly behaves in a 'color-blind' manner that reinforces inequalities based on the country's still quasi-segregated educational system.

Furthermore, current data clearly indicates the sharply divergent experiences of primary schooling in South Africa based on race, despite the end of official apartheid policies. Yamauchi uses learner-education ratios as a measure of educational quality to illustrate "findings [that] clearly confirm our prior perception that formerly Black schools, at both primary and secondary levels, have not improved relative to formerly White schools, even under the post-apartheid government."[119] While South African schools are no longer officially segregated, many students still live in monoracial communities and attend monoracial schools because of failures on the government's behalf to address the challenges experienced in daily life by minority South Africans. Zungu explains that in practice, "Allowing people of colour into [a] school doesn't

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[117] Malcolm Keswell. "Education and Racial Inequality in Post Apartheid South Africa." in the *Persistent Inequalities* research initiative, Santa Fe Institute. https://www.ekon.sun.ac.za/mkeswell/education_and_racewd.pdf. 16.

[118] Ibid.

[119] Futoshi Yamauchi. "Race, Equity, and Public Schools in Post-Apartheid South Africa: Is Opportunity Equal for all Kids?" FCND Discussion Paper No. 182. Food Consumption and Nutrition Division, International Food Policy Research Institute. https://ageconsearch.umn.edu/bitstream/60309/2/fcndp182.pdf. 25.

mean it isn't still segregated… [that's] like Burger King opening up their restaurants to vegans but still only selling Whoppers."[120]

The following chapters will highlight some of the structural factors that inform these disparities between South Africa's actual progress in implementing the targets set forth by the MDGs for 2015.

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[120] Will-Ed Zungu. "Our Schools Are The Breeding Ground Of Racism In South Africa." *HuffPost.za, The Blog.* January 31, 2017. http://www.huffingtonpost.co.za/will-zungu/our-schools-are-the-breeding-ground-of-racism-in-south-africa_a_21702956/

CHAPTER FOUR. Ideational Factors

Betts and Orchard explain that the realm of the ideational "emphasizes the role of ideas

and culture in constituting international norms at the domestic level… [alongside] domestic

epistemic communities… [and] the domestic legal system."[121] Ideational domestic structures are

those structures that detail the translation of the abstract into daily life, whether that be through

legal documents or communally understood ideas about what is and what ought to be, in addition

to the cultural practices and traditions of a place that inform the way rights are realized. In South

Africa, divisions in education policy and the experiences of schoolchildren based on locality,

race, and gender are embedded in the mutually reinforcing ideational realms of cultural practice

and legal precedent that can explain the failure to achieve an equitable system of universal

primary education in the MDG-informed period from 2000-2015.

Progressing towards equitable access to education has been stifled in South Africa

because of the cultural and legal provisions that allow for the practices of segregation to

continue, evidenced by continued divisions in housing, school finance and infrastructure, and

migration.

The failure to restructure mono-racial residential developments and/or regions across

South Africa has enabled a culture of racial segregation to continue and allowed the oppressive

effects of the Group Areas Act and the Bantu Education Act to linger in the post-apartheid era,

which directly impacts quality and access to schooling. As discussed previously, the Bantu

Education Act of 1953 resulted in the "creation of a separate and unequal system of Black

education" and the precedent to establish subsequent additional race-based, parallel yet unequal

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[121] Betts and Orchard, "Introduction", 13-15.

systems of education in South Africa.[122] The Bantu Education Act supplemented the far-reaching provisions of the apartheid-era Group Areas Act, which relegated specific neighborhoods approved for the inhabitation of a single race, and was retroactively applied across the country.[123] This law resulted in the eventual white ownership of 87 percent of South African land in the 1990s as reported by Walker and Dubb in 2013.[124]

Despite the repeal of both laws and despite marginal gains in the redistribution of land (an increase in Black-owned land of 7.95 million hectares or roughly 7.5 percent of previously white-owned land from the 90s to 2013), Lehola and Shabalala observe that the Group Areas Act's "residuals still dictate where people end up staying, and ultimately dictate the economic well-being of individuals based on where they stay." [125] Their conclusions ring true for South African schoolchildren: Fiske and Ladd report that a national study indicated in 1997 that "96 percent of African learners were still in 'mainly African schools' in which close to 100 percent of the students were African."[126] As time went on, the subsequent distribution and re-distribution of South African schoolchildren based on race in the post-apartheid era has been strikingly one-

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[122] David Wiley. "Bantu Education". At *Overcoming Apartheid*, via Michigan State University. N.d. http://overcomingapartheid.msu.edu/sidebar.php?id=65-258-2

[123] South African History Online. "Group Areas Act of 1950". South African History Online, 2017. http://www.sahistory.org.za/article/group-areas-act-1950

[124] Cherryl Walker, with Alex Dubb. Fact Check 1: The Distribution of Land in South Africa: An Overview". PLAAS - Institute for Poverty, Land and Agrarian Studies, (2013). http://www.plaas.org.za/plaas-publication/FC01

[125] Ibid, and Pali Lehohla and Nozipho Shabalala. "Inequality in South Africa." *Development* 57(3–4): Local/Global Encounters (2014.) https://link.springer.com/content/pdf/10.1057/dev.2015.33.pdf. 508.

[126] Edward B. Fiske and Helen F. Ladd. "Racial Equality in Education: How Far Has South Africa Come?" Working Papers Series, SAN05-03. Duke Univ., Durham, NC. Terry Sanford Inst. of Public Policy, via Institute of Education Sciences. https://files.eric.ed.gov/fulltext/ED493386.pdf. 10.

sided: while minority students now make up a greater proportion of the student body at formerly predominantly white institutions, the converse (more white students at historically minority schools) is failing to occur, which can largely be explained by the 'flight' of white students to independent schools. Chisholm and Sujee report, "The flight of students from former black schools (but) no parallel movement whatsoever of children classified coloured, white and Indian into former black schools;" suggesting that the impacts of these apartheid laws on individual schools have not been resolved, and the most effective solution for families to overcome educational inequities appear to be simply to move their children to a historically more privileged school.[127] Chisholm and Sujee's data also support the findings of Yamauchi in regards to racially-variant school performance, as discussed earlier. The impact of these legal structures on the landscape of South African education continues through the present.[128]

The failure to resolve the divergent enrollment in schools in South Africa is a result of the failure of post-apartheid legislation to include adequate provisions for the redress of the damages caused by the Group Areas Act and the Bantu Education Act. The South African government's formation of education policy directives at the end of apartheid was, as discussed in prior sections, guided by the provisions of the 1995 White Paper on Education, the 1996 Constitution, and the framework of education policy published by the African National Congress (ANC.) The guidelines, recommendations, and frameworks recommended in these three preliminary documents were codified in both the 1996 National Education Policy Act (NEPA), which

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[127] Linda Chisholm and Mohammad Sujee. "Tracking racial desegregation in South African schools". [SA] Journal of Education, No. 40. (2006) http://www.purpletod.co.za/docs/Racial%20segregation%20in%20SA%20schools.pdf. 154.

[128] Robyn Dixon. "Education experts lament South Africa test results". *Los Angeles Times,* (January 04, 2013). http://articles.latimes.com/2013/jan/04/world/la-fg-south-africa-schools-20130104

establishes the national framework of education management and adjacent supplementary

consulting groups, including the responsibilities of the Minister of Education and the the Council

of Education Ministers (CEM) and the Heads of Education Departments Committee

(HEDCOM); and the 1996 South African Schools Act (SASA), which Oosthuizen and

Beckmann describe "as providing for a uniform system for the organisation, governance and

funding of schools… reduces the number of school types to two (public and independent schools

(to replace the various race-based systems of apartheid)… [and] provides for democratic

governance of schools," as well as establishing the legitimacy of school fees for all parents who

are able to pay them.[129] SASA was amended in 2005 by the the Education Laws Amendment

Act, which established "no-fee schools" in low income communities which did not charge any

fees to families of schoolchildren.[130]

While many of these pieces of legislation and administrative guidance suggest a

commitment to equality and the recognition of human rights, they generally fail to explicitly

identify racial segregation as a historical wrong in the country and also fail to explicitly outline

civil rights protections against future racial inequities. While the 1996 Constitution states that

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[129] South Africa Department of Education. "Education in South Africa: Achievements since 1994" South Africa Department of Education (May 2001). http://www.dhet.gov.za/Reports%20Doc%20Library/Education%20in%20South%20Africa%20 Achievements%20since%201994.pdf. 8.

The South African Consulate in New York City. "Education", in *South Africa Yearbook 2015/16*. http://www.southafrica-newyork.net/consulate/Yearbook_2016/Education-SAYB1516.pdf. 134.

Izak J. Oosthuizen and Johann L. Beckmann. "A History of Educational Law in South Africa: An Introductory Treatment". *Australia & New Zealand Journal of Law & Education* (Vol 3, No 2, 1998.) http://www.anzela.edu.au/assets/anzjle_3.2_-_5_izak_j_oosthuizen__johann_l_beckmann.pdf. 70.

[130] The South African Consulate in New York City. "Education", 135.

South Africa is founded on "non-racialism" and recognizes a "historically diminished use and status of indigenous languages," it does not require the redress of racially-based human rights violations to be reported in the constitutionally mandated yearly production of information regarding the realization of a broad swath of rights, as overseen by the South African Human Rights Commission.[131]

The array of legislation discussed above establishes the Department of Basic Education (DBE) as the state apparatus which manages primary and secondary education in South Africa. It currently manages approximately twenty-six thousand schools and over four hundred thousand educators across nine provinces and eighty-six districts.[132] It formally recognizes the existence of an additional sixteen hundred independent schools, although alternative estimates suggest that the number of independent schools operating in the country may be as high as thirty-five hundred.[133] While the Ministry of Education published legally binding Norms and Standards for School Infrastructure in 2013 that outline the legal necessity of running water and electricity among other provisions, the DBE continues to fail to explicitly recognize the structural problems of de-facto segregation that continue to impact multiple facets of the daily life of South African schoolchildren, most importantly in education.[134] This failure of the DBE, alongside the failure of national legislation to accurately recognize and create structures to redress the wrongs of

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[131] South Africa Department of Justice. "Chapter 9: State Institutions supporting Constitutional Democracy" in *The Constitution of the Republic of South Africa*, (1996). http://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf. 93.

[132] Wilson Macha and Aditi Kadakia. "Education in South Africa". at World Education News & Reviews, (May 2, 2017). https://wenr.wes.org/2017/05/education-south-africa

[133] Ibid.

[134] Equal Education South Africa. "School Infrastructure". Equal Education South Africa. N.d. https://equaleducation.org.za/campaigns/school-infrastructure/

apartheid through a failure to explicitly outline provisions for progress in racial equity, has

allowed a culture of normalizing the continued presence of segregation to proliferate.

Indeed, sociological accounts point to a continuation of inequality of outcomes in

education as perceived in the daily lives of South Africans at the micro and macro level.

Huschka and Mau note that despite the fact that "ambitious plans have been made to provide

people with a 'better life' (in post-apartheid South Africa,) this has only partly been achieved and

there are still significant racial divisions in the quality of life… [such as in] jobs, health

opportunities, and education."[135] They examine the levels of social anomie, a term related to

associations of "a loss of general social orientation, the development of feelings of insecurity and

marginalization, uncontrolled rising expectations," and a series of related factors including the

destabilization of normative structures in regards to different racial groups in post-apartheid

South Africa.[136] They report high levels of variation in scores of anomie across racial groups,

with Black South Africans scoring the highest out of any group.[137] These feelings of

marginalization and social destabilization are linked to different ethnic groups' divergent

abilities to access universal quality education. Huschka and Mau explain that "[education] has a

clear influence… the higher level of education, the less likely one is to report strong anomic

feelings," and they subsequently suggest that "Whites still enjoy a privileged life in material

terms, but also in terms of access to education," making it clear that the research suggests a

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[135] Denis Huschka and Steffen Mau. "Social Anomie and Racial Segregation in South Africa". *Social Indicators Research*, via Springer. (May 2006, Volume 76, Issue 3.) https://link.springer.com/article/10.1007/s11205-005-2903-x. 473.

[136] Ibid, 468.

[137] Ibid, 481.

continual systemic failure to equitably educate all South Africans in terms of race or ethnicity.[138] What is particularly compelling about this case study is that the text clearly links these feelings and inequities to a lack of norm stability and/or clarity – the authors attribute an "overall absence or weakness of normative regulation" as a potential cause for these findings.[139] This project engages with the fact that an "implementation gap", as Betts and Orchard would describe it, may still exist in South Africa at the conclusion of the MDG framework timeline in 2015 because of a failure of the structural forces in South Africa to fully allow for the realization of the right to education.

Sociological research shows that the day-to-day experiences of South Africans are often de-facto segregated. Education is one of these spheres in which predominant cultural norms regarding racial interaction play out. Muyeba and Seekings argue that "hopes for desegregation have given way to disillusionment and skepticism," observing that most South Africans still live in "mono racial neighborhoods and their children attend mono-racial schools."[140] They note that despite the legal elimination of apartheid-era practices, socially constructed segregation often occurs in public space.[141] However, the findings of this study of mixed-race neighborhoods in the urban space of Cape Town suggest a horizon of greater racial-spatial heterogeneity, particularly within the context of young people. One respondent explained that, "The most togetherness of races is all about kids, they don't see it as we see it as big people… It's kids who can make a

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[138] Ibid, 486-493.

[139] Ibid, 493.

[140] Singumbe Muyeba and Jeremy Seekings, "Race, attitudes, and behavior in racially-mixed, low-income neighbourhoods in Cape Town, South Africa". in *Current Sociology*, via SAGEjournals (August 30, 2011.) http://journals.sagepub.com/doi/abs/10.1177/0011392111408679. 595.

[141] Ibid, 595.

difference," suggesting that South Africans see a future of multiculturalism and place a hope for social change in younger generations, regardless of the current economic and political realities that indicate there is still unequal access to schooling and greater inequality more broadly in South Africa today.[142] These findings suggest a paradoxical level of optimism in the younger generation in the post-apartheid era, despite continued subpar conditions in many South African schools. While the cultural practices of the current moment seem to re-create a lack of equitable access, the potential for future social change might be present.

On a separate note, research indicates that a culture supportive of human rights values espoused in schools in South Africa fails to translate into the community and into the home, causing a disconnect between the different spheres of a school-age child's life. Du Preez and Roux found that one South African teacher-respondent explained in their research interviews that in the current South African system, "There is no link between the school, community and home... the school introduce something, the community do it totally different and the same happens at home, and this is where the problem [of implementation] lies."[143] Their research specifically examines corporal punishment in schools – a practice which UNICEF has condemned as a violation against the rights of children in documents such as the 2006 United Nations Secretary-General's Study on Violence Against Children. While the scope of their research is limited, it can be argued that their findings with regards to the general cultural disconnect between school and home to be significant. Because a substantial amount of all learning takes place outside the classroom, the failure of the translation of human rights-

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[142] Ibid, 662.

[143] Petro du Preez and Cornelia Roux. "Human rights values or cultural values? Pursuing values to maintain positive discipline in multicultural schools". *South African Journal of Education*, (Vol.30, 2010). sajournalofeducation.co.za/index.php/saje/article/download/313/190. 20.

informed curricula into the community or the home point to another structural deficit in access to quality primary schooling in South Africa as idealized in MDG Target 2.A.

Both the legal and cultural apparatuses of contemporary South Africa continue to allow for the perpetuation of inequality in access to quality primary education. The legal framework constructed at the end of apartheid failed to adequately address the specific causes of inequality by implementing a series of color-blind education policies. These policies, while ambitious and containing the language of a human rights framework, failed to change the cultural practices of everyday South Africans to the point where they could begin to deconstruct the internalized legacies of segregation. Thus, the legal and cultural frameworks of education policy in South Africa need to be reassessed in order to move towards the goals set forth by MDG Target 2.A and beyond in SDG 4.

CHAPTER FIVE. Material and Institutional Factors

Betts and Orchard identify the material structures that impact implementation as those factors that might move the process of implementation forward based on available resources and interests, and the motivations behind particular choices made by actors at the domestic level in that regard.[144] In particular, they identify capacity in a number of contexts as a critical point of material analyses of implementation. Specifically, they note that capacity "can reflect such issues as economic strength… but also the broader institutional structure of the state and its (in)capacity to deal with corruption or other forms of rent-seeking behavior."[145] It is most effective to also consider institutional factors influencing implementation at this point, because of the deeply interconnected nature of material realities and institutional mechanisms in South Africa. These material and institutional factors are essential to a discussion of the evaluation of South Africa's implementation of the norm bundle guided by MDG 2 and subsequently SDG 4, particularly because inequality is often predicated upon discussions of the economy, as it relates to education policy.

The decisions of the South African government and other actors in politics and economics in the post-apartheid era have directly impacted the county's ability to address issues of equitable access to primary education as defined by MDG 2. The implementation of neoliberal macroeconomic reforms in the transition to post-apartheid governance indicated a shift in priorities away from direct resource allocation to social programs including education, as

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[144] Betts and Orchard, "Introduction". 16.

[145] Ibid.

Southall suggests. [146] Furthermore, while the continued emphasis on a "pro-poor education" agenda is admirable and much needed at the level of national policy, the corruption at the national and local levels plaguing the African National Congress as it continues to hold onto power decades after the end of apartheid and at the local level in relation to inconsistent housing development policies and neo-patrimonialism are both at fault for the lingering of quasi-segregative realities for many South African schoolchildren. These factors, among others, will be addressed at length in this chapter. All of these material factors help explain the deficits in access to primary education in South Africa today.

As discussed earlier, South Africa's primary school enrollment rate across racial groups has reached near-universal levels, despite continued marginal divergence in historically underrepresented groups. At face value, the levels of primary school enrolment appear to be on-track to become compliant with the stated goals of MDG Target 2.A. However, an analysis of the material factors at play in South African primary schools suggest a sustained discrepancy in the facilities, materials, and teacher quality between schools serving predominantly white learners and schools serving predominantly nonwhite learners. In fact, the following discussion will illustrate that it is difficult to claim that non-white primary school children in South Africa are obtaining much of an education at all, despite being in school. The distinction that must be made in order to understand how enrollment in primary school does not translate into the ability to complete a course of primary education, as mandated by MDG Target 2.A, is the distinction between education and schooling. The practice of going to a school and sitting in a classroom with a teacher is not synonymous with education, and this is especially true for non-white

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[146] Roger Southall. "From liberation movement to party machine? The ANC in South Africa". *Journal of Contemporary African Studies*, via Taylor and Francis. (32:3, 2014.) http://www.tandfonline.com/doi/abs/10.1080/02589001.2014.956500. 334.

learners in much of South Africa. Arendse concurs, stating that *"genuine* access is not guaranteed by simply making basic education compulsory... [s]uch a view is short-sighted."[147] The following section will argue that the divergence in access to essential quality educational resources in predominantly non-white schools in South Africa has indeed been successful in sending children to school buildings, but that this is and must be differentiated from the ability for all South African schoolchildren to receive an education that will make any sort of meaningful impact in their ability to achieve social mobility or, more ideally, equity. These structural failings can be explained by a discussion of the South African government's capacity, or lack thereof, to provide pathways for the implementation of an equitable primary education system as mandated by MDG Target 2.A in the wake of rapid political-economic change and additionally, a discussion of the interests of various state and non-state actors during the same period.

The most significant series of unequal material structures at play in access to primary education are again based in the policies of the apartheid regime. The provisions of the the Group Areas Act relegated a large percentage of nonwhite South Africans to a cluster of land areas referred to as "homelands," subpar and unreasonably small tracts of land on which White South Africans were not legally permitted to settle. This legislation was the cause of extreme inequality of land distribution: by the time the apartheid regime ended in 1994, nearly ninety percent of the land in South Africa was controlled by the white minority.[148] Urban areas were

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[147] Lorette Arendse. "The School Funding System and Its Discriminatory Impact". in *Law, Democracy, and Development,* Volume 15 (2011). via ResearchGate. https://www.researchgate.net/publication/272460089_The_school_funding_system_and_its_disc riminatory_impact_on_marginalised_learners. 346.

[148] POV. "Q&A: Land Reform in South Africa". American Documentary, Inc. via WHYY (PBS). (2010). http://www.pbs.org/pov/promisedland/land-reform-in-south-africa/

dominated by wealthy white South Africans, supplied with cheap labor from specifically relegated nearby communities of nonwhite workers referred to as 'townships.'[149] In short, under apartheid, the entire country's financial and residential systems were orchestrated to produce and preserve inequality between different racial groups in South Africa. Figure 4 depicts a protypical layout of an ideal apartheid-era city, a testament to the intent and meticulousity of the efforts to preserve the superior status of white South Africans. The primary goal of these policies were to keep profits and income in the hands of the few. This process is illustrated by the funding of school systems in many respects.
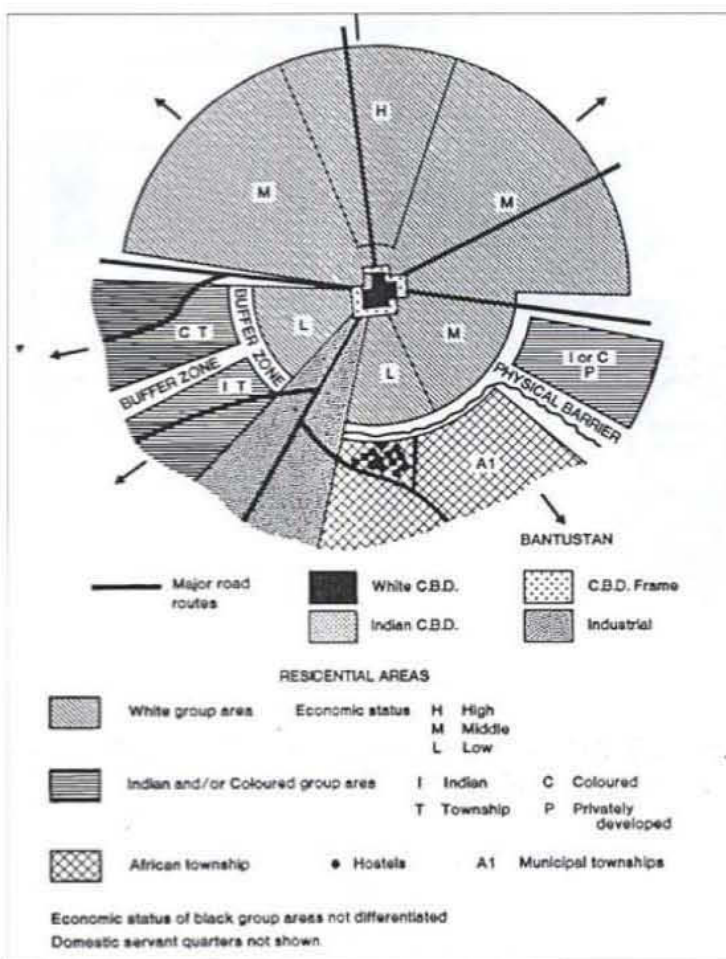

Figure 4: A prototypical model for an apartheid-era city, with specific zones for different communities based on race. David Kay, via the Guardian: "Apartheid ended 20 years ago, so why is Cape Town still 'a paradise for the few'?" by Oliver Wainwright, 2014.

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[149] Andrew Reschovsky. "Financing Schools in the New South Africa". *Comparative Education Review* (Vol. 50, No. 1, February 2006). Via JSTOR, University Chicago Press. www.jstor.org/stable/10.1086/498327. 22.

Reschovsky notes that, "It was essential that the [apartheid] government operate a highly centralized system of public finance… funding for public education came primarily from the central government."[150]

The post-apartheid government did not inherit a blank slate of a nation when the ANC took power in 1994. Rather, it inherited many of the structures and historical legacies of a nation tarnished by systemic and deliberate racial inequality. It also inherited a substantial budget deficit, which had reached 7.5 percent of GDP in 1992.[151] This deficit is related to the fact that the economy had been severely impacted by international sanctions, capital flight, and other macroeconomic downturns in the later days of the apartheid period. In light of this, the ANC's calls for drastic social change were sidelined in the face of the supposedly economically rational fiscal necessities and the realities of governance. Because education reform was championed by the ANC as one of several key areas of social policy that needed redressing in its 1994 Reconstruction and Development Programme (RDP), and not framed as an explicitly economic or fiscal concern, the urgency of allocating resources or building capacity for the transforming of schooling was minimized in the years immediately after the 1994 elections. As mentioned previously, ambitious legislation was passed during this same time period in the context of education, and the **ideational** significance of this legislation should not be dismissed. However, the capacity of the state to provide resources towards the achievement of the aims outlined in post-apartheid education legislation was hindered by the implementation of neoliberal

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[150] Ibid.

[151] Mark Horton. "Chapter 6: Role of Fiscal Policy in Stabilization and Poverty Alleviation". In *Post-Apartheid South Africa: the First Ten Years,* Eds. Michael Nowak and Luca Antonio Ricci. International Monetary Fund, (January 12, 2006). https://www.imf.org/external/pubs/nft/2006/soafrica/eng/pasoafr/sach6.pdf. 79.

macroeconomic reforms that reduced the available budget for social programs in favor of economic stimulation.

The economic reforms implemented by the government in the immediate post-apartheid period were directly informed by international interests, particularly multinational corporations and the IMF. A credit arrangement was agreed to with the IMF in December 1993 to help mitigate the effects of economic stressors, on the condition that the national deficit be reduced by 2 percentage points of GDP over two years. The South African government's interest in reducing the national deficit was motivated by the need to 'establish credibility', or in other words, attract foreign investment, as Horton explains. [152] Over the next several years, the ANC-majority government reaffirmed its commitment to these types of neoliberal reforms and moved away from many of the promises it made during the 1994 elections for drastically more radical policies, including the nationalization of some industries and substantial redistribution of wealth from the white minority to the nonwhite majority.[153] The ANC also stepped back from its promises of radical social change in sectors including education during this period as it devoted more and more energy to re-invigorating the economy. Harsch points out the following:

> A year after its election, and under pressure from both domestic business and the World Bank and the [IMF], the ANC came to accept pritivitzation in principle and dropped talk of regulating foreign investment. The government gradually eliminated measures to protect the currency and implemented some facets of trade liberalization even faster than required by its commitments to the World Trade Organization.[154]

The structure of macroeconomic reforms that took place in South Africa in the immediate post-apartheid period is in line with the "Washington Consensus," a series of hypothetical policy

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[152] Ibid.

[153] Ernest Harsch. "South Africa tackles social inequities." In *Africa Recovery*, (January 2001). Via the United Nations. www.un.org/en/africarenewal/subjindx/subpdfs/144soafr.pdf. 13.

[154] Ibid.

recommendations jointly supported by the International Monetary Fund (IMF), World Bank, and U.S. Department of the Treasury in a number of development contexts during the late 20th century.[155] However, most development scholars now recognize that this group of neoliberal reforms were both theoretically unstable and frequently counter-productive to stable and healthy state development. Stiglitz explains that "[Washington consensus reforms were] a failure in understanding economic structures within developing countries, in focusing on too narrow a set of objectives, and on too limited a set of instruments… [and did not concede that] there are important externalities in such dynamic processes, giving rise to an important role for government."[156] Indeed, Washington Consensus-style reforms are primarily focused on economic advancement, and assume that factors such as social inequity are irrelevant to a state focused on increasing its GDP and optimizing its economy. The South African government's acquiescence to these beliefs was the crucial decision that has led to the inability of its government to adequately address the problems related to access to adequate primary education in the early 21st century.

Given the political-economic moment at the dawn of a post-apartheid South Africa, it is doubtful that South African government officials were mal-intended in their adoption of neoliberal policy reforms in exchange for foreign capital; in many ways, these reforms may have felt like the only option to stabilize the country and preserve its future. Southall explains that the administration of the second post-apartheid President, Thabo Mbeki, "May have opted for [neoliberal] capitalism hoping it would provide sufficient surplus to allow the government to

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[155] Stephan R. Hurt. "Washington Consensus". Encyclopædia Britannica. 2017. https://www.britannica.com/topic/Washington-consensus

[156] J. E. Stiglitz. "The Post Washington Consensus Consensus". Via University of Oregon Department of International Studies. N.d., but post-2004. http://intldept.uoregon.edu/wp-content/uploads/2015/03/Yarris-Joya-5.1.15-Brown-Bag-Article.pdf. 2.

pursue social policies capable of alleviating social inequality and injustice."[157] However, the reality of compliance with such reform agendas is simply not a reality that allows for such an idealized future. Southall points out that "South Africa provides the most disappointing of [sic] case of 'false of decolonisation'… involving the new elites selling-out the revolution" through their decision to implement Washington-backed reforms.[158]

The financial reforms of the 1990s contributed to a marked improvement in South Africa's GDP in the early 2000s, as indicated by World Bank reports – however, the decision to prioritize GDP growth limited the country's ability to allocate resources to social programming, including education.[159] In addition, the use of GDP as the primary measure of economic success of a given economy should be called into question. In particular, economic gains need to be considered in the context of the growth's distribution within an economy, which mainstream economics dismisses, arguing that questions of distribution are beyond the scope of the discipline.

But inequality is a necessary consideration when looking at the material landscape of modern South Africa, because the legacy of neoliberal economic reform has less frequently produced growth across the communities that make up the country and much more frequently simply **altered the nature of inequality** by shifting much of the inequality from across racial groups to within racial groups, if there is any change in the landscape of inequality within a given community at all. South Africa's 2013 score on the Gini index, which "measures the degree of inequality in the distribution of family income in a country," is 62.5, is still second

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[157] Southall, "From liberation movement to party machine?" 334.

[158] Ibid.

[159] Trading Economics. "South Africa GDP". TradingEconomics.com, 2017. https://tradingeconomics.com/south-africa/gdp

only behind Lesotho, according to the CIA World Factbook, despite decades of attempted reforms.[160] Additionally, there are data that speak to the increasingly intra-racial nature of South African inequality: the World Institute for Development Economics Research reported in 2000 that, "The share in black household income of the poorest 40 per cent of black households decreased from 12 per cent to 6 per cent, while that of the richest 10 per cent increased from 32 per cent to 47 per cent."[161]

The changing nature of the South African economy and the perpetuation of inequality through the adoption of neoliberal financial reforms is directly linked to the South African government's ability to address inequality in access to primary education. The Washington-backed reforms did not produce the surpluses needed to adequately fund the necessary educational policy initiatives needed to make significant progress toward educational equity. But beyond a simple lack of budgetary resources, the South African government failed to effectively distribute the resources that it did have at its disposal to the neediest schools, instead opting for lukewarm equity provisions and a reliance on privatization within the education sector that preserved much of the system's structural inequalities in parallel to broader governmental policy.

Based on the structures established within post-apartheid education legislation, government officials have attempted to address educational inequities primarily through more effective and equitable distribution of funding and resources. As of 2004, South Africa spends between twenty-one and twenty-four percent of its total public budget on education, which,

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[160] Central Intelligence Agency. "COUNTRY COMPARISON: DISTRIBUTION OF FAMILY INCOME - GINI INDEX". (n.d.) https://www.cia.gov/library/publications/the-world-factbook/rankorder/2172rank.html

[161] Carolyn Jenkins and Lynne Thomas. "The Changing Nature of Inequality in South Africa". *Working Papers No. 203*, via World Institute for Development Economics Research, by the United Nations University. https://www.wider.unu.edu/sites/default/files/wp203.pdf. 3.

according to Seekings, puts "South Africa in the very top rank of international spenders on education... [yet] pupil achievement in South Africa is greatly inferior to other countries."[162]

The post-apartheid educational administration, guided by the principles of the constitution, has established a practice of cooperative government between the national and nine provincial governments. Reschovsky notes that, "This perhaps uniquely South African system of federalism means that while the national government provides most of provincial government revenues through an unconditional grant, provincial governments must utilize their fiscal resources in ways that are consistent with a set of national norms and standards."[163] The use of the word norms here is most likely in reference to the nascent Norms and Standards on Infrastructure (NSI), published in 2009 that provide a meticulously specific level of guidance for the provisions and infrastructure of prototypical schools in South Africa, based exclusively on the size of the school. It contains specifications for optimum dimensions of learning spaces, the "space denoting the square meters each child will occupy within different types of teaching space," and differentiated lux levels for ideal lighting in a classroom versus an art room.[164] The NSI does not align with the definition of norm as it is currently being used in this text; rather, this public document establishes the South African national government as the arbiter of what is necessarily an adequate or inadequate school. The specificity of the document distracts from the

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[162] Jeremy Seekings. "Trade Unions, Social Policy & Class Compromise in Post-Apartheid South Africa". *Review of African Political Economy* (Vol. 31, No. 100, June 2004). Via Taylor & Francis. www.jstor.org/stable/4006893. 302.

[163] Reschovsky, "Financing Schools in the New South Africa". 26.

[164] Angelina Matsie Motshekga. "Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure". Via Equal Education South Africa, (November 26, 2016). https://www.equaleducation.org.za/wp-content/uploads/content/2015/02/12/RegsMinimumNormsandStandardsforSchoolInfrastructure.pdf. 26.

fact that it suggests every school of a given size in South Africa needs exactly the same bare minimum of materials and resources, a suggestion that is unreasonable at best and potentially damaging to the student experience at worst.

The standards set forth in the NSI are reflective of an idealized system of education in South Africa. The portrait of the reality of infrastructure in schools is much more limited, much more closely tied to locality, and often times fails to provide the basics necessary to receive even the most rudimentary levels of educational achievement. The National Infrastructure Management Systems Report of 2009, released in the same year as the NSI, reported that over two thousand public ordinary schools had no water supply and only ten percent of public ordinary schools had stocked computer centers.[165] The publication of such an ambitious and out-of-touch-with-reality set of standards for school structure during the same year such statistics were published can be explained by the continued limitations on the country's capacity to provide funding for such infrastructure, even as it continues to set increasingly ambitious goals for the effects of education on young South Africans.

The process by which national funding is allocated to schools is decided by the national government through a complex funding algorithm. The constitution establishes the provisions for an "intergovernmental system, known as the 'equitable share,' which calls for distribution of a portion of nationally raised revenues to provinces and local governments."[166] Parliament is responsible for approving equitable share allocations for each province annually, and a portion of each equitable share is set aside for education in the province according to the following formula:

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[165] National Education Infrastructure Management Systems Report of 2009, as quoted in Arendse, "The School Funding System and Its Discriminatory Impact". 347.

[166] Reschovsky, "Financing Schools in the New South Africa". 26.

$$E_i = \left[\frac{S_i + 2P_i}{\sum_1^9 (S_i + 2P_i)} \right] A_{\text{Educ}},$$

where, as Reschovsky explains, "E_i = education component of the equitable share allocation to province i, S_i = primary and secondary school enrollment in province i, P_i = population between the ages of 5 and 17 in province i, and A_{Educ} is the total education component of the provincial equitable share."[167] It is important to note that this allocation formula does not take into account the proportion of historically disadvantaged students and/or schools in a given province, who necessarily require more resources to achieve a level of equity with historically privileged schools. While "the richer provinces still [have] higher levels of spending per pupil than poorer provinces, the differences in spending levels have been dramatically reduced" as South Africa progresses further away from the year apartheid fell. The fact that richer provinces are still able to spend more per pupil when the inverse would promote greater educational equity is most definitely contributing to South Africa's inability to fully and comprehensively meet the level of educational effectiveness for all primary school learners such that it can be considered remotely on-target with the goals of MDG 2.[168] Additionally, the current funding model leaves the proportions of allocations to Parliament to reassess every year, which may or may not be beneficial to student outcomes. While the resources allocated according to this formula are not specifically mandated to be spent towards any particular expenditure in a province, these allocations are very quickly partitioned to specific needs, or, as Mestry and Berry identify, are

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[167] Ibid, 27.

[168] Ibid.

quickly "ring fenced."[169]

Currently, approximately ninety percent of all educational expenditures are on teacher salaries,[170] in large part due to the collective bargaining strategies of teachers' unions, potentially at the expense of student learning outcomes. Seekings points out that teachers' unions in South Africa "comprise a vested interest willing and able to delay if not thwart policy reforms."[171] The advancement of neoliberal yet "pro-poor" reform strategies in the mid-90s included a significant restructuring of the teacher pay system that drastically increased pay for teachers, in some cases doubling in real terms between 1993 and 1997.[172] But this strategy to improve educational outcomes appears rife with complications: "[representing] a major burden on taxpayers… the ratio of the average cost of a teacher to GDP *per capita* in South Africa was about double that in countries with similar levels of GDP *per capita* … [and] lead directly to a 15% reduction in the number of teachers employed in public schools."[173] Thus, South Africa's strategy to enact educational reform via the reform of teacher pay created as many issues as it resolved, centering on a fundamental tension between the dual lived realities of teachers as providers of a public good and as employees who are obligated to a reasonable wage relative to their qualifications

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[169] Raj Mestry and Brian Berry, "The perceptions of stakeholders of the implementation of a state funding model in South African public schools". In *Africa Education Review* (13:2, 2016). Via Taylor & Francis. http://www.tandfonline.com/doi/abs/10.1080/18146627.2016.1224096. 92.

[170] Arendse, "The School Funding System and Its Discriminatory Impact". 348.

[171] Seekings. "Trade Unions, Social Policy & Class Compromise in Post-Apartheid South Africa". 303.

[172] Ibid, 304.

[173] Ibid.

and profession.[174] The influence of teachers' unions in South African politics underscores the limitations of the state's capacity to implement a comprehensive series of policies that adequately meet the standards prescribed by the prescriptive norm bundle lead by the MDGs. In a zero-sum situation, the post-apartheid government was pressured by the political weight of unions to allocate a disproportionate amount of the limited resources available for education reform to teachers' salaries, instead of to other resources that may have improved access to primary education in more effective ways. In short, the reallocation of spending toward social programming including education as promised by the ANC in the moments leading up to and after the 1994 election fails to address the most pressing problems left behind after apartheid's end - as Seekings puts it, "[little] progress has been made in addressing the quality of what actually happens inside the classroom in part because teacher power and selfinterest [sic] has inhibited reform."[175]

The collective bargaining power of teachers' unions in South Africa leaves little in the budget for other educational expenses, forcing schools to look to other methods to secure supplemental revenue. This lack of extensive funding available beyond national government grants makes the South African practice of charging school fees in public schools a major impediment to universal access to equitable primary schooling. South Africa's constitution guarantees universal primary education, but it does not guarantee that the education is universally free, and all public schools were initially welcome to charge school fees to their students. Some schools are able to charge fees of R50 per student and others can charge fees over R20,000 per student - a direct result of the failure of the South African government to relocate

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[174] Ibid, 305.

[175] Ibid, 310.

or substantially rezone schools in the post-apartheid era. The failure means that many public schools still serve the same constituents as they did before the end of apartheid – as Arendse explains, most children "attend schools that they would have been compelled to attend in the past on account of their race… former white schools are overwhelmingly located in relatively advantaged or rich communities."[176] Fiske and Ladd found that in primary schools in the Western Cape, Black children accounted for almost 100% of the enrollment in formerly African-only schools, 93% of coloured students were attending schools formerly operated exclusively for coloured students, and 66% of students at formerly all-white schools were white.[177] They conclude that, "While symbolically important for all students, [officially race-blind schooling] has had little effect on the schooling opportunities for the large majority of African students in South Africa."[178] These findings indicate that, by proxy, most schools in South Africa continue to serve communities based on race, and by extension, also by income level. This means that the ability for public schools in different communities to charge variant levels of school fees to student bodies with different levels of ability to pay those fees in order to supplement the minimum provided government allocations has had a significant impact on the overall ability of a school to acquire sufficient resources.

It is difficult to make a direct link between race and income level within a school because, as mentioned previously, the South African government does not keep longitudinal educational data disaggregated by race. However, five subcategories of schools do exist that further elucidate how school fees interact with government grants in South Africa. Schools are

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[176] Arendse, "The School Funding System and Its Discriminatory Impact". 354.

[177] Fiske and Ladd, ""Racial Equality in Education". 7.

[178] Ibid.

separated into quintiles at the national level – quintile one schools are poorest, and quintile five

schools are the least poor. Each year, an 'adequacy benchmark' for funding is decided –

essentially, the benchmark is the bare minimum for a child in South Africa to receive an

education for a year. In 2011, the adequacy benchmark per student was R678, which is the

amount per student schools in the third quintile receive.[179] Schools in quintiles one to three

receive this amount or more from the South African government, and depending on the research

being considered, schools in quintiles one and two OR one to three are considered "no-fee"

schools and are prohibited from charging school fees to families (which happens in practice to

varying degrees, in violation of the law).[180] Schools receiving less than the adequacy benchmark

amount per student from the government (and that have thus been determined to be wealthier

schools) are permitted to charge school fees, by the consent of the majority of the parents of the

school.[181] At face value, this system appears to address the inequities of schooling in South

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[179] Arendse, "The School Funding System and Its Discriminatory Impact". 349.

[180] Arendse, "The School Funding System and Its Discriminatory Impact". 349, and Consortium for Research on Educational Access Transitions and Equity (CREATE). "No Fee' Schools in South Africa: Policy Brief Number 7" CREATE, (August 2009). http://www.create-rpc.org/pdf_documents/Policy_Brief_7.pdf. 2.

[181] Arendse, "The School Funding System and Its Discriminatory Impact". 350.

Africa by allocating more government resources to underserved schools. However, the continued implementation of school fees results in a perpetuation of inequality that favors historically privileged and historically white schools.

The preceding figure by Arendse exemplifies the paradox of quintile-based funding and its interactions with school fees in contemporary South Africa.

Despite provisions in the 2007 Education Laws Amendment Act that specific that schoolchildren are prohibited from being suspended from classes or denied school reports based on their ability to pay school fees, Arendse found that the "South African Human Rights commission reports that discriminatory practices occur regularly against learners whose school fees are not paid… [including] sending learners home [from school.]"[182] Additionally, while South African parents are technically able to apply to enroll their children at the school of their choice, admission is often in practice dependent on a family's ability to pay the school's

Budgets in rich and poor schools		
(It is assumed that both schools have 1 000 learners; the poor school charges R50 per learner per year, despite its "no-fee" status, and the rich school R20 000 per learner per year.)		
Funding Source	**Poor school (quintile 1)**	**Rich School (quintile 5)**
School allocation (NPNC)	R905 000	R156 000
School fees	R50 000	R20 000 000
TOTAL BUDGET	**R 955 000**	**R20 156 000**

Figure 1 Hypothetical models of school funding in South Africa, based on school fees. Table in "The School Funding System and Its Discriminatory Impact, p. 351, by Lorette Arendse in Law, Democracy, and Development, Volume 15 (2011.)

expected fees, regardless of the legality of the practice.[183] Thus, from multiple angles, there is a clear divergence between the stated goals of MDG 2 and the self-reported data from the national government that claims steady increases to near-universal primary education. Based on the

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[182] Ibid, 356.
[183] Ibid, 351.

structural forces that are at play, it is clear that some South African children are continually denied access to primary schooling, because they may be outright prohibited from attending the school in which they are nominally enrolled because of their family's inability to pay school fees. These practices demonstrate a clear structural weakness in the ability for South Africa to have successfully implemented the goals of MDG 2 and to implement the SDGs moving forward.

Other factions within the South African government also alter the state's capacity to offer a truly universal system of primary education. It is increasingly clear in the literature that regional government bureaucrats have substantial control over the allocation of resources because of a simple lack of knowledge from local teaching staff about their rights broadly and about the access to resources to which they are guaranteed by those rights.

The behavior of local and semi-local educational officials in areas where low-quintile (read: poor) schools are common has been observed to diverge sharply from the behavior of similar officials in areas where high-quintile (read: rich) schools are common. Mestry and Berry observed that teachers in low-quintile schools are afraid to speak up in meetings about the allocation of funding due to a lack of knowledge about education finance, such as the knowledge that schools can "apply for additional financial functions as stipulated in section 21 of the Schools Act."[184] But they also observe that, "Many principals [and district officials]... especially in poor schools, lacked the necessary knowledge, skills and expertise to effectively and efficiently manage the schools' finances," on their own in the first place.[185] These observations are in stark contrast to high-quintile schools, which were observed to have "proper account

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[184] Mestry and Berry, "Perceptions of Stakeholders". 90.
[185] Ibid, 89.

records [that] were kept electronically and were updated on a daily basis."[186] Thus, these accounts illustrate that the inequality in education and schooling in South Africa extends beyond the educational outcomes of learners or in the level of primary school enrollment. In fact, it would appear that the government's adoption of neoliberal policies that favor de-regulation of the public sector simply skipped over the part where the public sector was regulated to begin with: the management of schooling in low-quintile schools seems to have been left to its own devices, with little oversight or support from the national government in the places it is needed most. It is clear that from multiple angles, the choices made by the South African government to reform government through privatization and decentralization have contributed to its inability to fully realize the provisions of MDG Target 2.A because a large portion of South African primary school children are still attending improperly managed, inadequately resourced schools that simply do not provide a school environment that can be considered impactful and educational.

These provincial-level bureaucratic practices of are facilitated and oftentimes constructed by the willingness of the members of the ANC at the local and national levels to engage in neopatrimonial political practices that produce intra-communal tensions. Tom Lodge argues that the prominence of African neopatrimonalism can be explained as a residual effect of colonialism, the fusion of indigenous norms and institutions with Western-style political institutions.[187] Neopatrimonial political behavior is identified by Cammack et al. as:

> A series of actions that cause "weak or no separation of the public and private spheres… the primacy of vertical over horizontal ties … personalism [otherwise known as 'big man politics']… [that together] results in a political logic that is characterised by the use of both formal institutions (e.g. the state) and informal rules, norms and practices (e.g.

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[186] Ibid, 91.

[187] Tom Lodge. "Neo-Patrimonial Politics in the ANC." *African Affairs*, (113/450, 2014). Via Oxford University Press, on behalf of Royal African Society. https://academic.oup.com/afraf/article/113/450/1/48437. 5.

personalism, clientelism, patronage, de facto centralised control of state resources, etc.) to gain legitimacy and advantages over rivals in a 'winner-takes-all' competition for control of the state."[188]

In South Africa, the increasing commitment of ANC party members to the party for the sake of loyalty increasingly inhibits any sort of development agenda from progressing forward, including the pursuit of education development in regards to primary education. As time passes and the 1994 landslide elections increasingly become part of the part, the ANC has continued to hold onto its electoral prowess through a variety of mechanisms that facilitated its transition from liberation movement to established political party. Southall identifies a number of tactics employed by the ANC to consolidate power in the post-apartheid period: control of the former apartheid state machinery to centralize its power, the "deployment" of party loyalists to particular political appointments, and the de-legitimization of opposition parties by conflating political opposition to the ANC with apartheid sympathies.[189] All of these tactics have helped to secure the power of the ANC in national politics, but have also increasingly destabilized the democratic underpinnings established by the 1996 Constitution. In these political battles for control, education and schooling are frequently used as pawns for leverage or as the objects of favors from one party politician to another, a concerning tokenization of the problems facing primary schools in South Africa today. The party's increasing political paralysis as it is distracted by the implications of neopatrimonalism and corruption in the present historical moment suggest that educational outcomes will continue to stagnate as long as the current

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[188] Diana Cammack et al. "Neopatrimonial Politics, Decentralisation and Local Government: Uganda and Malawi in 2006." *Good Governance, Aid Modalities and Poverty Reduction Working Paper Series,* via the Advisory Board for Irish Aid & The Overseas Development Institute. (December 2007). https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/5831.pdf. 3.

[189] Southall, "From liberation movement to party machine?" 332.

framework of political economy remains in the country. However, recent waves of protest across the country in relation to higher education fees and the recent devaluing of the nation's credit rating to junk status, which no doubt contributed to the ouster of current President Jacob Zuma in late 2017, suggest that the party, and the broader material circumstances of South Africa, may be at a turning point.

In summary, the material factors in South Africa have played a substantial role in the effective implementation of MDG Target 2.A. The government's compliance with neoliberal economic reforms in the 1990s forced them to sideline the promise of radical change in schools for the sake of economic growth. While they did succeed in creating a new black bourgeoisie, these policies ultimately ended up exacerbating inequality in South Africa and failed to provide the revenue needed to adequately address the problems plaguing primary schools in South Africa. While the government claims to have enrolled nearly all children in primary school, it is quite clear that in the South African context, universal enrollment, or rather, universal going to school and sitting in a classroom, does not translate into universal primary education. The disproportionate spending of what little resources are available on teacher salaries while a significant number of schools still lack computer technologies or even electricity makes it difficult to conclude the level of moderate compliance with MDG 2 being currently espoused by the South African government. The continued reliance on school fees in many public schools in the country, and the widespread practice of suspending or excluding students from primary schools because of their lack of ability to pay school fees is another factor that provokes hesitation to proclaim an even adequate or average level of compliance with MDG Target 2.A. Indeed, it would appear that work needs to be done in the nation in terms of material structures in order to meet the standards required for education by the MDGs, despite the government's

claims of near-compliance.

As the 2010s progress, the material structures South Africa are continuing to destabilize. Most recently, Standard & Poor re-evaluated South Africa's local currency debt from "BBB-" to "BB", informally referred to as junk status.[190] This downgrade has only further exacerbated the financial woes of the country, pushing the future of education reform further into question as the 21st century progresses.

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[190] Olivia Kumwenda-Mtambo and Mfuneko Toyana. "S&P downgrades South Africa's local currency debt to 'junk' status". Reuters (November 24, 2017). https://www.reuters.com/article/us-safrica-ratings/sp-downgrades-south-africas-local-currency-debt-to-junk-status-idUSKBN1DO2MY

CONCLUSION

This paper analyzed the structural factors that impact the implementation of the human rights norm regarding the right to education, as established in international agreements such as the UDHR and more specifically articulated in the provisions of the framework guided by the Millennium Development Goals. I offer two conclusions: one empirical, in regards to the South African context, and one theoretical, in regards to how scholars might understand the implementation of a norm such as the right to education and the frameworks that guide it.

Discussing and analyzing the structural factors that inhibited and facilitated implementation of MDG 2 in South Africa offer several points for future discussion and research. Overall, the impact of the MDGs and human rights frameworks in general is clearly embedded in the structure of the post-apartheid government, primarily in the theoretics of the constitution and the legislation and policy agendas it inspired. However, its prevalence and relevance to education practitioners in the nation is dubious at best. Additionally, the historical legacies and specific structural factors of the chosen case study indicate that there are other concerns equal to, if not more pressing than, the priorities set forth by the rights norms lead by the MDG framework in the country at the present moment.

All things considered, I call into question the notion that the South African government can claim that it has achieved near-universal access to education, because the statistics are reported based on primary school enrollment, not on whether or not being in primary school makes a difference in a child's life. I believe the premises set forth by Reimers, who points out that in development contexts "education reform should revisit not only questions of who has access to school, but principally to what extend the education received is adequately preparing

students to meet the new demands for effective political participation in a democratic society".[191]

This is a more robust measure by which to evaluate how effectively a country is promoting the enjoyment of a universal right to education. While such a standard would be more difficult to assess, the societal impacts of education are far more important for the future of South Africa than the practice of measuring the number of students who are enrolled. Future education policies and future research in this field should prioritize the effects of education on a different evaluative level, because this project shows that reporting primary school enrolments does not mean that the education system in a given country is making a substantial impact in the educational experiences of its students, as demonstrated by the South African case.

Additionally, the South African context raises important questions about the nature of human rights implementation and normative assessment as the field moves forward to 2030, the date set for the targets of the SDGs. My project points to a discrepancy between the core human rights norm of a universal right to education and the prescriptive norm bundle guided by the MDGs that details the specifics of implementation of this core norm.

Why is it easy to move almost seamlessly from a discussion of the MDGs to a discussion of the SDGs, and why do the two frameworks seem to be so closely aligned, with regards to the support of specific international and state actors, as well as the specific language of goals and general priority areas? It would appear that in some ways, it feels like the SDGs are an extension or rearticulating or even simply an extensive editing and repackaging of the priorities set forth by leading international organizations and norm entrepreneurs, because of the fact that in least in regards to MDG 2, a number of states failed to reach the MDG targets by 2015. The frameworks

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[191] Fernando Reimers. "Citizenship, Identity, and Education: Examining the Public Purposes of in an Age of Globalization". In *Prospects*, vol. XXXVI, (no. 3, September 2006). 282.

that are intended to guide the international community through 2030 are uncomfortably similar to previous frameworks of human rights implementation, especially considering the rapid rise of movements in opposition to an international human rights framework, such as neo-populism and a resurgence of nationalist sentiments in Western Europe and the United States.

A possible explanation lies in the methodological practices of the field of implementation analysis. The core norm of a universal right to education is difficult to evaluate in a comprehensive or meaningful way without a supplemental framework. As a result, it becomes necessary to evaluate implementation based on a core norm's prescriptive corollaries. In the case of the core norm regarding the right to universal education, the prescriptive norm bundle discussed in this paper is guided by the MDGs. But, as the analysis in this paper demonstrates, an analysis of the factors impacting implementation reveals that there may be multiple issue areas in education in a given country that do not fall within the scope of the analysis as informed by a prescriptive norm bundle. In the South African context, it is clear that structural inequality in schooling as a legacy of the country's colonial and apartheid history is a significant issue area, in some cases independent from the country's progress towards universal primary school enrollment.

The project also draws attention to the importance of historical contexts in an analysis of structural factors impacting implementation. Without an understanding of South Africa's history of policies that contributed to significant inequality between races, the structural factors that influence norm implementation in primary education are more difficult to trace.

This analysis identifies a discrepancy between the current state of the prescriptive norm bundle in regards to education, which is focused on universal primary education, and its relationship to the core norm of realizing the right to education for all. Discussing the translation

of prescriptive norms into domestic contexts via a discussion of implementation calls into question the idea that norm implementation analysis accurately depicts the realities of human rights realization at the domestic level. Moving forward, will be important to consider how effectively such analyses can effectively capture the challenges and nuances of implementation.

APPENDIX 1. Texts of IBHR Outlining Right to Education

Document	Section	Text	Implications
ICESCR	Article 13	1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.	

ICESCR	Article 14	Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.	
UDHR	Article 26	(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.	
ICCPR	Article 18	4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.	

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