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## Statutory Curtailment of School Autonomy: Recent Movements on the Centralization-Decentralization Continuum in South African Education

### Abstract

The South African education system has been perceived as a decentralised and democratized education system and the National Development Plan proposes that greater management autonomy should be granted to public school principals by recommending that principals should gradually be given more powers as the quality of their leadership improves. This paper however, argues that contrary to the objectives of the National Development Plan, recent and current amendments to legislation is indicative that the government is moving in the opposite direction and that school governance and management autonomy is being curtailed. This is evident through an analysis of the effect of relevant sections of the Education Laws Amendment Act 31 of 2007 and the draft Basic Education Laws Amendment Bill (2017).

Keywords: centralization, decentralization, school management, school governance, school autonomy

### Introduction

The South African education system makes provision for differentiated school governance autonomy. This differentiation is expressed in two ways. Firstly, Section 21 of the South African Schools Act (RSA, 1996a) provides an avenue for differentiated decentralised autonomy in that it makes provision for school governing bodies to apply to the provincial Head of Department to be allocated additional functions pertaining to the maintenance and improvement of a school's facilities, the extra-mural curriculum of the school, the purchasing of textbooks and other educational material, to pay for services to the school, to provide an adult basic education class and other functions consistent with the provisions of the Schools Act and applicable provincial law. The second way in which differentiated school autonomy finds expression is the National Norms and Standards for School Funding (NNSF) (RSA, 2017b) which determines that the poorest 60% of public schools are declared non-fee-paying schools, receiving all their funding from the state, whilst the 'richer' 40% of public schools are fee-paying schools, receiving substantially less from the state, which equates to non-fee-paying schools receiving approximately six times that of fee-paying schools. This not only provides so-called fee-paying schools with a substantial degree of autonomy, but also requires greater levels of accountability to the local school community. However, during the last decade there has been a steady curtailment of the autonomy levels of school governing bodies, both through official statutory regulatory channels and through repeated unlawful attempts that had to be resolved by the courts.

### **Statutory curtailments of school governance autonomy**

An important mechanism to provide the education authorities with influence in school governing bodies was the insertion of Section 16A into the South African Schools Act by the Education Laws Amendment Act 31 of 2007. Section 16A stipulates that the principal of a public school represents the provincial Head of Department on the school governing body. In addition, Section 16A determines that a public school principal may not assist the school governing body in a manner which is in conflict with the instructions of the provincial Head of Department (HOD). The insertion of these amendments to the Schools Act has thus provided the Department of Basic Education, through the principals, a vehicle to be represented on governing bodies of public schools and as such, a means to influence governing body decisions. This is an example of how, under the pretense of decentralization, the authorities are actually centralizing the governance system.

Other examples of statutory curtailment of school governance autonomy can be found in the Section 58C of the Schools Act, inserted by means of Section 11 of the Education Laws Amendment Act of 2007 (RSA, 2007). The constraining elements and the potential for centralization contained in Section 58C can be juxtaposed against a twofold motivation for government to apply a form of selective decentralization. The first is related to the need to achieve equity and hence to utilize financial resources more effectively where needed most. However, in so doing, government must rely on school communities who can afford it, to contribute in the form of school fees, thus being forced to allow some financial decision-making autonomy. Conversely, political realities (political realism), for example the decline in legitimacy due to underperformance of the education system, are forcing the government to implement a more centralized approach. This corresponds to Lauglo's (1995) rationale of political legitimacy for the implementation of decentralization measures, which places the emphasis on "who has the right to make what decisions".

It is important that Section 58C of the Schools Act (RSA, 1996a) be read in conjunction with Section 16 of the Schools Act and sub-section 3(4) of the National Education Policy Act (RSA, 1996b) which grants the Minister of Basic Education additional powers to promulgate additional regulations. This has resulted in a number of policies and regulations being published that curtail autonomy levels pertaining to the professional management of schools and the policy-making functions of school governing bodies. It illustrates the vast extent of the Minister of Basic Education's powers to prescribe to school governing bodies how they must govern their schools and influence what is happening at local school level.

Notwithstanding the above, it is especially in matters concerning the appointment of teachers, admission policies and language policies of public schools, and the procurement and contractual ability of school governing bodies that the draft Basic Education Laws Amendment Bill (RSA, 2017a) provides clear signs that the government has set its sights on a course towards greater centralization.

### **The draft Basic Education Laws Amendment Bill (2017)**

Firstly, the draft Basic Education Laws Amendment Bill (RSA, 2017a) seeks to adjust the powers of school governing bodies with regard to recommending

candidates for appointment to management positions in schools in favor of the HOD. It is argued by the memorandum of motivation that accompanied the draft Amendment Bill, that in terms of the appointment of teachers in management positions, dysfunctional school governing bodies in rural areas do not have functional governing bodies and persons with the necessary skills and necessary knowledge to conduct interview processes and to know what is required of a principal, a deputy principal or a head of department. Furthermore, the current system restricts the HOD in terms of whom he or she may appoint. However, this does not hold true for schools with well-functioning school governing bodies. This proposed amendment to the Schools Act also contradicts the recommendation of the National Development Plan (RSA, 2012) that top performing schools should be supported and not be saddled with unnecessary burdens.

Secondly, the draft Amendment Bill (RSA, 2017a) seeks to limit the powers of school governing bodies in respect of the admission policies of schools by amending section 5 of the Schools Act to provide for the provincial HOD to have the final authority to admit a learner to a public school. Should this proposed amendment be passed by Parliament, it will become a good example of the centralization of decision-making power and how education authorities are granted statutory powers to intervene at local governance level under the guise of freedoms promised by decentralization and local autonomy.

The Norms and Standards for Language Policy stipulate that school governing bodies must determine how the school will promote multilingualism in their schools. In addition, the Norms and Standards for Language Policy (RSA, 1997) stipulate that a school must provide for learners to be taught in a different language to the school's language of teaching and learning if a reasonable demand exists. This has resulted in a number of court cases – the latest being the case involving Overvaal High School. These regulations can be regarded as instruments of centralisation in an attempt to counterbalance decentralised decision-making powers of school governing bodies since the school governing bodies do not have full autonomy and a wide discretion in their decision-making power in adopting language policies for schools.

The proposed amendment in the draft Basic Education Laws Amendment Bill (RSA, 2017a) that the provincial HOD be empowered to centrally procure identified learning support material for public schools and that school governing bodies must seek the approval of the MEC for Education in the province to enter into lease agreements of any purpose, may not only limit the decision-making powers of capable school governing bodies, but is contrary to the recommendations of the National Development Plan (RSA, 2012) in that it will place an 'unnecessary burden' on well-functioning school governing bodies.

Therefore, instead of building on the differentiated school governance approach as initially contained in the South African Schools Act, the Department of Basic Education is following an approach of curtailing the powers of well performing governing bodies which, according to the National Development Plan, should be "recognized as national assets" (RSA, 2012, p. 303). In addition, the National Development Plan has as an objective to "develop a strong sense of community ownership" and acknowledges the need to provide additional support to school governing bodies (RSA, 2012, p. 311). Thus, instead of curtailing local governance

autonomy, means of incentivizing and rewarding school governing bodies to strive towards substantive and durable improvement must be sought. In this way the constitutional principle of co-operative governance will be strengthened. Unfortunately, according to Indicator 22 of the Department of Basic Education's *Action Plan to 2019: Towards realization of schooling in 2030* (DBE, 2015) school governing bodies are measured against minimum criteria of effectiveness which primarily means that school governing bodies need to only be "properly constituted and holding the required minimum of four meetings per year" to be deemed as effective (DBE, 2015, p. 43). Such superficial measures of effectiveness will not only not result in improvement of the effectiveness of school governance, but will also undermine governance autonomy as an "important cornerstone of democracy and accountability in the schooling system" (DBE, 2015, p. 42). Thus, governance autonomy at local school level requires school governing bodies to be meaningfully effective. In other words, without meaningful effectiveness, governance autonomy will not be possible.

### **Management and leadership autonomy at school level**

Compared to school governance autonomy, there is less room for autonomy in terms of school management and leadership. Although public school principals are in terms of Section 16 of the Schools Act (RSA, 1996a) responsible for the professional management of their schools, Section 16A stipulates that the principal of a public school represents the provincial Head of Department on the school governing body. Therefore, discretionary powers of public school principals are limited in that they may not act in conflict with the instructions of the Head of Department, legislation or policy and that the potential for a conflict of interests between the principal and the school governing body on the one hand, and between the principal and the education authorities on the other, is very real.

Notwithstanding the above, public school principals are still expected to apply discretion in terms of disciplinary issues of learners (*Van Biljon v Crawford*), ensuring the lawfulness of school policies (*Welkom* cases), protecting and promoting the rights of learners (*Welkom*, *Pillay*, *Antonie* and *Josias de Kock* cases) and in ensuring the safety of everyone in the school (*Queenstown Girls High School* and *Tania Jacobs* cases). In exercising discretion, principals need to apply the common law principles of *in loco parentis* and *diligence paterfamilias* (prudent father) in safeguarding and promoting the well-being of everyone in the school.

An important example of a principal and his management team applying professional discretion whilst deviating from the interpretation of a national policy by district officials can be found in the *Mbilwi High School* case. However, such a deviation from national policy needs to be well justified. For example, exercise of discretion and deviation of policy must be in the best interests of a learner as demanded by Section 9 of the Children's Act (RSA, 2005).

Although the Policy on the South African Standard for Principals (RSA, 2016) envisages the application of shared or distributed leadership in South African schools, the concepts of 'management' and 'leadership' are used interchangeably in policy documents. An example is that Section 16A of the Schools Act (RSA, 1996a) expects principals to be responsible for the 'professional management' of a school, where according to the National Development Plan "the main responsibility of a

school principal should be to lead [own emphasis] the core business of the school” (RSA, 2012, p. 309). Although this may be regarded by many as semantics, organizational theory makes a clear distinction between the two and the interchangeable usage of these concepts in official documentation dilutes the individual value and importance of each concept. In addition, the Department of Basic Education is applying a strong managerialistic form of monitoring and control which makes it unlikely that leadership activity will flourish. Also, the strong emphasis on school principals being the representative of and accountable to the provincial Head of Department is not conducive to principals creating conditions in their schools for shared and collaborative leadership practices.

There appears to be a substantial discrepancy between the current relatively low levels of autonomy afforded to principals and school management teams and what is proposed in the National Development Plan (RSA, 2012). Significantly the National Development Plan proposes that the management function of principals be expanded to include functions that currently fall within the ambit of school governing bodies. The National Development Plan proposes that greater management autonomy be granted to public school principals by recommending that principals gradually should be given “more administrative powers as the quality of school leadership improves, including in financial management, the procurement of textbooks and other educational material, and human resources management” (RSA, 2012, p. 310). Firstly, leadership is being associated with ‘administrative powers’, once again pointing to some conceptual (con)-fusion. Secondly, financial management of schools and procurement of textbooks are governance functions specifically allocated to school governing bodies in the Schools Act. Implementing such a recommendation would require amendments to the Schools Act which are notably absent in the draft Basic Education Laws Amendment Bill (RSA, 2017a) in its current form. Should the Schools Act be amended to allow for these recommendations, school governance in its current form will change and contrary to the partnership-model as envisaged in the South African Schools Act (RSA, 1996a), the role of school governing bodies, especially the well-functioning governing bodies, will be radically watered down. Thirdly, such extension of the powers of principals will necessitate drastic changes to the minimum entry requirements of school principals (and other school management positions). Public school principals will not only need to have a sound knowledge of the law and be proficient in applying the law and related legal principles, but they will also have to be well (and better) -trained and proficient in school financial management. These additional competencies and knowledge are important as principals will be held accountable for functions previously allocated to school governing bodies.

Just as in the case of governance autonomy, meaningful autonomy in school management will only be possible if accompanied by capacity. Principals will have to demonstrate high levels of competence for them to be entrusted with greater levels of autonomy, a principle acknowledged by the National Development Plan (RSA, 2012, p. 310).

## **Conclusion**

It appears as if decentralised-centralism has penetrated the South African education system at the expense of the partnership-principles as envisaged in the

pre-ambles of the South African Schools Act (RSA, 1996a). Unless the system reverts to an approach which promotes support which is underpinned by a philosophy of improvement, rather than to ensure compliance, it is unlikely that the education-related objectives of the National Development Plan (RSA, 2012) will be attained. Optimal use of existing capacity is required and that implies that it must be harnessed and exploited wherever it exists within the education system. A possible manner in which this can be done is by developing and implementing a model for differentiated or earned school autonomy.

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